



COMMONWEALTH of VIRGINIA

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Steven D. Briglia, Esquire
Town Attorney for the Town of Vienna
127 Center Street, South
Vienna, Virginia 22180

Dear Mr. Briglia:

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

Issues Presented

You inquire regarding the validity of several provisions of a County of Fairfax ("County") ordinance related to the regulation of rates set by the Town of Vienna ("Vienna") for water services Vienna provides to residents of the County. Specifically, you ask whether the County 1) presumptively can invalidate any rate adopted by Vienna if such water rate exceeds the water rate charged by the Fairfax County Water Authority; 2) can require the Town to submit its water rates for review to the staff and legislative board of a locality that does not operate the water system or set the water rate by ordinance; and 3) can require the Town to obtain the consent of the County for setting water rates that exceed those set by Fairfax County Water Authority.

Response

It is my opinion that Fairfax County lacks authority to impose a limit or subject to County review or approval the water service rates Vienna sets for those persons using the Town's water service, including any customers residing outside the Town limits.

Background

You relate that Vienna currently operates a water system that supplies water to Vienna residents and to residents of neighborhoods immediately adjacent to Vienna. You state that this water system was in operation prior to July 1, 1976. For years, at the request of the County of Fairfax and the Fairfax County Water Authority, the independent water authority created by the County, Vienna also has provided water to customers located outside the Town's corporate limits but within the bounds of the County. Each year, the Vienna mayor and town council hold a public hearing on water and sewer rates and set those rates by ordinance; you state that such rates have never been determined to be unfair or unreasonable.

In 2011, the County adopted an ordinance related to the regulation of water rates.¹ The ordinance expressly provides that “no provider of retail public water service within [the County] shall set, establish, bill, charge, or collect from any user in Fairfax County any rate, fee, or charge for water service that is greater than the corresponding rate, fee, or charge imposed by the Fairfax County Water Authority.”² A higher rate is permissible only upon the review and approval of a written proposal submitted by the water provider to the County Director of Public Works and Environmental Services. Upon finding that the proposed rate is “fair and reasonable,” the County Board of Supervisors may approve the higher rate by ordinance.³

While rates set by a city or town for water service provided within its territorial limits are exempt from the foregoing provisions of the ordinance,⁴ approximately forty percent of Vienna’s water system users, as you relate, are outside the boundaries of Vienna. Vienna’s water rates with regard to these users therefore would fall under the purview of the ordinance. You question the authority of the County to adopt this ordinance.

Applicable Law and Discussion

In determining the powers of a local government, Virginia follows the Dillon Rule of strict construction. Accordingly,

the powers of boards of supervisors are fixed by statute and are limited to those conferred expressly or by necessary implication. This rule is a corollary to Dillon’s Rule that municipal corporations have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable.^[5]

There is no statutory provision granting counties general oversight of water services provided to their residents by other localities. Rather, § 15.2-2143 provides, in pertinent part:

Every locality may provide and operate within or outside its boundaries water supplies and water production, preparation, distribution and transmission systems, facilities and appurtenances for the purpose of furnishing water for the use of its inhabitants; or may contract with others for such purposes and services. Fees and charges for the services of such systems shall be fair and reasonable and payable as directed by the locality

No locality, after July 1, 1976, shall construct, provide or operate outside its boundaries any water supply system prior to obtaining the consent of the locality in which the system is to be located. No consent shall be required for the operation of any such water supply system in existence on July 1, 1976, in the process of construction or for which the site has been purchased, or for its orderly expansion.

It is a general rule of statutory construction that the words of a statute are to be given their usual, commonly understood meaning.⁶ Moreover, when “the language of a statute is clear and unambiguous,”

¹ COUNTY OF FAIRFAX, VA., Code § 65-6-13.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Bd. of Supvrs. v. Horne*, 216 Va. 113, 117, 215 S.E.2d 453, 455 (1975) (citations omitted); *accord Bd. of Supvrs. v. Countryside Inv. Co.*, 258 Va. 497, 503, 522 S.E.2d 610, 613 (1999).

