

**01-026**

**MOTOR VEHICLES: TITLING, REGISTRATION OF MOTOR VEHICLES.**

**CONSTITUTION OF VIRGINIA: LOCAL GOVERNMENT (COUNTY AND CITY OFFICERS).**

**COUNTIES, CITIES AND TOWNS: LOCAL CONSTITUTIONAL OFFICERS, ETC. – TREASURERS.**

**TAXATION: LOCAL OFFICERS – TREASURERS — REVIEW OF LOCAL TAXES – COLLECTION BY TREASURERS, ETC.**

**Duty of Norfolk city treasurer to collect outstanding fines owed for violation of city code governing vehicular parking before issuing license decals to delinquent applicant is not discretionary; treasurer may not refuse to enforce Norfolk city code.**

The Honorable John H. Rust Jr.  
Member, House of Delegates  
February 28, 2001

You ask whether the treasurer for the City of Norfolk may refuse to enforce the city's prohibition against issuing a city decal to an applicant having two or more outstanding parking tickets.

You advise that, pursuant to § 46.2-752(D)<sup>1</sup> of the *Code of Virginia*, the City of Norfolk adopted an ordinance prohibiting the issuance of vehicle license decals to an applicant who has two or more parking tickets due and owing the city for sixty days or more.<sup>2</sup> You also advise that the city treasurer believes that he has discretionary authority regarding enforcement of the subject ordinance. You also relate that the city has privatized the enforcement of parking regulations. The contractor, however, has no authority regarding the issuance of city decals to applicants who have unpaid parking tickets.

Section 74 of the charter for the City of Norfolk pertains to the city treasurer and provides:

The city treasurer ... shall give bond in such sum not less than one hundred thousand dollars, as the council may prescribe, with surety to be approved by the council, conditioned for the faithful discharge of his official duties

in relation to the revenue of the city, *and of such other official duties as may be imposed upon him by this charter and the ordinances of the city.* Subject to the supervision of the *city manager*, he shall collect and receive all city taxes, levies, assessments, license taxes, rents, water rents, fees and all other revenues or moneys accruing to the city .... *He shall perform such other duties, have such powers and be liable to such penalties as are now or may hereafter be prescribed by law or ordinance.*<sup>[3]</sup>

The office of treasurer is a constitutional office.<sup>4</sup> The powers and duties of a treasurer are generally set out in Article 2, Chapters 31<sup>5</sup> and 39<sup>6</sup> of Title 58.1. In addition, § 15.2-1608 provides that "[t]he treasurer shall exercise all the powers conferred and perform all the duties imposed upon treasurers by law." The use of the word "shall" in a statute ordinarily implies that its provisions are mandatory.<sup>7</sup> Section 15.2-1608 also provides that the treasurer "may perform such other duties ... as the governing body may request." The use of the word "may" indicates the grant of permissive, rather than mandatory, authority.<sup>8</sup>

Prior opinions of the Attorney General conclude that it is the duty of a county treasurer to issue local automobile licenses and collect the fees authorized by local ordinance.<sup>9</sup> The conclusions of these opinions will also apply to city treasurers. These conclusions are based on the duties of treasurers as prescribed in §§ 15.2-1636.3 and 58.1-3127. Section 15.2-1636.3 provides that county treasurers shall collect license fees; § 15.2-1636.4 provides that city treasurers must collect license fees. Section 58.1-3127(A) requires city and county treasurers to receive levies and other amounts payable into the treasury of the political subdivisions they serve. A 1975 opinion considers whether a city may impose the obligation of collecting city parking fines on the office of treasurer.<sup>10</sup> The opinion concludes that a city council may validly delegate the duty of collecting parking fines to the treasurer.<sup>11</sup> The opinion also concludes that there is no authority which permits a city treasurer to refuse to accept responsibility for collecting parking fines on behalf of the city.<sup>12</sup>

To determine legislative intent, statutes dealing with the same subject matter must be construed together to achieve a harmonious result, resolving conflicts to give effect to each statute, to the maximum extent possible.<sup>13</sup> In addition, when it is not clear which of two statutes apply, the more specific statute prevails over the more general.<sup>14</sup> The two enactments by the General Assembly pertaining to this matter are § 74 of the city charter and § 15.2-1608. Section 74 of the city charter specifically sets forth the duties of the treasurer for the City of Norfolk. Section 15.2-1608 generally sets forth the duties of all treasurers in the Commonwealth. Where the duties specified in these two enactments differ, the more

general must give way to the specific.<sup>15</sup> Clearly, § 74 of the city charter is more specific with regard to the duties of the Norfolk city treasurer. Section 74 requires the treasurer to "perform such other duties ... as are now or may hereafter be prescribed by law *or*<sup>16]</sup> ordinance."<sup>17</sup>

