



COMMONWEALTH OF VIRGINIA

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March 17, 2010

The Honorable M. Kirkland Cox
Member, House of Delegates
131 Old Brickhouse Lane
Colonial Heights, Virginia 23834

Dear Delegate Cox:

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

Issue Presented

You ask whether a city that assesses real property on a twelve-month basis has the authority to reassess such real property before the twelve-month period has expired and to change the assessed value of a piece of property.

Response

It is my opinion that the General Assembly has not authorized a city to conduct more than one general reassessment of real property in any one year. A taxpayer, however, may be required to pay a higher corrected assessment in some limited circumstances.

Background

You relate that the city of Petersburg conducts real property assessments once a year, normally in April. You believe that once the yearly assessment is complete, the property will not be assessed until the next annual cycle is due in twelve months. You note a situation where a person's real property assessment value was raised eight months into the initial twelve-month assessment period. Further, you report that such person received notification through a supplemental bill from the City's assessor.

Therefore, you seek clarification regarding the authority for such a reassessment prior to the end of the annual assessment period. Specifically, you ask whether such early reassessment would be legal when the locality assesses real property on a twelve-month basis.

Applicable Law and Discussion

The power of a local governing body, unlike that of the General Assembly, "must be exercised pursuant to an express grant"¹ because the powers of a locality "are limited to those conferred expressly

¹Nat'l Realty Corp. v. Va. Beach, 209 Va. 172, 175, 163 S.E.2d 154, 156 (1968).

or by necessary implication.”² “If the power cannot be found, the inquiry is at an end.”³ The Dillon Rule requires a narrow interpretation of all powers conferred on local governments since they are delegated powers.⁴ Therefore, any doubt as to the existence of power must be resolved against the locality.⁵

Chapter 32 of Title 58.1, §§ 58.1-3200 through 58.1-3389, comprehensively governs the assessment and reassessment of real estate for local taxation. A general reassessment is a major undertaking, requiring a locality “to ascertain all the real estate in his county or city, as the case may be, and the person to whom the same is chargeable with taxes on that day.”⁶ The general reassessments must determine the fair market value of the property.⁷

The General Assembly has provided some flexibility to localities with respect to the frequency of reassessments.⁸ Section 58.1-3250 provides the default rule for the general reassessment cycle for cities as every two years. For counties, the default cycle is every four years.⁹ Section 58.1-3253(B), however, provides that cities and counties may adopt an ordinance that provides for an annual assessment.

Consistent with this flexibility, the General Assembly has also authorized the governing body of a locality to direct a reassessment in any given year. Section 58.1-3254 provides, in pertinent part, that:

Notwithstanding any other provision of [Article 5]^[10] to the contrary, there may be a general reassessment of real estate in any county or city in any year if the governing body so directs by a majority of all the members thereof, by a recorded ye and nay vote.

This provision does not authorize multiple general reassessments in a particular year. Rather, there may be “a” singular, general reassessment in any year, provided that the governing body so directs by majority vote. The plain import of § 58.1-3254 is to permit cities and counties that do not conduct a general reassessment on an annual basis to disrupt the two-year, four-year, or other cycle and allow for a general reassessment to occur. The General Assembly does not contemplate or permit a general reassessment more frequently than once per year.

² *Bd. of Supvrs. v. Horne*, 216 Va. 113, 117, 215 S.E.2d 453, 455 (1975) (noting corollary to Dillon Rule).

³ *Commonwealth v. County Bd.*, 217 Va. 558, 575, 232 S.E.2d 30, 41 (1977).

⁴ *See Bd. of Supvrs. v. Countryside Invest. Co.*, 258 Va. 497, 504-05, 522 S.E.2d 610, 613-14 (1999) (holding that county board of supervisors does not have unfettered authority to decide what matters to include in subdivision ordinance; must include requirements mandated by Land Subdivision and Development Act and may include optional provisions contained in act); *Op. Va. Att’y Gen.*: 2002 at 77, 78; 1974-1975 at 403, 405.

⁵ 2A EUGENE MCQUILLEN, *THE LAW OF MUNICIPAL CORPORATIONS* § 10.19, at 369 (3d ed. 1996); *see also Op. Va. Att’y Gen.*: 2002 at 83, 84; 2000 at 75, 76.

⁶ *See* VA. CODE ANN. § 58.1-3281 (2009).

⁷ *See* § 58.1-3201 (2009).

⁸ *See* §§ 58.1-3250 to 58.1-3261 (2009).

⁹ *See* § 58.1-3252.

¹⁰ Article 5, Chapter 32 of Title 58.1, §§ 58.1-3250 to 58.1-3261 governs the reassessment and assessment cycles in the Commonwealth.

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Although a locality is limited in its ability to conduct a general reassessment in any one year, an individual taxpayer may find his property reassessed at a higher value in some limited circumstances. One of those situations involves action by a board of equalization¹¹ that results in a higher assessment.¹² Another situation that may result in an increased assessment prior to the general reassessment cycle involves the correction of a factual or clerical error in an assessment.¹³

Conclusion

Accordingly, it is my opinion that the General Assembly has not authorized a city to conduct more than one general reassessment of real property in any one year. A taxpayer, however, may be required to pay a higher corrected assessment in some limited circumstances.

With kindest regards, I am

Very truly yours,

A handwritten signature in cursive script, appearing to read "Ken Cuccinelli, II". The signature is written in black ink and is positioned to the right of the "Very truly yours," text.

Kenneth T. Cuccinelli, II
Attorney General

1:213; 1:941/10-003

¹¹See § 58.1-3370(A) (2009) (requiring appointment of board of equalization following general reassessment unless locality has permanent board).

¹²See §§ 58.1-3379(A), 58.1-3381(A) (2009) (providing that board of equalization may increase assessments); § 58.1-3385 (2009) (providing that commissioner of revenue may make supplemental assessment based on action of board of equalization).

¹³See § 58.1-3981 (2009) (allowing for correction of erroneous assessments).