

**COUNTIES, CITIES AND TOWNS:LOCAL CONSTITUTIONAL OFFICERS, ETC. -
COURTHOUSES.**

Determination of contiguity of land from which and to which courthouse will be located without voter approval is question of fact that requires familiarity with physical characteristics of land in particular locality. Fact that old and new sites are on same lot, as shown on plat, is factor to consider in determining whether sites are contiguous.

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You ask whether, under the facts you present, the Fluvanna County courthouse may be relocated from its current location without a voter referendum.

Section 15.2-1644 of the *Code of Virginia* requires the question of "the removal of the courthouse"¹ to be submitted to the voters at a referendum. Furthermore, § 15.2-1655 provides that "[a]fter an election has been held in any county upon the question of the removal of its courthouse, no other such election shall be held within ten years." Section 15.2-1646 provides, however, that "[t]he relocation of a courthouse to land contiguous with its present location and within the same county is not such a removal as to require authorization by the electorate."

You state that, in early 1997, the Fluvanna County voters failed to approve a referendum to move the courthouse to a parcel of land approximately one mile from the current courthouse and separated from the present location by several privately owned parcels and the Rivanna River. Since the voters failed to approve the removal to this location, the board of supervisors is considering relocating the courthouse to a different parcel of land. The land must be deemed "contiguous" to the present location under § 15.2-1646 because § 15.2-1655 prohibits the question of the removal of the courthouse from again being submitted to the voters before the year 2007.

In 1997, pursuant to your request, the Attorney General opined regarding whether voter approval would be required for the county courthouse to be relocated to a parcel of land which, although physically separated from the present site by three abutting parcels of land, was connected to the present location by the county's ownership of all or portions of the three parcels.² In responding to your question, the Attorney General relied on the narrow construction that a 1996 opinion had placed on the word "contiguous" as used in § 15.2-1646.³ The 1996 opinion interprets "contiguous" for purposes of the statute as meaning "land that touches as opposed to land that is nearby," and concludes that a parcel separated from the present courthouse site by several privately owned lots is not contiguous to the present site.⁴

The 1997 opinion recognizes that the question of whether land is contiguous is primarily a question of fact.⁵ The Attorney General then stated his opinion, however, that the facts presented were not sufficiently distinguishable from the facts considered in the 1996 opinion to support a different conclusion.⁶ The 1997 opinion notes that, although the county owns portions of the lots separating the present site from the proposed future site, the two lots do not touch or share a common boundary.⁷ The 1997 opinion further notes that the courthouse lot has not been combined with the county's portion of the land in the lots separating the two sites.⁸

Your present request involves the same parcels of land.⁹ The board of supervisors proposes to replat the land so that the parcel on which the courthouse presently is located, the parcel to which the courthouse will be removed, and the portions of the intervening parcels owned by the county

will all constitute one lot. You ask for an opinion of the Attorney General as to whether, with this change, the courthouse may be relocated without voter approval.

The fact that both the old site and the new site for the courthouse will be on the same lot, as shown on the plat, is a factor to be considered in determining whether the two locations are "contiguous." Certainly, two sites located on the same lot could be deemed to be "physically touching."¹⁰ This fact, combined with other facts such as the distance between the two sites,¹¹ could well support a conclusion that the land is "contiguous."

It is also my opinion, however, that the ultimate determination of whether land is contiguous for purposes of § 15.2-1646 is a question of fact that requires familiarity with the physical characteristics of the land in the particular locality.¹² As acknowledged in the 1996 opinion, the characteristics of the land could support a determination that land not physically touching is nevertheless contiguous.¹³ In other instances, parcels of land technically may touch or share a common boundary and yet, because of distance or other geographic factors, not reasonably be deemed contiguous under the requirements of § 15.2-1646.

¹Section 15.2-1644(A).

²See 1997 Op. Va. Att'y Gen. 50. The 1997 opinion considered §§ 15.1-559, 15.1-561 and 15.1-570 of Title 15.1. These sections were recodified without substantive change as §§ 15.2-1644, 15.2-1646 and 15.2-1655, respectively, of Title 15.2, effective December 1, 1997. See 1997 Va. Acts ch. 587, at 976, 1095-96, 1098. All statutory references in this opinion will be to the sections as presently codified in Title 15.2.

³See 1996 Op. Va. Att'y Gen. 49, 50.

⁴*Id.* at 50.

⁵See 1997 Op. Va. Att'y Gen., *supra* note 2, at 51.

⁶See *id.*

⁷See *id.*

⁸See *id.*

⁹See *id.* at 50-51 (providing description of land).

¹⁰1996 Op. Va. Att'y Gen., *supra* note 3, at 50 n.2 (defining "contiguous" in geographic sense).

¹¹You state that the lot abutting the lot to which the courthouse will be located is already substantially owned by the county and is occupied by the current county office building. You also state that the distance between the border of the present courthouse lot to this lot is approximately 1,000 feet.

¹²See 1997 Op. Va. Att'y Gen., *supra* note 2, at 51 & n.2.

¹³See 1996 Op. Va. Att'y Gen., *supra* note 3, at 51 n.4.