Additionally, I am required to consider the rule of statutory construction that the purpose underlying a statute's enactment is particularly significant in construing it.<sup>18</sup> Clearly, the purpose of § 46.2-752(D) is to provide a city with an enforcement mechanism to collect delinquent fines by requiring the payment of all outstanding fines owed for violation of ordinances governing the parking of vehicles in the city. It is quite clear that the City of Norfolk requires city vehicle licenses to be withheld until fines resulting from two or more outstanding parking tickets due and owing for sixty days or more are paid. It is the duty of the city treasurer to issue city vehicle licenses and collect the authorized fees. Without the enforcement of the pertinent city ordinance by the city treasurer, § 46.2-752(D) is meaningless to the City of Norfolk. I am required to apply the rule of statutory construction that "every part of a statute is presumed to have some effect and no part will be considered meaningless unless absolutely necessary."<sup>19</sup>

Accordingly, I must conclude that the treasurer for the City of Norfolk does not have discretionary authority regarding enforcement of the city ordinance prohibiting the sale of motor vehicle license decals to an applicant who has been delinquent for at least sixty days in the payment of two or more city parking tickets. I am of the opinion, therefore, that the treasurer may not refuse to enforce § 24-172(b) of the Norfolk city code.

<sup>1</sup>Section 46.2-752(D) authorizes cities to prohibit the local licensing of any motor vehicle, trailer, or semitrailer "unless all fines owed to the jurisdiction by the owner of the vehicle, trailer, or semitrailer for violation of the jurisdiction's ordinances governing parking of vehicles have been paid."

<sup>2</sup>No [city] license shall be issued [for a motor vehicle, trailer or semitrailer] if the applicant therefor has two (2) or more outstanding unpaid parking tickets due and owing to the City of Norfolk for sixty (60) days or more and such tickets remain unpaid when the motor vehicle, trailer or semitrailer license is sought." Norfolk, Va., Code § 24-172(b) (2001).

<sup>3</sup>1976 Va. Acts ch. 599, at 748, 749-50 (first and third emphasis added).

<sup>4</sup>Va. Const. art. VII, § 4; see also Va. Code Ann. § 15.2-1600(A) (Michie Repl. Vol. 1997) (codifying parallel statute).

<sup>5</sup>Va. Code Ann. §§ 58.1-3123 to 58.1-3172.1 (LEXIS Repl. Vol. 2000).

<sup>6</sup>Va. Code Ann. §§ 58.1-3910 to 58.1-3939 (LEXIS Repl. Vol. 2000).

<sup>7</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>8</sup>See Op. Va. Att'y Gen.: 1997 at 10, 12; 1994 at 64, 68; 1992 at 133, 135, and opinions cited therein.

<sup>9</sup>See Op. Va. Att'y Gen.: 1984-1985 at 357, 358; 1969-1970 at 298; 1955-1956 at 221.

<sup>10</sup>1975-1976 Op. Va. Att'y Gen. 137.

<sup>11</sup>*Id.* at 138.

<sup>12</sup>*Id.*

<sup>13</sup>*Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7-8 (1957) (noting that statutes relating to same subject are not to be considered in isolation but must be construed together to produce harmonious result that gives effect to all provisions if possible); 1991 Op. Va. Att'y Gen. 159, 160.

<sup>14</sup>See *Va. National Bank v. Harris*, 220 Va. 336, 257 S.E.2d 867 (1979); *City of Roanoke v. Land*, 137 Va. 89, 92-93, 119 S.E. 59, 60 (1923); Op. Va. Att'y Gen.: 1990 at 227, 228; 1987-1988 at 276, 277; 1980-1981 at 330, 331.

<sup>15</sup>See *Davis v. Davis*, 206 Va. 381, 386, 143 S.E.2d 835, 839 (1965); 1976-1977 Op. Va. Att'y Gen. 93, 94.

<sup>16</sup>See 1A Norman J. Singer, *Sutherland Statutory Construction* § 21.14, at 129 (5<sup>th</sup> ed. 1993) (stating that disjunctive "or" usually separates words in alternate relationship, indicating that either of separated words may be used without other); see also 1989 Op. Va. Att'y Gen. 228, 229 (noting use of "or" is disjunctive).

<sup>17</sup>1976 Va. Acts ch. 599, *supra* note 3, at 750 (emphasis added).

<sup>18</sup>See *VEPCO v. Prince William Co.*, 226 Va. 382, 388, 309 S.E.2d 308, 311 (1983).

<sup>19</sup>*Sansom v. Board of Supervisors*, 257 Va. 589, 595, 514 S.E.2d 345, 349 (1999) (quoting *Hubbard v. Henrico Ltd. Partnership*, 255 Va. 335, 340, 497 S.E.2d 335, 338 (1998)).

[Back to February 20001 Index](#)