

01-033

**COUNTIES, CITIES AND TOWNS: GENERAL POWERS OF LOCAL GOVERNMENTS.**

**CIVIL REMEDIES AND PROCEDURE: MEDIATION.**

**Specific statute governing role of local offices of consumer affairs and conferring upon such offices power to resolve consumer complaints through mediation is controlling over more general mediation or confidentiality statutes.**

The Honorable Harvey L. Bryant III  
Commonwealth's Attorney for the City of Virginia Beach  
July 30, 2001

You ask whether the participation by a consumer affairs investigator as a mediator in a dispute being reviewed by a local consumer affairs office violates the mediation or confidentiality provisions of Chapter 21.2 of Title 8.01, §§ 8.01-581.21 through 8.01-581.23 of the *Code of Virginia*.

You relate that a local consumer affairs investigator sometimes assists and facilitates agreements between the parties to a consumer complaint investigation. You also relate that many complaint investigations result in informal negotiations and agreements that satisfy the parties in dispute, while others result in the determination that a criminal offense has been committed or that a statewide investigation is necessary. In addition, you advise that an investigator often receives requests from other governmental agencies or when called to testify in a judicial proceeding to disclose information and records in his files. You conclude that the role of an investigator as a mediator does not fall within the purview of § 8.01-581.21 or § 8.01-581.22.<sup>1</sup>

Section 15.2-963 authorizes any county or city to "establish a local office of consumer affairs." The provision was enacted in 1974,<sup>2</sup> and authorizes a local office of consumer affairs to serve as a central coordinating agency and clearinghouse for receiving and investigating complaints about illegal, fraudulent, deceptive or dangerous consumer practices.<sup>3</sup>

Section 15.2-963(1) specifically authorizes local offices of consumer affairs to receive and investigate consumer complaints. Section 15.2-963(2) authorizes such offices "to resolve complaints ... by means of voluntary mediation or arbitration which may involve the creation of written agreements to resolve individual complaints between complainants and respondents to complaints." Section 15.2-963(4) authorizes the offices "[t]o maintain records of consumer complaints" and provides that such records remain "confidential except to the extent that disclosures of such matters may be necessary for the enforcement of laws." Clearly, local offices of consumer affairs established pursuant to § 15.2-963 possess adequate statutory authority to receive, investigate, mediate, and arbitrate consumer complaints<sup>4</sup> and to disclose information connected with such complaints as may be required for the enforcement of laws.<sup>5</sup>

Chapter 21.2 of Title 8.01, §§ 8.01-581.21 through 8.01-581.23, provides for the resolution of controversies through mediation. As used in Chapter 21.2, "*mediation*" means the process by which a mediator assists and facilitates two or more parties to a controversy in reaching a mutually acceptable resolution of the controversy,<sup>6</sup> and

"'mediator' means an impartial third party selected by agreement of the parties to a controversy to assist them in mediation."<sup>7</sup> Additionally, § 8.01-581.22 sets forth confidentiality provisions regarding "memoranda, work products and other materials contained in the case files of a mediator."

An accepted principle of statutory construction provides that a specific statute is controlling over a more general statute.<sup>8</sup> In this case, § 15.2-963 provides for and governs the role of local offices of consumer affairs. Importantly, this statute specifically confers upon these offices the power to mediate consumer complaints and authorizes them to create written agreements to resolve such complaints. Accordingly, in light of the specific statutory language regarding mediation of consumer complaints contained in § 15.2-963, I am of the view that this statute is controlling over the more general mediation provisions of §§ 8.01-581.21 through 8.01-581.23.

Additionally, § 15.2-963 was enacted prior to the enactment of Chapter 21.2 of Title 8.01.<sup>9</sup> The General Assembly is, of course, presumed to know what statutes previously have been enacted.<sup>10</sup> Therefore, had the General Assembly intended for §§ 8.01-581.21 through 8.01-581.23 to be applied to mediation conducted by local consumer affairs offices, it could have so provided.<sup>11</sup>

Accordingly, it is my opinion that §§ 8.01-581.21 through 8.01-581.23 are not applicable to the investigation and mediation activities connected with the resolution of consumer complaints pursuant to § 15.2-963.

<sup>1</sup>Section 2.1-118 requires that a request by a Commonwealth's attorney for an opinion from the Attorney General "shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions."

<sup>2</sup>*See* 1974 Va. Acts ch. 644, at 1199, 1199 (originally codified as § 15.1-23.2).

<sup>3</sup>Va. Code Ann. § 15.2-963(1) (Michie Supp. 2001); 1976-1977 Op. Va. Att'y Gen. 48, 48 (citing § 15.1-23.2, predecessor statute to § 15.2-963).

<sup>4</sup>Section 15.2-963(1), (2); 1976-1977 Op. Va. Att'y Gen., *supra*, at 48-49.

<sup>5</sup>Section 15.2-963(4).

<sup>6</sup>Va. Code Ann. § 8.01-581.21 (Michie Repl. Vol. 2000).

<sup>7</sup>*Id.*

<sup>8</sup>*See* *City of Roanoke v. Land*, 137 Va. 89, 119 S.E. 59 (1923); Op. Va. Att'y Gen.: 1989 at 187, 188; 1985-1986 at 291, 292 n.2; 1981-1982 at 240, 241.

<sup>9</sup>1988 Va. Acts ch. 623, at 811.

<sup>10</sup>*See* *School Board v. Patterson*, 111 Va. 482, 487-88, 69 S.E. 337, 339 (1910); Op. Va. Att'y Gen.: 1989, *supra* note 8, at 188; 1985-1986 at 65, 67.

<sup>11</sup>*Compare* Va. Code Ann. § 10.1-1186.3 (Michie Repl. Vol. 1998) (stating that "[t]he State Air Pollution Control Board, the State Water Control Board and the Virginia Waste Management Board, in their discretion, may employ mediation as defined in § 8.01-581.21").

[Back to July Index](#)