



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable David A. Nutter
Member, House of Delegates
Post Office Box 1344
Christiansburg, Virginia 24068

Dear Delegate Nutter:

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 inquire whether the Town Council of the Town of Christiansburg is authorized to initiate negotiations for a multi-year employment contract with the Town Manager without the Town Council first affirmatively voting to enter into any such contract.

Response

It is my opinion that a Town Council may initiate negotiations for the appointment of a town manager without a resolution of the Council, so long as the contract and the appointment ultimately are approved by a vote of the Council.

Applicable Law and Discussion

The Constitution of Virginia provides that “[t]he General Assembly shall provide by general law for the organization, government, powers, change of boundaries, consolidation, and dissolution of counties cities, towns, and regional governments”¹ and that “[t]he General Assembly may also provide by special act for the organization, government, and powers of any city, town, or regional government, including such powers of legislation, taxation, and assessment as the General Assembly may determine[.]”²

Under the Dillon Rule, localities have only those powers that the General Assembly grants them. Towns, in particular, have all the powers conferred upon them by their charters and those set forth in

¹ VA. CONST. art. VII § 2. A “general law” is a law that applies alike to all counties, cities or towns. VA. CONST. art. VII § 1.

² *Id.* A “special act” is a law applicable to a county, city or town. VA. CONST. art. VII § 1.

§§ 15.2-1100 through 15.2-1133.³ Section 15.2-1102 authorizes towns to exercise all necessary “powers pertinent to the conduct of the affairs and function of the municipal government, the exercise of which is not expressly prohibited by the Constitution and the general laws of the Commonwealth.” Moreover, “[a] municipal corporation may provide for the organization, conduct and operation of all departments, offices, boards and agencies . . . subject to such limitations as may be imposed by its charter or otherwise by law[;]” “may establish, consolidate, abolish or change” them; and “may prescribe the powers, duties and functions thereof, except where such departments, offices, boards, commissions and agencies or the powers, duties and functions thereof are specifically established or prescribed by its charter or otherwise by law.”⁴

Section 15.2-1540 provides that “[t]he governing body of any locality may appoint a chief administrative officer, who shall be designated . . . town administrator or manager or executive, as the case may be.” The analogous provision of the Town Charter is to the same effect.⁵ Under the plain language of this statute, it is the governing body that must appoint the chief administrative officer. Nothing in the Code or Charter, however, would preclude preliminary negotiations by some members of the Town Council without the affirmative vote of all of the members, because these negotiations would not be binding on the Town Council. There is no statutory impediment so long as the ultimate decision to appoint the administrative officer and to determine the final form of the employment contract rests with the Town Council.⁶

Your inquiry raises a further question. You indicate that the contract under negotiation, but that ultimately was not approved, was a “multi-year contract.” Pursuant to its authority to “provide by general law or special act for [] officers and for the terms of their office[.]”⁷ the General Assembly has provided that “[a]ll appointments of officers and hiring of other employees by a locality shall be without definite term, unless for temporary services not to exceed one year or except as otherwise provided by general law or special act.”⁸ The Town Charter is consistent with this enactment. It provides that “all officers and employees appointed may be removed by the town council at its pleasure[.]”⁹ I therefore conclude that a contract of employment specifying a term of years would violate the General Assembly’s clear intent that the Town Manager, as a municipal officer,¹⁰ serve the Town on an at-will basis.

³ See VA. CODE ANN. §§ 15.2-204; 15.2-1102; 15.2-1103 (2008).

⁴ Section 15.2-1107 (2008).

⁵ CHARTER OF THE TOWN OF CHRISTIANSBURG, VA., § 2.04 (2005).

⁶ See VA. CODE ANN. § 15.2-1420 (2008) (governing body acts by majority vote).

⁷ VA. CONST. art. VII § 4.

⁸ VA. CODE ANN. § 15.2-1503 (2008). “Locality” includes a town. Section 15.2-102 (2008).

⁹ Charter § 2.05. Section 2.04 provides that town managers are to be appointed by the town council. A different conclusion may follow if the Charter included a grant of authority to the Town Council that provided for alternative means of appointment, hiring or removal; for “the provisions of the charter shall be construed and held to take precedence[.]” VA. CODE ANN. § 15.2-1103.

¹⁰ Charter § 2.03 classifies the town manager as a municipal officer.

Conclusion

Accordingly, it is my opinion that a Town Council may initiate negotiations for the appointment of a town manager without a resolution of the Council, so long as the contract and the appointment ultimately are approved by a vote of the Council.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink that reads "Ken C II". The signature is stylized, with "Ken" and "C" being the most prominent parts, and "II" written as two vertical lines to the right of the "C".

Kenneth T. Cucchinelli, II
Attorney General