

01-075

CONSTITUTION OF VIRGINIA: LOCAL GOVERNMENT (SALE OF PROPERTY AND GRANTING OF FRANCHISES BY CITIES AND TOWNS).

COUNTIES, CITIES AND TOWNS: FRANCHISES, PUBLIC PROPERTY, UTILITIES.

EDUCATION: SCHOOL PROPERTY.

Buildings owned and used as schools by City of Hopewell are "public places" that may not be sold without recorded three-fourths affirmative vote of all members elected to city council.

The Honorable Riley E. Ingram
Member, House of Delegates
September 14, 2001

You ask whether § 15.2-2100(A) of the *Code of Virginia*, which requires a three-fourths vote of all members elected to council to sell the rights to certain public property, applies to the sale of two buildings owned and previously used as school buildings by the City of Hopewell.

A relatively recent opinion of the Attorney General issued to Mr. Edwin N. Wilmot, City Attorney for the City of Hopewell, dated December 19, 2000 ("Wilmot opinion"), concludes that Article VII, § 9 of the Constitution of Virginia and § 15.2-2100(A) apply to the sale of the two city-owned buildings¹ about which you inquire. You provide the following information in addition to that provided in the Wilmot opinion request and inquire whether this information alters the conclusion of the Wilmot opinion regarding the two buildings.

Pursuant to § 22.1-129, the school board conveyed to the city one of the buildings as surplus property. The building is vacant and boarded up and has not been used for ten years. The only purpose to which the building has been devoted since its conveyance to the city has been for storage and vehicular parking.

The other building is used as an elementary school but will become vacant upon completion of a newly constructed elementary school. The building is also used as a polling place and a meeting place for religious services and for other public functions. When both buildings no longer are used as

schools and are vacant, the school board will relinquish both buildings to the city.

The city plans to develop and sell these two buildings. A majority of the city council seeks to develop the vacant building into a regional public library, as headquarters for the Appomattox Regional Library System. In order to obtain partial funding for the project through federal and state tax credits, you note that the building must be conveyed to a private limited partnership. Further, the arrangement may be structured so that the property reverts to the city at the end of a specific time period.

The other building, currently used as an elementary school, soon will be closed to the public. The city plans to redevelop the building for productive use, which may entail selling the building to a private entity for development as residential apartments. You are advised that other localities have made similar conveyances of former school property in order to take advantage of tax credits and to facilitate development of the property.

The constitutional provision declaring that the Attorney General "shall perform such duties ... as may be prescribed by law"² is implemented by the statutes that define the various duties of the office.³ Section 2.1-118 articulates the authority of the Attorney General to render official legal opinions. For many years, Attorneys General have concluded that § 2.1-118, the authorizing statute for official opinions of the Attorney General, does not contemplate that such opinions be rendered on matters requiring largely factual determinations, rather than matters interpreting questions of law.⁴ Your question clearly requires that certain factual determinations be made and applied to the applicable provisions of the Virginia Constitution and enabling statutory provisions. In addition, § 2.1-118 also prevents the Attorney General from rendering an official opinion on questions involving the interpretation of matters that are of a purely local nature.⁵ Let me, however, share with you several observations on overriding principles that control your inquiry that are neither largely factual determinations nor matters of a purely local nature.

Sections 15.2-2100 and 15.2-2107⁶ implement the provisions of Article VII, § 9. Article VII, § 9 requires an "affirmative vote of three fourths of all members elected to the governing body" before a city may sell any rights "in and to its ... streets, avenues, ... or other public places, or its gas, water, or electric works." The clear intent of the constitutional provision is to safeguard public property and to ensure that it not be appropriated by private self-interests for an extended term to the detriment of the public without due consideration by council members.⁷

From the additional facts provided, it is clear that the two buildings are "public places." The Wilmot opinion adopts the following definition of "public place":

"A place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighboring public (*e.g.*, a park or public beach). Also, a place in which the public has an interest as affecting the safety, health, morals, and welfare of the community. A place exposed to the public, and where the public gather together or pass to and fro."^{18]}

The additional facts do not alter the conclusion of the Wilmot opinion. In my view, the two buildings are public, rather than private, places. The public has a clear interest in such buildings that affects "the safety, health, morals, and welfare of the community."⁹ The final determination, however, regarding whether these two buildings are subject to the three-fourths affirmative vote requirement in Article VII, § 9 and § 15.2-2100(A) depends on a complete and detailed set of facts. Based upon the additional information provided, however, it remains my opinion that the two buildings in the City of Hopewell clearly are "public places," as that term is used in Article VII, § 9 and § 15.2-2100(A).

Consequently, it remains my opinion that Article VII, § 9 and § 15.2-2100(A) apply to the sale of the two described buildings owned by the City of Hopewell.

¹See 2000 Op. Va. Att'y Gen. 62 (concluding that buildings owned and used as schools by City of Hopewell are "public places" that may not be sold without recorded three-fourths affirmative vote of all members elected to city council).

²Va. Const. art. V, § 15.

³See Va. Code Ann. §§ 2.1-117 to 2.1-133.4 (Michie Repl. Vol. 1995 & Supp. 2000, 2001).

⁴See, *e.g.*, Op. Va. Att'y Gen.: 1991 at 122, 123-24 (determining whether element of consideration exists sufficient to render duck race form of illegal gambling is factual matter); 1986-1987 at 1, 5-6 (determining accuracy of conflicting newspaper accounts describing existence of alleged prior agreement involving contact visits for death row inmates is factual matter); see also 2 A.E. Dick Howard, Commentaries on the Constitution of Virginia 668 (1974) (stating that giving advice and opinions on matters of law is major responsibility of Attorney General).

⁵Op. Va. Att'y Gen.: 1991 at 237, 238; 1989 at 293, 298 (concluding that Attorney General does not render opinions requiring examination of private contracts or agreements among condominium owners).

⁶Section 15.2-2107 provides that persons occupying or using streets, avenues, or any other public places, contrary to law, "shall be guilty of a Class 4 misdemeanor."

⁷See op. no. 01-003, to Hon. Kenneth W. Stolle, Va. Sen. (Feb. 2, 2001), available at www.vaag.com; 2000 Op. Va. Att'y Gen. 44, 45.

⁸2000 Op. Va. Att'y Gen., *supra* note 1, at 64 (quoting 1983-1984 Op. Va. Att'y Gen. 32, 32 n.6 (quoting Black's Law Dictionary 1107 (5th ed. 1979))).

⁹*Id.*

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