



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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Attorney General

July 23, 2007

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Mr. Ronald S. Hallman
City of Chesapeake Attorney
306 Cedar Road
Chesapeake, Virginia 23322

Dear Mr. Hallman:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You inquire whether the Mayor of the City of Chesapeake is counted as an elected member of the Chesapeake City Council for purposes of calculating the three-fourths majority vote required to sell public land. If so, you inquire regarding circumstances when the mayor abstains from voting or is absent during the vote.

Response

It is my opinion that the Mayor of the City of Chesapeake is an elected member of the Chesapeake City Council for purposes of calculating the three-fourths majority vote required to sell public land, including when he abstains from voting or is absent during such vote.

Background

You relate that the City Council ("Council") for the city of Chesapeake ("City") is comprised of eight members and the Mayor, all of whom are elected at large. You state that the Council has considered a resolution to sell fee simple property owned by the City as well as certain riparian rights to the Elizabeth River. You note that the sale of the fee simple property and the riparian rights will be handled separately. You state that the Council has conducted a public hearing on the proposed property sales, and eight members of the Council voted on the proposed sale. Further, you note that the Mayor did not attend the public hearing, did not cast a vote, and previously had declined to participate in the proposed sale due to a perceived conflict of interest. Based upon a six-to-two vote in favor of the sale, you believe the motion failed to receive the required three-fourths majority vote.¹

¹A request by a city 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." VA. CODE ANN. § 2.2-505(B) (2005).

Applicable Law and Discussion

Article VII, § 9 of the Constitution of Virginia mandates that:

No rights of a city or town in and to its waterfront, wharf property, public landings, wharves, docks, streets, avenues, parks, bridges, or other public places, or its gas, water, or electric works shall be sold except by an ordinance or resolution passed by a recorded affirmative vote of three fourths of all members *elected* to the governing body. [Emphasis added.]

Section 15.2-2100(A), which implements Article VII, § 9, provides, in part, that:

No rights of a city or town in and to its waterfront, wharf property, public landings, wharves, docks, streets, avenues, parks, bridges, or other public places, or its gas, water, or electric works shall be sold except by an ordinance passed by a recorded affirmative vote of three-fourths of all the members *elected* to the council, notwithstanding any contrary provision of law, general or special, and under such other restrictions as may be imposed by law. [Emphasis added.]

A prior opinion of the Attorney General has noted that § 9 seeks to safeguard public property and ensure that it not be appropriated by private self-interests to the detriment of the public without due consideration by council members.² To protect the interest of the public from what has been perceived as “unscrupulous municipal councils,”³ § 9 requires “the recorded vote of an extraordinary majority”⁴ of council members when selling public property. The language of both Article VII, § 9 and § 15.2-2100 clearly and unambiguously places the extraordinary majority necessary to sell public land at three-fourths of *all* the members *elected* to a city council. “Where the language of a statute is clear and unambiguous[,] rules of statutory construction are not required.”⁵

The answer to your inquiry depends on whether the Mayor of Chesapeake is a member of the Council.⁶ Under the City’s revised charter, the Mayor is considered part of the Council.⁷ The Mayor is elected at large and has the same voting privileges as other council members.⁸ Therefore, the Mayor is a member of the Council for purposes of a three-fourths majority vote.⁹

²See 2000 Op. Va. Att’y Gen. 44, 45; see also 1990 Op. Va. Att’y Gen. 43, 44 (noting that intent of § 9 is to prevent clandestine moves by council members).

³2 A.E. DICK HOWARD, COMMENTARIES ON THE CONSTITUTION OF VIRGINIA 854 (1974).

⁴*Id.* at 853.

⁵Ambrogio v. Koontz, 224 Va. 381, 386, 297 S.E.2d 660, 662 (1982).

⁶See 1984-1985 Op. Va. Att’y Gen. 36, 36

⁷1987 Va. Acts ch. 76, at 103, 103 (amending § 3.01 to provide that council consists of mayor and eight members).

⁸*Id.* at 104 (amending § 3.08 and granting mayor same rights and duties as other council members).

⁹See 1980-1981 Op. Va. Att’y Gen. 40, 41; see also 1984-1985 Op. Va. Att’y Gen., *supra* note 6, at 36-37 (concluding that where charter did not include mayor as part of council, he did not factor in three-fourths vote required by Article VII, § 9 and § 15.1-307, predecessor to § 15.2-2100).

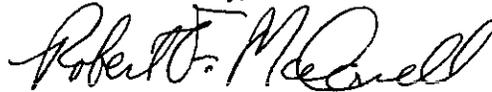
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Conclusion

Accordingly, it is my opinion that the Mayor of the City of Chesapeake is an elected member of the Chesapeake City Council for purposes of calculating the three-fourths majority vote required to sell public land, including when he abstains from voting or is absent during such vote.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert F. McDonnell". The signature is written in a cursive style with a large, prominent "R" and "M".

Robert F. McDonnell