



COMMONWEALTH of VIRGINIA

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The Honorable Henry C. Eickelberg
Treasurer
County of Loudoun
P.O. Box 347
Leesburg, Virginia 20178-0347

The Honorable Robert S. Wertz, Jr.
Commissioner of the Revenue
County of Loudoun
P.O. Box 347
Leesburg, Virginia 20178-0347

Dear Treasurer Eickelberg and Commissioner Wertz:

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

Issues Presented

Your request involves questions of general statutory interpretation concerning the local voting percentage required of a town's governing body when adopting an ordinance establishing the tax rate. In your request, you ask for an opinion based on the following facts: (1) the locality is a town, and (2) the town's charter is silent as to the required voting threshold.

You present multiple questions regarding the methods by which a town may establish their tax rate. These specific questions implicate several different provisions of the Code and are as follows:

- 1) Whether it is mandatory under Virginia law for a town to annually take an affirmative vote with a two-thirds majority to set their tax rate;
- 2) What is the vote percentage required of a town's governing body when adopting an ordinance (or resolution) setting the tax rate if the town's governing body proposes to either continue or lower the tax rate from its current percentage;
- 3) Whether a town may by ordinance adopt a voting procedure that permits a simple majority to reaffirm or reimpose the immediately prior tax rate or, in the alternative, may the governing body, by

ordinance, provide that the current tax rate remains in effect absent action by the town's governing body in any given year; and

4) Whether the use of identifiable fiscal-year terminology is required in a town's public notice and/or ordinance for establishing a valid and enforceable tax rate.

Response

It is my opinion that:

1) Virginia law requires a town's governing body to annually engage in the process of voting in a public meeting and recording the vote of each member present to establish an annual tax rate. Both the Virginia Constitution and statutory law oblige the town council to annually impose their tax rate (should the town's charter empower it to do so) and such action must be accomplished at a properly called meeting, with a sufficient quorum, and an affirmative vote of two-thirds of the majority.

2) Where a town charter is silent, a locality is required under §15.2-1427(G), to obtain a two-thirds majority in order to impose any tax rate and that action must be taken by such two-thirds majority of the governing body present as prescribed in §15.2-1427(G).

3) The two-thirds majority requirement is not dependent on whether the proposed tax rate is the same, greater, or less than the current adopted tax rate. A town may not side-step the two-thirds voting requirement by drafting a tax-ordinance that empowers the town's governing body to vote by a simple majority to reimpose the same (or a lower rate) and only impose a two-thirds vote requirement when voting for a higher tax rate. In short, a town's governing body may not draft around the statutory requirements of §15.2-1427(G).

4) Finally, a public notice or ordinance that uses fiscal-year terminology to describe the period for which a tax rate will be imposed does not, by itself, (1) impact the two-thirds vote requirement or (2) affect the validity of such notice or ordinance, even when the tax rate is imposed on a calendar-year or tax-year basis; provided, however, the wording of such public notice conveys in all material respects the statutory information required including describing the current and proposed rates for the next year.

Applicable Law and Discussion

Your inquiry concerns certain mandatory legislative procedures for the adoption of a town tax rate. This analysis must begin with the Virginia Constitution. Article VII, Section 7 of the Virginia Constitution states in relevant part:

No ordinance or resolution appropriating money exceeding the sum of five hundred dollars, imposing taxes, or authorizing the borrowing of money shall be passed except by a recorded affirmative vote of a majority of all members elected to the governing body... On final vote on any ordinance or resolution, the name of each member voting and how he voted shall be recorded.^[1]

Article VII, Section 7 of the Virginia Constitution provides that an ordinance or resolution "imposing taxes" must be passed by a recorded affirmative vote of a majority of all members elected to the governing body. The imposition of town taxes is only Constitutionally valid where there was a public

¹ VA. CONST., art. VII, § 7.

meeting of the town council and a recording of each member's final vote. Further § 58.1-3005 requires that the council of every town shall annually make an account of all sums lawfully chargeable on the town which ought to be paid within one year and order the imposition of taxes in such amount.² The requirement to base the tax rate on the annual liabilities of the town necessarily requires the town council to annually impose taxes in response to those specific liabilities rather than merely continuing the existing rate.

These two provisions taken together provide for clear and unambiguous procedures. Section. § 58.1-3005 explicitly mandates that the town council of every town must annually "order the imposition of taxes" in an amount necessary to cover their yearly fiscal liabilities. A resolution or ordinance to continue at the same rate would not be procedurally sufficient to meet the requirement for an annual accounting of the town's liabilities and the establishment of a rate required to meet such obligations. For the imposition of a tax rate, at a minimum under the Virginia Constitution, there must be a public meeting for setting the rate and, under statutory law, an annual vote on such tax rate each year.

