



COMMONWEALTH of VIRGINIA

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September 8, 2016

The Honorable Sandra Gioia Treadway
Librarian of Virginia
800 East Broad Street
Richmond, Virginia 23219

Dear Ms. Treadway:

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 ask whether the Roanoke County Public Library (the “County Library”) is subject to § 42.1-35 of the *Code of Virginia*, which requires that a local library board comprised of citizens appointed by the local governing body have management and control of the local library (*i.e.*, that it be a “managing board” of the library).

Background

The Library Board of the Library of Virginia (the “State Library Board”) is authorized to award grants to local libraries, provided they qualify under standards set by that body.¹ One such standard is that a local library “must be organized under the appropriate section of the Code of Virginia.”² If that standard is not met, the State Library Board may withhold funding. Thus, the question of whether the County Library must have a managing board appointed by the local governing body affects its eligibility for this type of state funding.

The question you pose was first raised by state officials in 1991, and the county responded by asserting that the county charter, a special act of the General Assembly enacted in 1986,³ prevails over the

¹ See VA. CODE ANN. § 42.1-48 (2013) (“In order to encourage the maintenance and development of proper standards, including personnel standards, and the combination of libraries or library systems into larger and more economical units of service, grants of state aid from funds available shall be made by the Board to any free public library or library system which qualifies under the standards set by the Board.”).

² 17 VA. ADMIN. CODE §§ 15-90-20; 15-110-10; *see also* LIBRARY OF VA., REQUIREMENTS FOR STATE AID TO VA. PUBLIC LIBRARIES (March 13, 1991), <http://www.lva.virginia.gov/lib-edu/LDND/state-aid/requirements.asp>.

³ 1986 Va. Acts ch. 617.

statute in question, which is a general law. The county interpreted the county charter as placing the ability to create a library department with the County Board of Supervisors, and as placing governing responsibility over all county departments—including the library department—with the County Administrator. For that reason, the county concluded that it was in compliance with special state law (its charter) and thus exempt from the general statute requiring a managing library board made up of citizens. The issue was raised again five years later, in 1996, and the county responded in the same way. The State Library has now raised the issue for a third time, and the county’s position remains the same.

Applicable Law and Discussion

The statute in question, § 42.1-35 of the *Code of Virginia*, provides for the creation of local library boards whose members are to be a managing board:

The *management and control* of a free public library system shall be vested in a board of not less than five members or trustees. They shall be appointed by the governing body, chosen from the citizens at large with reference to their fitness for such office.^[4]

Several localities are exempted from the requirement to create a managing board by the following statute, § 42.1-36:

The formation, creation or continued existence of boards shall in nowise be considered or construed in any manner as mandatory upon any city or town with a manager, or upon any county with a county manager, county executive, urban county manager or urban county executive form of government or the Counties of Chesterfield and Shenandoah, by virtue of this chapter.^[5]

The exemption statute does not, however, apply to Roanoke County: it is not one of the named exempt localities, and it has a county administrator form of government, which is not one of the named exempt forms of government.⁶

The county takes the position that it need not create a managing library board because of provisions in its charter providing that the Board of Supervisors “shall provide for the performance of all governmental functions of the county and to that end shall provide for and establish all departments of government that it deems necessary,”⁷ and that “the county administrator [in general] shall appoint each superintendent or department head of each county department.”⁸ According to the county, these provisions of the charter effectively create an exemption from § 42.1-35, such that the county is not required to establish a library managing board.

⁴ VA. CODE ANN. § 42.1-35 (2013) (emphasis added).

⁵ VA. CODE ANN. § 42.1-36 (2013).

⁶ As to the various forms of county government referenced in this statute, counties with a “county manager” are Henrico and Arlington; counties with a “county executive” are Albemarle and Prince William; there are no counties with an “urban county manager”; and the sole county with an “urban county executive” is Fairfax County. Thus, Roanoke County, which has a county *administrator*, is not among the counties made exempt under this statute.

⁷ CHARTER FOR THE COUNTY OF ROANOKE, VA., § 3.02.

⁸ *Id.* at § 4.01. While the Roanoke County Code is subordinate to Virginia Code § 42.1-35, and thus could not modify or create an exemption to its requirement of having a managing local library board, I do note that—like the County Charter—the County Code does not address the characteristics of the County Library Board, or even mention it.

