



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

Mark R. Herring  
Attorney General

202 North Ninth Street  
Richmond, Virginia 23219  
804-786-2071  
Fax 804-786-1991  
Virginia Relay Services  
800-828-1120  
7-1-1

November 17, 2016

Patrick J. Skelley II, Esquire  
Bedford County Attorney  
122 East Main Street, Suite 201  
Bedford, Virginia 24523

Dear Mr. Skelley:

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 county may establish a local enterprise zone development taxation program (a “program”) in an enterprise zone located in a town within the county, where the town was a city when the enterprise zone was first established, and the city has since reverted to the status of a town.

## Background

According to the information you provided, an area within what was then the City of Bedford received enterprise zone designation in 2009, pursuant to § 59.1-542 of the *Code of Virginia*. Because it was an independent city, it was not part of the County of Bedford, which surrounded it. In 2013, it reverted to town status, and it is now the Town of Bedford. Because towns, unlike cities, are part of the counties in which they are located, the Town of Bedford is part of Bedford County.

The Commonwealth renewed the enterprise zone designation in 2014, the year after the former city reverted to town status. The county now seeks to adopt a program in order to incentivize economic revitalization in the enterprise zone.

## Applicable Law and Discussion

Localities use enterprise zones to revitalize distressed areas and combat unemployment.<sup>1</sup> They are areas designated by the Governor as eligible for the benefits of the Enterprise Zone Grant Act (the “EZGA”).<sup>2</sup> Upon the periodic announcement of competitions by the Department of Housing and Community Development (“DHCD”), the governing body of any county or city may submit an

---

<sup>1</sup> See VA. CODE ANN. § 59.1-545 (2014).

<sup>2</sup> Sections 59.1-538 to -549 (2014). The EZGA is contained in §§ 59.1-538 to 59.1-549 (2014).

application to DHCD requesting enterprise zone designation for an area within the locality.<sup>3</sup> The application is to include proposals for “local incentives . . . [to] stimulate real property improvements and new job creation” within the potential enterprise zone.<sup>4</sup> The EZGA provides that one such incentive may include a reduction of local taxes.<sup>5</sup>

Once DHCD approves an enterprise zone application, the enterprise zone is created, and the locality may then adopt a program: the *Code of Virginia* provides that “[t]he governing body of any county, city, or town may adopt a . . . program by passing an ordinance designating an enterprise zone located within its boundaries as a local enterprise zone . . . .”<sup>6</sup> In other words, as long as there is an enterprise zone “within [the] boundaries” of a locality, the locality may establish a program.

The EZGA does not indicate that the reversion of an independent city into a town would dissolve enterprise zone designations within the former city.<sup>7</sup> It is also significant that this enterprise zone was renewed by DHCD in 2014, a year after the former city reverted to town status. Because the town is located within the county, this means that when DHCD granted the 2014 renewal, it was aware that the enterprise zone was located in both the town and the county. In the absence of any facts or laws triggering termination or limitation of the enterprise zone designation, I conclude that the enterprise zone in question has valid existence within both the town of Bedford and the County of Bedford.

The Dillon Rule strictly construes local government authority in Virginia, such that “municipal corporations have only those powers that are expressly granted, those necessarily or fairly implied from granted powers, and those that are essential and indispensable.”<sup>8</sup> A corollary to the Dillon Rule provides that “the powers of [county] boards of supervisors are fixed by statute and are limited to those conferred expressly or by necessary implication.”<sup>9</sup> Therefore, the ability of a county to establish a program depends upon delegation of the requisite authority by the General Assembly.<sup>10</sup>

Section 58.1-3245.8(A) explicitly gives counties, cities, and towns the authority to adopt programs within enterprise zones within their boundaries. It is therefore apparent that the General Assembly “expressly granted” to local governing bodies the power to establish these programs, and there

---

<sup>3</sup> Section 59.1-542(A) (2014). After reviewing applications, the Director of DHCD makes a designation recommendation to the Governor. Section 59.1-542(E). Enterprise zone designation initially lasts ten years, followed by two potential five-year renewal periods. *Id.*

<sup>4</sup> Section 59.1-543(A) (2014).

<sup>5</sup> *Id.* Additional “local incentives include, but are not limited to: (i) reduction of permit fees; (ii) reduction of user fees; [and] (iii) reduction of business, professional and occupational license tax . . . .” *Id.* As part of the program, a portion of the tax revenue derived from the local enterprise zone is placed into a Local Enterprise Zone Development Fund. Section 58.1-3245.8 (2013). This Fund may be used in accordance with a number of statutorily enumerated purposes that generally aim to ameliorate quality of life and incentivize business development within the local enterprise zone. Section 58.1-3245.10 (2013).

<sup>6</sup> VA. CODE ANN. § 58.1-3245.8(A) (2013). Section 58.1-3245.8(B) requires “[t]he governing body [to] hold a public hearing on the need for a local enterprise zone development taxation program in the county, city, or town prior to adopting a local enterprise zone development taxation ordinance.”

<sup>7</sup> *Id.*

<sup>8</sup> *Bd. of Zoning Appeals v. Bd. of Supvrs.*, 276 Va. 550, 552-53 (2008) (citations omitted).

<sup>9</sup> *Bd. of Supvrs. v. Horne*, 216 Va. 113, 117 (1975) (citations omitted).

<sup>10</sup> *See Bd. of Zoning Appeals*, 276 Va. at 552-53.

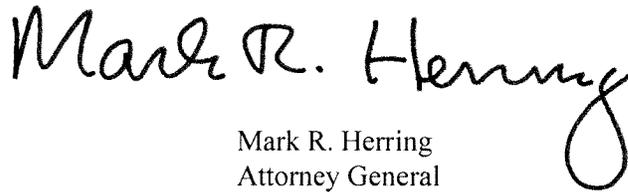
is no need to determine whether such authority is “necessarily or fairly implied from granted powers.”<sup>11</sup> In addition, the *Code of Virginia* does not restrict the authority to enact a program for a particular enterprise zone to the original applicant for enterprise zone designation. Accordingly, I conclude that the governing body of the county may establish a program within the enterprise zone identified in your request.

#### Conclusion

For the reasons stated above, it is my opinion that § 58.1-3245.8(A) expressly empowers Bedford County to adopt a program for the enterprise zone in the Town of Bedford. The *Code of Virginia* does not indicate that the town’s previous status as an independent city at the time of the initial enterprise zone designation limits or otherwise affects this authority.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink that reads "Mark R. Herring". The signature is written in a cursive style with a large, looped final flourish.

Mark R. Herring  
Attorney General

---

<sup>11</sup> *See id.*