The inquiry as to the voting percentage also requires consideration of both Article VII, Section 7 of the Constitution of Virginia and § 15.2-1428. The Constitution requires a majority vote "of all members elected to the governing body;" a simple majority is not sufficient. The Virginia legislature enacted additional, more specific voting requirements for towns. While § 15.2-1427(A) provides that an ordinance may be adopted by a simple majority vote, this provision only applies when the Constitution or any other general or special laws do not provide a more specific requirement.

Familiar rules of statutory construction govern this inquiry. In construing § 15.2-1428 in its entirety, the objective is to ascertain and give effect to legislative intent which must be determined by harmoniously construing the words used in the statute in both sections (A) and (G). "When interpreting and applying a statute, . . . [Courts] assume that the General Assembly chose, with care, the words it used in enacting the statute, and we are bound by those words."³ When the language of a statute is plain and unambiguous, the words will be given their clear effect.⁴ In addition, statutes addressing the same subject "should be read, construed and applied together so that the legislature's intention can be gathered from the whole of the enactments."⁵

Accordingly, the reading of both §§ 15.2-1427 section (A) and (G) requires giving effect to the more specific requirement of section (G). The legislature imposed a more specific requirement for towns seeking to impose a tax on their residents. Section 15.2-1427(G) provides that "no tax shall be imposed except by a two-thirds vote of the council members."⁶ The central question is not whether Virginia requires a majority vote for an action establishing a tax to be valid and effective. It clearly does. Rather, the question is whether a town that takes an action to "impose" a tax within the meaning of § 15.2-1427(G) must do so by a two-thirds vote. As to towns, rules of statutory construction under Virginia law require the conclusion that a two-thirds majority is mandatory when adopting a tax rate for a town on an annual basis.

² VA. CODE ANN. § 58.1-3005 (2022).

³ *Shepherd v. Conde*, 293 Va. 274, 285 (2017), quoting *Kiser v. A.W. Chesterton Co.*, 285 Va. 12, 19 n.2 (2013).

⁴ *Long v. Commonwealth*, 7 Va. App. 503, 506 (1988) ("If the language of a statute is plain and unambiguous and its meaning perfectly clear and definite, effect must be given to it regardless of what courts think of its wisdom or policy." (quoting *Temple v. City of Petersburg*, 182 Va. 418, 423 (1944)).

⁵ *Alger v. Commonwealth*, 19 Va. App. 252, 256 (1994).

⁶ VA. CODE ANN. § 15.2-1427(G) (Supp. 2025).

Therefore, it is my opinion that when a town's governing body acts to adopt an ordinance or resolution establishing a tax rate, Virginia law requires such a measure to be approved by a two-thirds vote of the governing body as articulated in § 15.2-1427(G).

The second question focuses on whether a town can set the tax rate by a simple majority if the same rate is to be continued during the next year or if such rate is to be lowered. Just as § 58.1-3005 directs a town and/or city council to annually cause to be entered on its journals the sums lawfully chargeable within one year and shall order the imposition of taxes in such amount as it deems necessary to be raised to meet such obligations, the municipality must rely upon monies collected from taxes and assessments to satisfy such sums. Section 15.2-1104 authorizes a municipal corporation to raise money annually by taxes and assessments. This section provides in relevant part:

A municipal corporation may raise annually by taxes and assessments on property, persons, and other subjects of taxation, which are not prohibited by law, such sums of money as in the judgment of the municipal corporation are necessary to pay the debts, defray the expenses, accomplish the purposes, and perform the functions of the municipal corporation, in such manner as the municipal corporation deems necessary or expedient.^[7]

A town may well consider that it is expedient to seek a simple majority if there is no change to the annual tax rate. Section 15.2-2503, while framed in budget terms, is consistent with the structure of annually adopting taxes. It provides in relevant part, "(t)he governing body shall approve the budget and fix a tax rate for the budget year no later than the date on which the fiscal year begins."⁸ The expedient position would be that a simple majority vote requirement may apply when a town's governing body has proposed to either continue or lower the tax rate from its current percentage. One might argue that a town's governing body is not "imposing" a tax when it merely keeps or lowers the current rate for the upcoming year. As such, the town-specific supermajority requirement would only apply when the town's governing body proposes increasing the tax rate.

However, § 15.2-2503 provides that the locality shall "fix" a tax rate each year no later than the start of the fiscal year. The governing body cannot simply continue a rate and meet the requirement that it "fix" a rate for the specific budget year. The word "shall" in a statute is typically construed as mandatory, absent any manifestation of contrary intent by the legislature.⁹ There is no indication in the language of § 15.2-2503 that the word "shall" is intended to be other than mandatory. Therefore, a locality is required under § 15.2-2503 to "impose" the tax on an annual basis regardless of the rate. Therefore, the law requires the two-thirds majority to impose such tax as established in § 15.2-1427(G).

