

01-022

PRISONS AND OTHER METHODS OF CORRECTION: COMMUNITY CORRECTIONAL FACILITIES AND PROGRAMS – COMPREHENSIVE COMMUNITY CORRECTIONS ACT FOR LOCAL-RESPONSIBLE OFFENDERS.

COUNTIES, CITIES AND TOWNS: JOINT EXERCISE OF POWERS.

1995 resolution establishing Southwest Virginia Community Corrections Program, and providing for Southwest Virginia Community Criminal Justice Board to select consenting participating city or county to act as administrator and fiscal agent for funds awarded to implement local community-based probation programs and services, does not comply with statutory requirement that governing authorities of participating localities select administrator and fiscal agent.

The Honorable Roy F. Evans Jr.
Commonwealth's Attorney for Smyth County
June 29, 2001

You ask for a review of a 1995 resolution establishing the Southwest Virginia Community Corrections Program pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders, §§ 53.1-180 through 53.1-185.3 of the *Code of Virginia* ("Community Corrections Act"), regarding compliance with the requirements of §§ 15.2-1300 and 53.1-185.3.

The Community Corrections Act governs the establishment and maintenance of local community-based probation programs by any city or county or combination thereof.¹ Section 15.2-1300(A) provides for the joint exercise of a power by two or more political subdivisions "except where an express statutory procedure is otherwise provided for the joint exercise." This exception is consistent with the long-standing principle of statutory construction that the more specific statute prevails over the general statute.² In the instant case, §§ 53.1-180 through 53.1-185.3 provide express statutory procedures for the establishment and maintenance of the program in issue among two or more localities.³ Accordingly, § 15.2-1300, by its own terms, is not applicable to your inquiry inasmuch as express statutory procedures are set forth in the Community Corrections Act.⁴ Therefore, a review of the 1995 resolution with respect to § 15.2-1300 is unnecessary.

With regard to whether the 1995 resolution is in compliance with the requirements of § 53.1-185.3, I note that this statute was amended during the 2000 Session of the General Assembly to provide that, "[i]n cases of multijurisdictional participation, the governing authorities of the participating localities shall select one of the participating cities or counties, with its consent, to act as administrator and fiscal agent for the funds awarded for purposes of implementing the ... community-based probation program."⁵ The use of the word "shall" in a statute generally implies that its terms are intended to be mandatory, rather than permissive or directive.⁶

Accordingly, I must conclude that the provision contained in the 1995 resolution, wherein the Southwest Virginia Community Criminal Justice Board selects a consenting participating city or county to act as administrator and fiscal agent for funds awarded to implement the community-based probation programs and services, does not comply with § 53.1-185.3. The selection of the administrator and fiscal agent must be made by the governing authorities of the participating localities.⁷

¹See Va. Code Ann. § 53.1-180 (Michie Supp. 2000).

²See *Dodson v. Potomac Mack Sales & Service*, 241 Va. 89, 94-95, 400 S.E.2d 178, 181 (1991); *Va. National Bank v. Harris*, 220 Va. 336, 257 S.E.2d 867 (1979); *Op. Va. Att'y Gen.*: 1999 at 165, 167; 1990 at 227, 228; 1987-1988 at 276, 277; 1980-1981 at 330, 331.

³The 1995 resolution enclosed with your letter reveals the eight county and two city participants in the program.

⁴*Compare* 1993 *Op. Va. Att'y. Gen.* 228, 230 (noting that tax statute setting forth general situs rule, by its own terms, does not apply where another statute specifically establishes situs).

⁵2000 Va. Acts ch. 1040, at 2487, 2492.

⁶See *Andrews v. Shepherd*, 201 Va. 412, 414-15, 111 S.E.2d 279, 281-82 (1959) (discussing intent of "shall" as mandatory rather than directory); *see also* *Schmidt v. City of Richmond*, 206 Va. 211, 218, 142 S.E.2d 573, 578 (1965) (noting that "shall" is generally used in statute in mandatory or imperative sense); *Op. Va. Att'y Gen.*: 1999 at 44, 45; 1991 at 238, 240.

⁷Va. Code Ann. § 53.1-185.3 (Michie Supp. 2000).

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