⁶ *See Wright v. Commonwealth*, 278 Va. 754, 759, 685 S.E.2d 655, 657 (2009).

application of the rules of statutory construction is not required.⁷ The plain language of the first paragraph of § 15.2-2143 is unequivocal. Any locality, including a town,⁸ is authorized to provide and operate, within or outside its boundaries, water supply services. Moreover, the locality providing the service may charge “fees and charges for the services of such systems” so long as they are “fair and reasonable” and are payable “as directed by the locality.”

The General Assembly clearly contemplated operations of water services by a locality both “within or outside” the boundaries of the supplying locality, and permitted the locality providing the service to set the fees and charges for the services, making them payable as directed by the operating locality. Thus, the locality providing the service is authorized to set rates for its customers, regardless of where those customers live. The *Code of Virginia* does not provide authority for a non-supplying locality to set rates for its residents who receive their water services from another locality.⁹ If the General Assembly had intended to provide such authority, it could have easily done so; however, no such authorization is included, and none now should be implied.¹⁰

Therefore, I conclude that Vienna can set the fees and charges for its customers, including those located outside Vienna but within the County, without restriction or consent from the County.¹¹ The only limitation on such rates and charges is that they be “fair and reasonable.”¹² Because Vienna is authorized to set rates for water services it provides to users residing within or outside of its boundaries, and because the County lacks such authority, I further conclude that the County has no authority to direct Vienna to submit its rates to the County for review and approval.

⁷ *Ambrogi v. Koontz*, 224 Va. 381, 386, 297 S.E.2d 660, 662 (1982).

⁸ VA. CODE ANN. § 15.2-102 (2012) (defining a “locality” for purposes of Title 15.2 to include cities, counties, and towns, “as the context may require.”). Moreover, Section 6.1(a) of The Charter of the Town of Vienna grants the Town Council the “power and authority to acquire, or otherwise obtain control of or establish, maintain, operate, extend and enlarge waterworks . . . within or without the limits of the Town,” as well as to “promulgate and enforce reasonable rates, rules and regulations for use of the same, any or all of which rates, rules and regulations the Council may alter at any time without notice.”

⁹ Although § 15.2-2111 authorizes a county (or any other locality) to fix the rates of *any* sewage or water services provided within its boundaries, the general language of this statute must yield to the more specific language of § 15.2-2143, which authorizes a town (or any other locality) supplying water outside its boundaries to set the rates of the water so supplied. “In construing conflicting statutes, if one section addresses a subject in a general way and the other section speaks to part of the same subject in a more specific manner, the latter prevails.” *Beard Plumbing & Heating v. Thompson Plastics*, 254 Va. 240, 245, 491 S.E.2d 731, 734 (1997) (citing *Dodson v. Potomac Mack Sales & Serv., Inc.*, 241 Va. 89, 94-95, 400 S.E.2d 178, 181 (1991)).

¹⁰ *See Bd. of Supvrs. v. Reed’s Landing Corp.*, 250 Va. 397, 400, 463 S.E.2d 688, 670 (1995) (“If there is a reasonable doubt whether legislative power exists, the doubt must be resolved against the local governing body.”)

¹¹ Moreover, § 15.2-2143 additionally provides that no locality “operating outside its boundaries any water supply system” that was in existence as of July 1, 1976 is required to obtain the consent of the locality in which the system is located in order continue operations outside its boundaries. This language further supports the proposition that a town may operate a preexisting water system serving users outside of town boundaries in a manner independent of County influence.

¹² Whether the rates at issue here are “fair and reasonable” is beyond the scope of this opinion, and a “determination of reasonableness will ultimately depend on the particular facts presented.” 1997 Op. Va. Att’y Gen. 77, 79, and *see* citations therein.

Conclusion

Accordingly, it is my opinion that Fairfax County lacks authority to impose a limit on or subject to review the water service rates Vienna sets for those persons using the town's water service, including any customers residing outside the town limits.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink that reads "Ken C II". The signature is stylized, with the first name "Ken" written in a cursive-like font and the last name "C" followed by "II" in a more formal, blocky font.

Kenneth T. Cuccinelli, II
Attorney General