This conclusion draws further support from the ordinary understanding of the word "impose" and from the separate public notice statute, § 58.1-3007.¹⁰ Section 58.1-3007 singles out tax increases for an

⁷ Section 15.2-1104 (2018).

⁸ Section 15.2-2503 (2018).

⁹ See *Andrews v. Shepherd*, 201 Va. 412, 414 (1959) (observing the "well settled rule" that the word "shall", "should be construed as mandatory unless a different intention is fairly manifest"); see also *Schmidt v. City of Richmond*, 206 Va. 211, 218 (1965) (stating that the word "shall" in a statute generally is "used in an imperative or mandatory sense").

¹⁰ See Section 58.1-3007 (2018): ("Before any local tax levy shall be increased in any . . . town . . . , such proposed increase shall be published in a newspaper having general circulation in the locality affected at least seven days before the increased levy is made and the citizens of the locality shall be given an opportunity to appear before, and be heard by, the local governing body on the subject of such increase.").

annual special notice and hearing requirement. Section 58.1-3005 authorizes towns to annually “order the imposition of taxes” following specific procedures.¹¹ Therefore, reading § 58.1-3000 with § 15.2-1427(G) together, strengthened by the General Assembly using the same word “imposition” in § 58.1-3000 and “imposed” in § 15.2-1427(G), in both statutes, any new tax enacted for a new fiscal or calendar year, has to be imposed by a two-thirds recorded vote. In my opinion, Virginia law requires towns that impose a tax rate to follow a procedure that includes: (1) deciding annually to set a rate, (2) imposing a specific tax rate by following specific procedures and (3) following those procedures regardless of whether the proposed numerical rate is more, less or the same as the numerical rate currently in place. Thus, reading these statutes together, there is clear legislative intent to treat municipal taxation as an annual governmental action subject to public notice and hearing which cannot be part of a self-executing ordinance that continues in place until amended.

In short, the Virginia legislature did not establish two different voting requirements for towns when adopting a tax rate, one voting requirement that is to be followed when a town adopts a higher tax rate and a separate (less restrictive) voting requirement to be followed when a town is simply reaffirming or even decreasing its tax rate. This reading is further bolstered by the fact that the Virginia legislature imposed a more rigorous public notice requirement when a town seeks to increase its tax rate. This indicates that the legislature clearly envisioned a greater burden on public disclosure and accountability when a town proposes increasing its tax rate. The legislature has made no such delineation as to the voting percentage required when a town’s governing body enacts its tax rate and does not single out a special procedure for imposing a higher tax rate. Accordingly, the two-thirds vote requirement applies anytime a town’s governing body sets its tax rate. This procedure is the same regardless of whether the proposed rate is higher, lower, or unchanged.

Your third question asks whether a town may, by ordinance, adopt a voting procedure that permits a simple majority of the town’s governing body to reaffirm or reimpose the immediately prior tax rate or may, by ordinance, ensure that the current tax rate remains in effect absent action by the town’s governing body. This question is also dispositively answered by § 15.2-1427. Section 15.2-1427 provides that an ordinance becomes effective upon adoption or on a date fixed by the governing body, and that an ordinance may be amended or repealed in the same manner in which the ordinance is adopted.¹² Thus, ordinances generally remain effective until amended or repealed.

The existence of a continuing ordinance does not satisfy the statutory mandate for the annual imposition, and it does not satisfy the requirement to have a tax rate continue essentially on autopilot. Pursuant to the discussion above, such an ordinance would be inconsistent with Virginia law. Statutes addressing the same subject “should be read, construed and applied together so that the legislature’s intention can be gathered from the whole of the enactments.”¹³ Based on the same annual-tax provisions,

¹¹ Section 58.1-3005 (2022).

¹² Section 15.2-1427 in relevant part: “(A) [A]n ordinance may be adopted by majority vote of those present and voting at any lawful meeting. (B) On final vote on any ordinance or resolution, the name of each member of the governing body voting and how he voted shall be recorded An ordinance shall become effective upon adoption or upon a date fixed by the governing body. (C) All ordinances or resolutions heretofore adopted by a governing body shall be deemed to have been validly adopted (D) An ordinance may be amended or repealed in the same manner, or by the same procedure, in which, or by which, ordinances are adopted. (E) An amendment or repeal of an ordinance shall be in the form of an ordinance which shall become effective upon adoption or upon a date fixed by the governing body, but, if no effective date is specified, then such ordinance shall become effective upon adoption (G) In towns, no tax shall be imposed except by a two-thirds vote of the council members.”

