



COMMONWEALTH of VIRGINIA

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Brian K. Telfair, Esquire
City Attorney for the City of Petersburg
Office of the City Attorney, City Hall
135 North Union Street
Petersburg, Virginia 23803

Dear Mr. Telfair:

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 § 2-5 of the Petersburg City Charter (the "City Charter"), which allows for the expulsion of City Council members, and the City Council's adoption of a Disciplinary Procedure pursuant thereto, are constitutional in light of § 24.2-233 of the *Code of Virginia*, which provides for a method by which a circuit court may remove city officials.

Response

It is my opinion that § 2-5 of the City Charter, and the Disciplinary Procedure adopted by the City Council pursuant thereto, are valid exercises of constitutional authority. The constitutionality of the City Charter and the Disciplinary Procedure are not affected by § 24.2-233 of the *Code of Virginia*.

Applicable Law and Discussion

Article VII, § 2 of the Constitution of Virginia authorizes the General Assembly to "provide by special act for the organization, government, and powers of any county, city, town, or regional government, including such powers of legislation, taxation, and assessment as the General Assembly may determine . . ." Pursuant to this provision, the legislature may enact municipal charters that confer upon localities "rights and powers different from, and in addition to, those conferred by general statutes."¹ In

¹ *City of Colonial Heights v. Loper*, 208 Va. 580, 585-86, 159 S.E.2d 843, 847 (1968) (quoting *Ransone v. Craft*, 161 Va. 332, 340, 170 S.E. 610, 613 (1933) (citing to the predecessor provision of VA. CONST. art. VII, § 2, as found in the 1902 Constitution of Virginia)); *see also* VA. CODE ANN. § 15.2-1103 (2012) (providing that the legislature may confer, by municipal charter, powers in addition to those conferred by general statute); *Fallon Florist, Inc. v. City of Roanoke*, 190 Va. 564, 574, S.E.2d 316, 321 (1950); *City of Portsmouth v. Weiss*, 145 Va. 94, 107, 133 S.E. 781, 785 (1926).

addition, the legislature may enact municipal charters that establish “laws for the organization and government of one city which differ from those enacted for another city.”²

In accordance with this constitutional authority, the General Assembly granted to the Petersburg City Council, through § 2-5 of the City Charter, the express authority “to adopt such rules and to appoint such officers and clerks as it may deem proper for the regulation of its proceedings, and for the convenient transaction of business, to compel the attendance of absent members, *to expel a member for malfeasance, misfeasance or nonfeasance in office.*”³ The City Council has exercised this authority by adopting a City Council Disciplinary Procedure, which allows the Council to take disciplinary action against a member for official misconduct.⁴

Generally, all acts of the General Assembly are presumed constitutional.⁵ Because a municipal charter is an act of the General Assembly, “there is a *prima facie* presumption that [it] was enacted in the manner required by the Constitution, and that the rights and powers conferred are within the legislative power to grant.”⁶ The Supreme Court of Virginia “will not invalidate a statute unless that statute clearly violates a provision of the United States or Virginia Constitutions.”⁷ I find no federal or state constitutional provision that would preclude the General Assembly from granting a local legislative body the power to expel one of its members.⁸ I therefore conclude that § 2-5 of the City Charter, which allows for the expulsion of City Council members, is a constitutional exercise of the General Assembly’s legislative power. It follows that the Council’s Disciplinary Policy and Procedure, adopted in pursuance to this express grant of authority, also is constitutional.⁹

This conclusion is not altered by § 24.2-233 of the *Code of Virginia*. This statute provides that, “[u]pon petition, a circuit court may remove from office any elected officer or officer who has been appointed to fill an elective office, residing within the jurisdiction of the court”¹⁰ There is no direct

² *Pierce v. Dennis*, 205 Va. 478, 485, 138 S.E.2d 6, 12 (1964) (citing to the predecessor provision of VA. CONST. art. VII, § 2, as found in the 1902 Constitution of Virginia).

³ CHARTER FOR THE CITY OF PETERSBURG, VA., § 2-5 (emphasis added), *available at* <http://dls.virginia.gov/charters/Petersburg.pdf>. This Charter was last amended in 2009, with no change to this authority. *See* 2009 Va. Acts cc. 659 & 724.