The legal error with this position is that laws empowering local governing bodies to establish departments are common,⁹ as are laws giving the administrative head of government power to manage them.¹⁰ The Supreme Court of Virginia has held that “specific provisions of [a] statute . . . cannot be regarded as having been repealed or modified by the general provisions of [a] charter.”¹¹ Here, the specific statutory requirement of a local library managing board “cannot be regarded as having been repealed or modified” by charter provisions authorizing the Board of Supervisors to establish departments and the County Administrator to manage them.¹²

I find nothing else in the county charter showing that the General Assembly intended for it to exempt Roanoke County from the statutory requirement of having a governing library board.¹³

I note further that when the charter was enacted in 1986, the General Assembly could easily have amended the exemption statute to include either “Roanoke County” or “any locality having the County Administrator form of government.” The General Assembly has added certain localities to this statute since it was first enacted in 1970.¹⁴ Its failure to do so in 1986 or subsequently for Roanoke County is a clear indication that it has never intended to exempt the county from the statutory requirement of having a managing library board.

⁹ “Every locality shall provide for all the governmental functions of the locality, including . . . the organization of all departments” VA. CODE ANN. § 15.2-1500 (2012). “A municipal corporation may provide for the organization, conduct and operation of all departments, offices, boards, commissions and agencies of the municipal corporation, subject to such limitations as may be imposed by the charter or otherwise by law.” VA. CODE ANN. § 15.2-1107 (2012).

¹⁰ “Every chief administrative officer shall be the administrative head of the local government in which he is employed. He shall be responsible to the governing body for the proper management of all the affairs of the locality which the governing body has authority to control.” VA. CODE ANN. § 15.2-1541 (2012).

¹¹ *City of Roanoke v. Land*, 137 Va. 89, 92-93 (1923) (“[W]e are of [the] opinion that the specific provisions of the statute . . . cannot be regarded as having been repealed or modified by the general provisions of the charter”) (holding that local ordinances enacted under general charter powers are void when they conflict with a specific statute); 2001 Op. Va. Att’y Gen. 161, 162-163; 1978-1979 Op. Va. Att’y Gen. 192, 193.

¹² If allowing local governing bodies to establish departments and authorizing the chief administrative officer to manage them were deemed to create an exemption from the governing board statute (Section 42.1-35), then the vast majority—if not all—of Virginia counties, cities, and towns would be exempt from the general requirement of having a managing library board, to the point that the exemption statute (§ 42.1-36) would be virtually meaningless. That is not a reasonable conclusion. “[I]t is well established that every act of the legislature should be read so as to give reasonable effect to every word” *Jones v. Cornwell*, 227 Va. 176, 181 (1984).

¹³ The charter does contain a “grandfather clause” that continues the existence of then-existing “boards, committees, commissions, and authorities.” CHARTER FOR THE COUNTY OF ROANOKE, VA., § 18.07. While this clause does continue the existence of the library board, which had been previously established by Resolution No. 2474, “Establishing a plan of government for the County of Roanoke from and after January 1, 1980” (Minutes of a Jan. 2, 1980, meeting of the Roanoke County Board of Supervisors), the mere continued existence of the library board does not, without more, make the county exempt from the “managing board” statute in question.

¹⁴ Section 42.1-36, the “exemptions statute,” was first enacted in 1970. At that time it applied only to “any city or town with a manager, or upon any county with a county manager, county executive, urban county manager or urban county executive form of government.” 1970 Va. Acts ch. 606. In 1978, it was amended to include Chesterfield County. 1978 Va. Acts ch. 6. It was amended again in 2002 by adding Shenandoah County. 2002 Va. Acts ch. 111.

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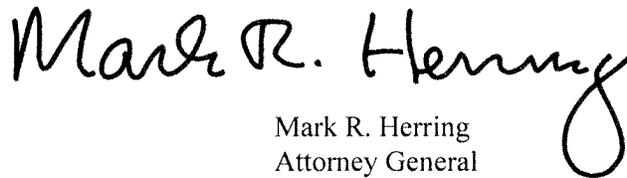
I therefore conclude that the county charter's general provisions regarding the power of the governing body to create departments and the power of the chief administrative officer to manage them, do not exempt the county from the specific statutory requirement of creating a managing library board appointed by the Board of Supervisors, as required by § 42.1-35. This conclusion is supported by the fact that the General Assembly has not amended § 42.1-36 so as to exempt the county from the requirement.

Conclusion

For the reasons stated, it is my opinion that § 42.1-35 of the *Code of Virginia*, which requires that a local library board be a managing board whose members are appointed by the local governing body, is applicable to Roanoke County.

With kindest regards, I am

Sincerely yours,

A handwritten signature in black ink that reads "Mark R. Herring". The signature is written in a cursive style with a large, looping "H" and "R".

Mark R. Herring
Attorney General