¹³ *Alger*, 19 Va. App. at 256.

particularly § 58.1-3005, the General Assembly clearly and unequivocally contemplated that a town annually engage in a municipal action affixing a tax rate. Therefore, while a town's tax ordinance legally remains "on its books until changed," a town may not, through drafting, supplant the percentage vote required by state law to impose a tax rate for the current year.

For this reason, Virginia law does not permit a town to adopt an ordinance that essentially lowers the two-thirds statutory voting requirement to a simple majority when the town's governing body either reaffirms or lowers the current tax rate. Likewise, Virginia law does not permit a town to treat a tax rate as remaining in effect absent action by a town's governing body. In short, Virginia law requires a town that wishes to impose a tax on its residents to annually vote to impose such tax and to do so by a two-thirds vote of the governing body.

This leads to the fourth and final question concerning the use of fiscal year terminology in a town's public notice and ordinance. Virginia law requires a town to give public notice of any budget hearing pursuant to § 15.2-2506.¹⁴ Such notice is required to include, at minimum, the current and proposed real estate and personal property tax levies. Additionally, before any local tax levy can be increased, the proposed increase must be published and the public given an opportunity to be heard.¹⁵ Virginia law also expressly recognizes that counties, cities, and towns may levy taxes on either a fiscal-year basis by ordinance under § 58.1-3010 or, if operating on a calendar-year basis, may change the rate during the calendar year under § 58.1-3012.

Therefore, the mere use of fiscal-year terminology in a public notice or tax-rate ordinance does not, by itself, alter the vote percentage required for the governing body's annual legislative action establishing the tax rate. Whether the locality is lawfully operating on a fiscal-year basis under § 58.1-3010 or on a calendar-year basis under § 58.1-3012, the vote-threshold question remains governed by the statutes discussed above. The fiscal-year wording alone does not convert the town's annual levy action into something other than an act subject to a two-thirds voting requirement as required by § 15.2-1427(G).

You also ask whether such terminology affects the validity or sufficiency of the notice or ordinance. As a matter of general statutory interpretation, the use of fiscal-year wording alone does not affect the validity or sufficiency of such notice. When Virginia courts evaluate challenges to local tax and budget advertisements, they generally look to whether the notice violates an explicit statutory command such as the timing requirements.¹⁶ Because the text of § 15.2-2506 explicitly dictates that the notice contains "a summary of the total revenues and expenditures . . . and current and proposed real estate and personal property tax levies," a notice that contains those structural elements will satisfy the law. Virginia law recognizes fiscal-year levies in some circumstances and, as such, fiscal-year terminology may be used simply as a matter of convenience in describing a town's budget process.

At the same time, the notice must still satisfy Virginia law. In my view, if the notice's wording (1) materially obscures the levy actually being proposed, (2) fails to disclose the current and proposed levies as required by § 15.2-2506, or (3) fails to give the public the notice required before an increase under §

¹⁴ Section 15.2-2506 (Supp. 2025) ("Notice of one or more public hearings shall be given in accordance with § 15.2-1427. Such notice shall, at a minimum, include a summary of the total revenues and expenditures for each appropriated fund and the current and proposed real estate and personal property tax levies The hearing shall be held at least seven days prior to the approval of the budget as prescribed in § 15.2-2503.").

¹⁵ *Id.*

¹⁶ *See* *Town of Madison v. Ford*, 255 Va. 429 (1998).

58.1-3007, then the sufficiency of such public notice may be called into question.¹⁷ Because your request seeks general guidance rather than adjudication of a specific notice text, I find that the inclusion of fiscal-year terminology does not, by itself, impact the validity of such notice. Use of such terminology, however, does not insulate a defective notice from challenge should it materially misstate the period or levy being acted upon. In drafting public notice, a town should carefully and accurately describe the period of time for which the tax rate is intended to be imposed, but a reference in such public notice to a fiscal period (verses a tax year or calendar year) does not, in itself, impact its validity.

Conclusion

Accordingly, it is my opinion that:

Where a town charter is silent on the vote threshold, Virginia law requires a two-thirds vote for a town's governing body to impose a tax rate. Virginia law imposes this two-thirds voting requirement on a town regardless of whether the proposed rate is higher, lower, or unchanged. Virginia law does not permit a town to avoid the two-thirds voting requirement by adopting an ordinance that states the adopted tax rate shall remain in effect (or lowered) by a simple majority vote. Finally, the use of fiscal-year terminology in an ordinance or public notice (versus referring to the specific tax or calendar year for which the tax rate will be imposed) does not, by itself, impact the validity of such ordinance or notice, provided the wording materially represents the terms and conditions of the proposed tax rate and gives fair indication of the time period over which such tax rate will be imposed.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Jones", with a long horizontal line extending to the right.

Jay Jones
Attorney General

¹⁷ *Id.*