

01-008

COUNTIES, CITIES AND TOWNS: JOINT ACTIONS BY LOCALITIES — TRANSITION OF CITY TO TOWN STATUS — CONSOLIDATION OF LOCALITIES.

EDUCATION: SCHOOL DIVISIONS, JOINT SCHOOLS AND CONTRACTS BETWEEN SCHOOL DIVISIONS.

State school funding continues to be distributed to localities operating school system resulting from consolidation of separate systems only when such funds have been distributed to each locality prior to consolidation of governmental program or function. Joint school system operated by county and city and two school boards pursuant to written agreement did not result from consolidation of two separate systems. Consolidation will occur upon transition of city to town status, and current state school funding distribution will continue, in accordance with statutory schedule.

The Honorable Malfourd W. Trumbo
Member, Senate of Virginia
February 21, 2001

You ask whether § 15.2-1302 of the *Code of Virginia* operates to protect school funding provided by the state with regard to certain localities.

You relate that a county and a city are operating a joint school system pursuant to a written agreement. You also relate that members from each locality comprise the resulting joint school board. You note that the amount of state school funding for the system derives from computations separately calculated with reference to the county and city, respectively. You state that the authorized state funds for such joint system, as well as state directives regarding schools within the system, have been separately sent to the county and city accordingly. You further state that either locality may choose to opt out of the joint school system and return to operating separate county and city school systems. Lastly, you advise that the city seeks to change to town status. You inquire whether § 15.2-1302 will allow the current state school funding distribution to remain in place upon such transition subject to the time limitations set forth in the statute.

A county and city may operate a joint school system pursuant to the authority and terms set forth in §§ 22.1-26 and 15.2-1300. Section 22.1-26 generally provides for two or more school boards to establish joint schools. Section 15.2-1300(A) generally provides for two or more political

subdivisions to jointly exercise any power, privilege or authority otherwise capable of being exercised by each such political subdivision. Section 15.2-1300(B) specifically authorizes political subdivisions to enter into agreements with one another for joint action.

Section 15.2-1302 provides two instances for which distribution of funds by the state to a locality remain in effect for certain limited time periods, subsequent to the occurrence of certain events specified in the statute. First, § 15.2-1302 provides that "[a]ny state funds that were distributed to a locality, including a local school board, in support of a governmental program or function prior to a consolidation of such program or function ... shall continue to be distributed to the entity or entities carrying out the program or function after consolidation" in accordance with the schedule articulated in the statute.¹ Secondly, § 15.2-1302 provides that "state funds ... distributed to a locality, including a local school board, in support of a governmental program or function prior to a consolidation of such program or function" shall continue to be so distributed after a "governmental consolidation of the entities providing such programs or functions" subject to the schedule set forth in the statute.²

Importantly, § 15.2-1302 is premised on the fact that state funds have been distributed to each locality prior to any "consolidation" of a governmental program or function. Therefore, if the school system in question resulted from a "consolidation," § 15.2-1302 would not be applicable since this statute, by its plain language,³ operates only when the funds have been distributed to a locality prior to a consolidation. Conversely, if this joint school system was not effected by a consolidation, then the entities involved are entitled to the treatment of funds afforded in § 15.2-1302 should they later become consolidated.

In the instant case, each locality has entered into an agreement with the other to operate a joint school system. The Attorney General previously has recognized that the phrase "joint school system" is subject to interpretation based on a factual determination.⁴ Whether such system is tantamount to a consolidation likewise is dependent on the facts.

The county and city and two school boards about which you inquire are linked by a written agreement which provides that each locality may opt out of the arrangement and revert to individual school systems. Additionally, the stream of state funds flows to each locality based on separate calculations for each locality. Indeed, the state has treated each locality separately in that the state funds for the system's schools are computed and distributed separately. Therefore, the state has not recognized a consolidation of the two school systems. Accordingly, it is my opinion that a consolidation of the two school systems has not yet taken place.⁵

Because I conclude that the joint school system in issue did not result from a consolidation of two separate systems, it is necessary to determine whether the transition of the city to town status will effectuate a consolidation as contemplated by § 15.2-1302.

Section 15.2-1302 specifically provides that the state funds distributed to a locality in support of a governmental program or function prior to the "governmental consolidation of the entities providing such programs or functions, shall continue to be distributed to the entity or entities carrying out the program or function after consolidation" subject to the schedule set forth in the statute. The use of the word "shall" in a statute ordinarily implies that its provisions are mandatory.⁶ Generally, consolidations of localities are governed by Chapter 35 of Title 15.2, §§ 15.2-3500 through 15.2-3550. Chapter 41 of Title 15.2, §§ 15.2-4100 through 15.2-4120, specifically addresses the transition of a city to town status. Significantly, § 15.2-1302 provides that, for its purposes, "'consolidation' includes the transition of a city to town status." A statute that is not ambiguous needs no interpretation.⁷ In view of the unambiguous language of § 15.2-1302, it is clear that the transition of a city to town status activates the operative provisions of the statute.

Accordingly, it is my opinion that § 15.2-1302 applies to the localities about which you inquire upon the transition of the city to town status.⁸

¹See Va. Code Ann. § 15.2-1302(1)-(3) (Michie Supp. 2000).

²See *id.*

³See 1999 Op. Va. Att'y Gen. 22, 22 (noting that plain language of statute must be given its clear and unambiguous meaning).

⁴Compare 1981-1982 Op. Va. Att'y Gen. 399, 400 (noting that certain prerequisites are essential to form "joint school system" pursuant to § 22.1-26).

⁵Compare Op. Va. Att'y Gen.: 1987-1988 at 323, 324; 1985-1986 at 4, 6 (noting that construction of statute by public officials charged with its administration is entitled to great weight and in doubtful cases will be regarded as decisive).

⁶See *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.

⁷See *Temple v. City of Petersburg*, 182 Va. 418, 29 S.E.2d 357 (1944) (noting that, when language of statute is plain and unambiguous and its meaning clear and definite, it must be given effect).

⁸*Compare* op. to Hon. H. Morgan Griffith, H. Del. Mbr., at 2 & n.6 (Aug. 30, 2000) (concluding that, pursuant to §§ 15.2-1302 and 15.2-4116, city continues to receive separate state funding to operate independent library upon city's transition to town status).

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