⁴ CITY OF PETERSBURG, VA., Resolution No. 13-R-29 (2013) (“A Resolution Adopting a Policy and Procedure that Governs the Exercise of City Council’s Disciplinary Authority”).

⁵ Indeed, “[t]here is no stronger presumption known to the law than that which is made by the courts with respect to the constitutionality of an act of Legislature.” *Whitlock v. Hawkins*, 105 Va. 242, 248, 53 S.E. 401, 403 (1906).

⁶ *City of Colonial Heights*, 208 Va. at 586, 159 S.E.2d at 847 (quoting *Ransone*, 161 Va. at 341, 170 S.E. at 613).

⁷ *Marshall v. N. Va. Transp. Auth.*, 275 Va. 419, 427, 657 S.E.2d 71, 75 (2008).

⁸ I note in this regard that “a legislative body’s discipline of one of its members is a core legislative act.” *Whitener v. McWatters*, 112 F.3d 740, 741 (4th Cir. 1997); *see also* *Pine v. Commonwealth*, 121 Va. 812, 825, 93 S.E. 652, 655-56 (1917); 1980-81 Op. Va. Att’y Gen. 186, 187.

⁹ It is well-established in Virginia that a locality may exercise all powers that are necessarily or fairly implied from powers expressly granted by the General Assembly. *See, e.g.,* *Richmond v. Confrere Club of Richmond, Inc.*, 239 Va. 77, 79, 387 S.E.2d 471, 473 (1990); *Bd. of Supvrs. v. Horne*, 216 Va. 113, 117, 215 S.E.2d 453, 455 (1975).

¹⁰ This statute applies to local officers, so long as their removal is not provided for by the Constitution of Virginia. *See* VA. CODE ANN. § 24.2-230 (2011).

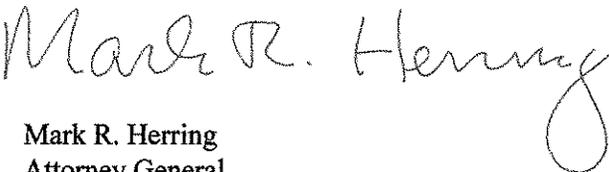
conflict between the provisions of this statute and § 2-5 of the City Charter.¹¹ Although § 24.2-233 provides one means for the removal of an elected local official, there is no language to indicate it is intended to be the sole means. “A principal rule of statutory interpretation is that courts will give statutory language its plain meaning.”¹² In addition, “[r]ules of statutory construction prohibit adding language to or deleting language from a statute.”¹³ Accordingly, exclusivity cannot be read into the provisions of § 24.2-233. The City Charter’s grant of disciplinary authority and the removal authority granted to circuit courts by § 24.2-233 therefore must be read as additional procedures available for the discipline of local officials.

Conclusion

Accordingly, it is my opinion that § 2-5 of the City Charter, and the Disciplinary Procedure adopted by the City Council pursuant thereto, are valid exercises of constitutional authority. The constitutionality of the Charter and the Disciplinary Procedure are not affected by § 24.2-233 of the *Code of Virginia*.

With kindest regards, I am

Very truly yours,



Mark R. Herring
Attorney General

¹¹ Statutes should be construed “in a manner that harmonizes and gives effect to each statute.” *Liberty Mut. Ins. Co. v. Fisher*, 263 Va. 78, 84, 557 S.E.2d 209, 212 (2002). I note that, even if § 24.2-233 and § 2-5 of the City Charter directly conflicted, § 2-5 of the City Charter would govern, as this provision is part of a special act. See *Powers v. Cnty. Sch. Board*, 148 Va. 661, 669, 139 S.E. 262, 264 (1927) (stating that “[w]hen there is a conflict in the provisions of a special or local act and the general law on the subject[,] the special act is controlling”).

¹² *Davenport v. Little-Bowser*, 269 Va. 546, 555, 611 S.E.2d 366, 371 (2005) (citing *Jackson v. Fidelity & Deposit Co.*, 269 Va. 303, 313, 608 S.E.2d 901, 904 (2005)).

¹³ *Appalachian Power Co. v. State Corp. Comm’n*, 284 Va. 695, 706, 733 S.E.2d 250, 256 (2012) (citing *BBF, Inc. v. Alstom Power, Inc.*, 274 Va. 326, 331, 645 S.E.2d 467, 469 (2007)).