



COMMONWEALTH of VIRGINIA

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J. Vaden Hunt, Esquire
Pittsylvania County Attorney
Post Office Box 426
Chatham, Virginia 24531

Dear Mr. Hunt:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You inquire whether a member of a Board of Supervisors ("Board"), individually, or the Board, as a unit, may petition the circuit court pursuant to § 4.1-124(A) in order to place on the ballot a referendum asking whether the jurisdiction should permit, within its boundaries, the sale of mixed beverages by restaurants licensed by the Virginia Alcoholic Beverage Control Board.

Response

It is my opinion that, based on the plain language of § 4.1-124(A), neither a member of the Board nor the Board in its entirety is authorized to petition the circuit court for a referendum on mixed beverage sales.

Applicable Law and Discussion

Section 4.1-124 of the Alcoholic Beverage Control (ABC) Act¹ provides that a locality may permit the sale of mixed beverages when a majority of the voters in that jurisdiction approves such sales by referendum. Section 4.1-124(A) further provides that:

The qualified voters of a town, county, or supervisor's election district of a county may file a petition with the circuit court of the county asking that a referendum be held on the question of whether the sale of mixed beverages by restaurants licensed by the [ABC] Board should be permitted within that jurisdiction... Upon the filing of a petition, and under no other circumstances, the court shall order the election officials of the county to conduct a referendum on the question.^[2]

¹ VA. CODE ANN. §§ 4.1-100 through 133 (2010).

² The General Assembly has taken action to amend this provision of the statute to simplify the language, but the relevant portions will remain unchanged. *See* 2011 Va. Acts ch. 560.

When a statute is clear and unambiguous, the rules of statutory construction dictate that the statute be interpreted according to its plain language.³ Here, the Code expressly requires such a petition to be signed by ten percent of the qualified voters of a jurisdiction or by one hundred qualified voters, whichever is greater.⁴ Because “qualified voters” does not refer to or include the Board of Supervisors,⁵ and the mention of one thing in a statute generally implies the exclusion of another,⁶ I conclude that a Board of Supervisors and its members are not authorized under § 4.1-124 to petition a court to call for a referendum regarding the sale of mixed beverages by restaurants. This conclusion is supported by the comparable language of § 4.1-123(A), which provides that “[e]ither the qualified voters *or the governing body*” may file a petition to limit the sale of alcohol on Sundays (emphasis added). If the General Assembly had intended to permit a Board of Supervisors or its members to file a petition in the situation you present, it clearly knew how to do so.⁷

In addition, the ABC Act constitutes a comprehensive legislative scheme, by which the Commonwealth has preempted control of alcoholic beverages, so that political subdivisions retain only the limited and specific authority set out in the statute.⁸ Moreover, Virginia adheres to the Dillon Rule of strict construction, which provides that local governing bodies have “only those powers which are expressly granted by the state legislature, those powers fairly or necessarily implied from expressly granted powers, and those powers which are essential and indispensable.”⁹ Any doubt as to the existence of the power must be resolved against the locality.¹⁰ I can find no other Code section that would provide a Board of Supervisors the authority to file such a petition. As such, only qualified voters may file a petition to seek a referendum on the sale of mixed beverages.

Conclusion

Accordingly, it is my opinion that neither a member of the Board nor the Board in its entirety is authorized to petition the circuit court for a referendum on mixed beverage sales.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

³ See, e.g., *HCA Health Servs. of Va., Inc. v. Levin*, 260 Va. 215, 220, 530 S.E.2d 417, 419-20 (2000).

⁴ Section 4.1-124, *but see* note 2, *supra*.

⁵ See VA. CODE ANN. § 24.2-101 (Supp. 2010) (defining “qualified voter”). Clearly, the individual members of the Board are qualified voters, but their status as Board members does not afford them any greater authority than other citizens in this instance.

⁶ See *Smith Mountain Lake Yacht Club v. Ramaker*, 261 Va. 240, 246, 542 S.E.2d 392, 395 (2001). See also NORMAN J. SINGER & J.D. SHAMBLE SINGER, 2A SUTHERLAND STATUTORY CONSTRUCTION § 47.23 (7th ed. 2007).

⁷ The General Assembly is presumed to have chosen with care the words it used when it enacted the statute, *Barr v. Town & Country Props., Inc.*, 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990); and the legislature knows how to express its intention, *see, e.g.* 2006 Op. Va. Att’y Gen. 29, 31 n.5 and opinion cited therein.

⁸ See 1976-77 Op. Va. Att’y Gen. 4, 5; 1968-69 Op. Va. Att’y Gen. 234A, 235.

⁹ *Arlington Cnty. v. White*, 259 Va. 708, 712, 528 S.E.2d 706, 708 (2000) (alteration in original) (quoting *City of Va. Beach v. Hay*, 258 Va. 217, 221 (1999)).

¹⁰ 2004 Op. Va. Att’y Gen. 117, 118 (citing 2A EUGENE MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS § 10.19 (3d ed. 1996)).