

**01-004**

**COUNTIES, CITIES AND TOWNS: HOSPITAL AUTHORITIES.**

**Mayor of City of Petersburg may remove commissioners of Petersburg Hospital Authority for inefficiency, neglect of duty or misconduct, only after commissioners have been given copy of charges against them at least 10 days prior to hearing at which they have opportunity to be heard.**

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You ask whether the mayor of the City of Petersburg has the authority to remove from office the commissioners of the Petersburg Hospital Authority.

You advise that the Petersburg Hospital Authority is established in accordance with the laws governing hospital authorities. You advise further that the mayor appoints the commissioners of the Authority and fills any vacancies by appointment of commissioners nominated by the remaining commissioners. You relate that the mayor has been asked to remove the Authority's commissioners, because they have voted to purchase land for the purpose of relocating the main hospital facilities within the City of Petersburg.

Chapter 53 of Title 15.2, §§ 15.2-5300 through 15.2-5367 of the *Code of Virginia* comprises the statutory scheme governing hospital authorities and provides for the establishment of such authorities as the Petersburg Hospital Authority. Section 15.2-5302 provides:

In each city there shall be a political subdivision of the Commonwealth, with such public and corporate powers as are set forth in this chapter, to be known as the "hospital authority" of the city.

Subsequent provisions of Chapter 53 provide the framework for determining the need for such an authority, its subsequent powers, its bonding authority, and the method for its dissolution. Specifically, § 15.2-5303 provides that the city council must declare a need for such an authority; § 15.2-5307 provides that the city mayor must appoint the authority's commissioners; § 15.2-5319 provides that the governing body of any city in which the authority is located may make appropriations to aid the authority; and § 15.2-5349 provides that any bonds and other obligations of the authority shall not be a debt of the Commonwealth. Finally, § 15.2-5321 provides:

Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling. Nothing in this chapter shall prevent any city from establishing, equipping, and operating a hospital or hospitals or improving or extending

existing hospitals and hospital facilities under the provisions of its charter or any general law other than this chapter.

The use of the word "shall" in a statute ordinarily implies that its provisions are mandatory.<sup>1</sup> It, therefore, is the express intent of the General Assembly that the provisions of Chapter 53 override any potential conflicts with other statutory provisions.<sup>2</sup>

Pursuant to § 15.2-5307, the mayor appoints the commissioners to the hospital authority. Section 15.2-5311 specifically qualifies the authority of a mayor to remove commissioners so appointed:

The mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner has been given a copy of the charges against him, which may be made by the mayor, at least ten days prior to the hearing thereon and has had an opportunity to be heard in person or by counsel.

The use of the word "may" in § 15.2-5311 clearly indicates the grant of permissive and discretionary authority.<sup>3</sup>

The Supreme Court of Virginia has stated that, "[i]f the language used [in a statute] is plain and unambiguous, and its meaning clear and definite, effect must be given to it regardless of what courts think of its wisdom or policy."<sup>4</sup> In such cases, courts must find the meaning within the statute itself.<sup>5</sup> The General Assembly clearly and unambiguously permits the mayor to remove commissioners of a hospital authority. When a statute creates a specific grant of authority, however, such authority exists only to the extent specifically granted in the statute.<sup>6</sup> The Supreme Court has also stated that "[t]he manifest intention of the legislature, clearly disclosed by its language, must be applied."<sup>7</sup>

Consequently, it is my opinion that § 15.2-5311 empowers the mayor of the City of Petersburg to remove the commissioners of the Petersburg Hospital Authority for neglect of duty or inefficiency or misconduct in office, but "only after" the commissioners have been given a copy of the charges made against them at least ten days prior to a hearing, and they have had an opportunity to be heard.

<sup>1</sup>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.

<sup>2</sup>See *Op. Va. Att'y Gen.*: 1996 at 197, 198; 1987-1988 at 1, 2.

<sup>3</sup>See *Op. Va. Att'y Gen.*: 1997 at 10, 12; 1994 at 64, 68; 1992 at 133, 135.

<sup>4</sup>*Fairbanks, etc., Co. v. Cape Charles*, 144 Va. 56, 63, 131 S.E. 437, 439 (1926); *see also* *Town of South Hill v. Allen*, 177 Va. 154, 165, 12 S.E.2d 770, 774 (1941); *Hammer v. Commonwealth*, 169 Va. 355, 364-65, 193 S.E. 496, 499-500 (1937); *Woodward v. Staunton*, 161 Va. 671, 674, 171 S.E. 590, 591 (1933).

<sup>5</sup>See *Town of South Hill v. Allen*, 177 Va. at 164-65, 12 S.E.2d at 774; *Hammer v. Commonwealth*, 169 Va. at 364-65, 193 S.E. at 499-500; *Woodward v. Staunton*, 161 Va. at 674, 171 S.E. at 591; *Fairbanks, etc., Co. v. Cape Charles*, 144 Va. at 63, 131 S.E. at 439.

<sup>6</sup>See *Tate v. Ogg*, 170 Va. 95, 195 S.E. 496 (1938); 1999 Op. Va. Att’y Gen. 85, 86.

<sup>7</sup>*Barr v. Town & Country Properties*, 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990) (quoting *Anderson v. Commonwealth*, 182 Va. 560, 566, 29 S.E.2d 838, 841 (1944)).

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