



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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Thomas M. Simons, Esq.
Town Attorney, Town of Glasgow
202 South Randolph Street
Lexington, Virginia 24450

Dear Mr. Simons:

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, under Article II, § 5 of the Virginia Constitution, the town of Glasgow can enact an ordinance preventing spouses from concurrently holding interrelated elected public offices.

Response

It is my opinion that the General Assembly has not authorized localities to enact an ordinance preventing spouses from concurrently holding interrelated public offices and, therefore, such an ordinance would be impermissible under Article II, § 5 of the Virginia Constitution.

Applicable Law and Discussion

In determining the validity of a local government's exercise of legislative authority, Virginia follows the Dillon Rule of strict construction that "provides that municipal corporations have only those powers that are expressly granted, those necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable."¹ "When a local ordinance exceeds the scope of this authority, the ordinance is invalid."² You indicate that the Town Charter does not contain a section that would authorize such an ordinance. Therefore, the Town could not derive any authority to enact such an ordinance from its Charter.

Moreover, Article II, § 5 of the Constitution of Virginia provides that

[t]he only qualification to hold any office of the Commonwealth or of its governmental units, elective by the people, shall be that a person must have been a resident of the

¹ *Marble Techs., Inc., v. City of Hampton*, 279 Va. 409, 417, 690 S.E.2d 84, 88 (2010) (citation omitted).

² *City of Chesapeake v. Gardner Enters., Inc.*, 253 Va. 243, 246, 482 S.E.2d 812, 814 (1997).

Commonwealth for one year next preceding his election and be qualified to vote for that office, except as otherwise provided in this Constitution.

Section 5 contains three exceptions that authorize the General Assembly to impose some restrictions on the general qualification requirement.³ None of these exceptions nor any other provision in the Constitution authorizes a locality to restrict eligibility for the office of a local governing body based on his or her status as a spouse of a current member of the governing body. As prior opinions of the Attorney General and other authority have concluded, neither the General Assembly nor a governing body may impose requirements on candidates for election to the governing body beyond those specified in the Virginia Constitution.⁴

Conclusion

Accordingly, it is my opinion that the General Assembly has not authorized localities to enact an ordinance preventing spouses from concurrently holding interrelated public offices and, therefore, such an ordinance would be impermissible under Article II, § 5 of the Virginia Constitution.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

1:485; 1:941/10-059

³ The three exceptions to the qualifications to hold elective office in Article II, § 5 are: (a) the General Assembly may impose more restrictive geographical residence requirements for election of its members, and may permit other governing bodies to impose more restrictive geographical residence requirements for election to such governing bodies; (b) the General Assembly may provide that residence in a local governmental unit is not required for election to designated local offices, other than the governing body; and (c) the section does not limit the power of the General Assembly to prohibit certain conflicts of interest, dual officeholding or other incompatible activities by elective or appointive officials.

⁴ See 1993 Op. Va. Att'y Gen. 44, 45-46 (Article II, § 5 prohibits General Assembly from amending city's charter to provide that, in popular election of mayor, only elected members of city council or candidates for election to city council are eligible to be candidates for separate election as mayor). The Supreme Court of Virginia has long held that when the Virginia Constitution specifies qualifications for an office, that specification is an implied prohibition against legislative interference to change those qualifications. *Black v. Trower*, 79 Va. 123, 125-26 (1884). See also 1997 Op. Va. Att'y Gen. 36, 36-37 (a condition imposed by board of supervisors, when appointing a replacement member to the board, prohibiting the appointed replacement from later seeking election to the board is unconstitutional and void); 1991 Op. Va. Att'y Gen. 53, 54-55 (statute imposing a limit of two terms on members of local governing body imposes an additional qualification in violation of Virginia Constitution). See also 1 A.E. DICK HOWARD, COMMENTARIES ON THE CONSTITUTION OF VIRGINIA 394-95 (1974) (qualifications for elective office prescribed in Virginia Constitution can neither be added to nor subtracted from except as expressly provided in Virginia Constitution).