

COUNTIES, CITIES AND TOWNS: ALLEGHANY HIGHLANDS ECONOMIC DEVELOPMENT AUTHORITY.

Alleghany County may not offset funding provided to Alleghany-Highlands Economic Development Authority for failed industrial project against minimum amount county is required to remit annually as member of Authority.

Mr. Michael M. Collins
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You ask whether a county may offset, pursuant to § 15.2-6209 of the *Code of Virginia*, an amount of money paid by the county to the Alleghany-Highlands Economic Development Authority against the amount it currently owes to the Authority.

You relate that Alleghany County is a member locality of the Alleghany-Highlands Economic Development Authority. You also relate that the county contributes annually to the Authority a certain amount of funding in compliance with the requirements of § 15.2-6209. You further relate that the county recently provided additional funding to the Authority for an industrial project that failed to materialize. You inquire regarding whether this amount of additional funding provided to the Authority may be used to offset the upcoming annual contribution otherwise owed by the county pursuant to § 15.2-6209.

Chapter 62 of Title 15.2, §§ 15.2-6200 through 15.2-6214, establishes and governs the Alleghany-Highlands Economic Development Authority. Specifically, § 15.2-6209 provides for the capitalization of the Authority by "each county and city which is a member of the Authority," and further provides that every year each such member

may remit to the Authority an amount it deems appropriate for Authority purposes. However, *in no event shall* the [member's] contribution be an amount less than the greater of five percent of the machinery and tools tax collected in the previous year or a sum equal to its highest previous annual allocation to the Alleghany-Highlands Economic Development Commission. [Emphasis added.]

It is axiomatic that the primary goal of statutory interpretation is to interpret statutes in accordance with the legislature's intent.¹ Therefore, statutes must be construed in a manner that ascertains and gives effect to

legislative intent. Such intent "‘must be gathered from the words used, unless a literal construction would involve a manifest absurdity.’"² Finally, the entire statutory provision must be reviewed to ascertain legislative intent.³

With respect to capitalizing the Alleghany-Highlands Economic Development Authority, § 15.2-6209, by providing that each member "may remit ... an amount it deems appropriate," contemplates that each of the Authority's members exercises its own discretion in deciding the amount of its contribution. Section 15.2-6209 also mandates, however, that such discretion is subject to a minimum amount of contribution.⁴ Therefore, in reviewing § 15.2-6209 in its entirety, it is clear that the statute requires that each member's annual contribution meet a minimum amount as determined by the statutory formula. Because this minimum amount is statutorily required to be remitted every year by each Authority member, the fact that a greater amount may have been remitted by a member in a prior year does not alter that member's obligation under the statute.

Accordingly, I must conclude that the amount Alleghany County originally provided to the Alleghany-Highlands Economic Development Authority as additional funding for an industrial project that failed to materialize may not be used to offset the county's obligation under § 15.2-6209 to remit annually to the Authority the minimum amount required by that statute.

¹See *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983). 1999 Op. Va. Att'y Gen. 198, 198.

²*Watkins v. Hall*, 161 Va. 924, 930, 172 S.E. 445, 447 (1934) (quoting *Floyd v. Harding*, 69 Va. (28 Gratt.) 401, 405 (1877)).

³See *Commonwealth v. Jones*, 194 Va. 727, 731, 74 S.E.2d 817, 820 (1953) (noting that, to derive true purpose of act, statute should be construed to give effect to its component parts).

⁴The use of the word "shall" in a statute ordinarily implies that its provisions are mandatory. See *Andrews v. Shepherd*, 201 Va. 412, 414, 111 S.E.2d 279, 281 (1959) (noting that "shall" is word of command, used in connection with mandate); see *also* *Schmidt v. City of Richmond*, 206 Va. 211, 218, 142 S.E.2d 573, 578 (1965) (noting that "shall" generally indicates procedures are intended to be mandatory, imperative or limited); Op. Va. Att'y Gen.: 1997 at 16, 17; 1996 at 20, 21; 1991 at 126, 126, and opinions cited therein; *id.* at 127, 129, and opinions cited therein.