



COMMONWEALTH of VIRGINIA

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September 1, 2017

Theresa J. Fontana, Esquire
Covington City Attorney
Gynn & Waddell, P.C.
415 S. College Avenue
Salem, Virginia 24153

Dear Ms. Fontana:

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 ask what the criteria are for a locality to be an “affected locality” so as to be a necessary party to a revenue sharing agreement. You also ask whether two towns are necessary parties to such an agreement between Allegheny County and the City of Covington.

Background

You relate that Allegheny County (the “County”) and the City of Covington (the “City”) have approved, after negotiation, a joint economic growth-sharing agreement (the “Agreement”). It contemplates their creating a “Development Area” in which tax growth will, in general, be divided equally as “Tax Increment Revenue Sharing.”¹ Other revenue obtained from properties in the Development Area will generally be divided equally. The Development Area is not identified in the Agreement. Instead, it is to be designated at some time in the future “by concurrent ordinance of the governing bodies” of these two localities.²

¹ The “base tax” received by either locality from any property in the Development Area would continue to go to that locality, with only increased tax receipts above this baseline to be divided equally between the two localities. See *Joint Economic Development & Growth-Sharing Agreement*, by and between Allegheny County, Virginia and the City of Covington, Virginia, §§ 1.3, 1.4, 1.12, 1.18, 1.19, 3.1, 3.3.

The County and City have agreed that the joint Industrial Development Authority of Covington–Allegheny County will manage properties in the Development Area and administer the division of non-tax revenues. See *id.* §§ 4.3, 4.6.

² *Id.* §§ 1.12, 2.1.

There are two incorporated towns—Clifton Forge and Iron Gate—located within the County. Neither town is a party to the Agreement. If any part of the Development Area is to be within either town, the town's prior concurrence is required:

[T]he County and the City may designate parcels as part of the Development Area that are within the incorporated areas of the Towns of Clifton Forge and Iron Gate [by concurrent ordinance], provided however that as a condition of such Ordinance going into effect, the Town Council of the relevant Town shall adopt an ordinance concurring in the designation.^[3]

Should that occur, town taxes on property within the Development Area will not be affected:

Taxes laid by the Towns of Clifton Forge and Iron Gate shall not be subject to this Agreement, and the Towns will continue to tax property within Development Areas as all other property within their borders.^[4]

The Agreement does not contemplate either town sharing with the City or the County its revenue, tax base, or any aspect of economic growth from the Development Area. If the revenue, tax base, or economic growth of either town is enhanced by the Development Area, the town retains the entire amount of that enhancement.

After the County and the City approved the Agreement, they referred it to the two towns for review and comment. You state that neither town has raised any objections or requested any changes to the Agreement.

The Agreement also was submitted to the Commission on Local Government for review. The Commission issued an advisory report in May of this year stating that it was overall supportive of the Agreement.⁵

Applicable Law and Discussion

The statutory authority for the Development Area is § 15.2-1301 of the *Code of Virginia*, which addresses binding agreements for economic growth-sharing:

A. Any county, city or town, or combination thereof, may enter voluntarily into an agreement with any other county, city or town, or combination thereof, whereby the locality may agree for any purpose otherwise permitted, including the provision on a multi-jurisdictional basis of one or more public services or facilities or any type of economic development project, to enter into binding fiscal arrangements for fixed time periods, to exceed one year, to share in the benefits of the economic growth of their localities.^[6]

³ *Id.* § 2.2.

⁴ *Id.* § 3.2.

⁵ Commission on Local Government, *Report on the City of Covington-County of Alleghany Voluntary Economic Growth-Sharing Agreement* at 17 (May 2017), available at <http://www.dhcd.virginia.gov/index.php/commission-on-local-government/reports.html> (last visited Aug. 31, 2017).

⁶ VA. CODE ANN. § 15.2-1301(A) (Supp. 2016).

Under this statute, approval by the “affected localities” is required:

B. The terms and conditions of the revenue, tax base or economic growth-sharing agreement as provided in subsection A shall be determined by the affected localities and shall be approved by the governing body of each locality participating in the agreement^[7]

Subsection A refers to localities that agree to enter into “binding fiscal arrangements . . . to share in the benefits of the economic growth of their localities.” Subsection B states that “the affected localities” of a subsection A agreement must enter into the agreement. Thus, the only locality that is “affected” (subsection B) is *one that agrees to be part of a “binding fiscal arrangement[] . . . to share in the benefits of . . . economic growth”* (subsection A). Under the facts you have presented, neither of the two towns in question will be part of a binding fiscal arrangement to share the benefits of economic growth. For that reason alone, neither of those towns is an “affected locality” within the meaning of this statute.

In addition, I note that the phrase “affected localities” appears several times elsewhere in the *Code of Virginia*. Most relevant are the places it appears in statutes dealing with local status and boundary transitions. For example, § 15.2-2907 requires the review of the Commission on Local Government when certain status transitions are sought. It provides in subsection B that the Commission must “report, in writing, its findings and recommendations to the *affected localities*, and *any other localities likely to be affected* by such proposed action.”⁸ The fact that this sentence distinguishes “affected localities” from “any other localities likely to be affected” indicates that the phrase “affected localities” often is a term of art referring to localities whose *legal rights* are affected.⁹ Here, the proposed growth-sharing agreement would not affect the legal rights of the two towns in question. Thus, while they could possibly be described as “localities likely to be affected” by the growth-sharing agreement, they are not “affected localities,” and thus are not necessary parties to the agreement.

Finally, I note that under the proposed agreement, each town is given the further right of approval or disapproval if any part of the Development Area is to be within its borders.

Conclusion

For the reasons set forth above, it is my opinion that the only “affected localities” who are required to be parties to a revenue-sharing agreement pursuant to § 15.2-1301 of the *Code of Virginia* are those that assume obligations arising from terms and conditions of the agreement affecting their rights regarding revenue, tax base, or economic growth. Based on the facts you have presented, neither Clifton Forge nor Iron Gate would be an “affected locality,” and therefore neither locality is a required party to the proposed revenue-sharing agreement between Allegheny County and the City of Covington.

⁷ Section 15.2-1301(B) (emphasis added).

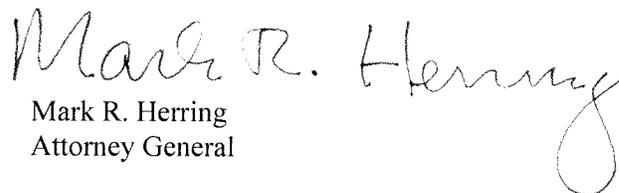
⁸ Emphasis added.

⁹ See also VA. CODE ANN. § 15.2-3108 (Supp. 2016), dealing with boundary adjustments between localities. The term “affected localities” clearly refers only to the localities whose boundaries are being adjusted; § 15.2-3211 (2012), dealing with annexation by towns and cities. The term “affected localities” is used in subsection 5 to refer only to arrangements between localities that would share public improvements in annexed areas, even though there might be other parties to a special court action; § 15.2-3534(17) (2012), dealing with referenda on consolidation issues. The term “affected localities” refers only to the localities whose interests would be directly impacted by the outcome of a referendum.

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With kindest regards, I am

Very truly yours,

A handwritten signature in cursive script that reads "Mark R. Herring". The signature is fluid and extends to the right, with a large loop at the end of the word "Herring".

Mark R. Herring
Attorney General