COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

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900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

Mr. William C. Shelton
Director, Virginia Department of Housing and Community Development
Main Street Centre
600 East Main Street, Suite 300
Richmond, Virginia 23219

Dear Mr. Shelton:

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 a local, regional or consolidated housing authority organized pursuant to the Housing Authorities Law[1] is authorized to operate throughout the entire Commonwealth without first meeting the requirements of § 36-23.

Response

It is my opinion that a local, regional or consolidated housing authority may not operate throughout the entire Commonwealth without first meeting the requirements of § 36-23.

Background

You relate that the Virginia Department of Housing and Community Development and the Virginia Housing Development Authority are currently preparing an application to the federal Department of Housing and Urban Development ("HUD") to serve as the Performance-Based Contract Administrator for project-based Section 8 housing assistance in Virginia. You indicate that the Notice of Funding Availability issued by HUD for this program sets forth certain eligibility criteria for applicants, including a requirement that the applicant have the legal authority to operate throughout the entire state for which it is applying for funds.

Applicable Law and Discussion

Virginia follows the Dillon Rule of strict construction that provides that municipal corporations have "only those powers which are expressly granted by the state legislature, those powers fairly or necessarily implied from expressly granted powers, and those powers which are essential and indispensable."[2]

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[1] VA. CODE ANN. §§ 36-1 through 36-55.6 (2011).

[2] Arlington Cnty. v. White, 259 Va. 708, 712, 528 S.E.2d 706, 708 (2000) (citing City of Va. Beach v. Hay, 258 Va. 217, 221, 518 S.E.2d 314, 316 (1999)). *See also* City of Richmond v. Bd. of Supvrs., 199 Va. 679, 684, 101 S.E.2d 641, 645 (1958).

Moreover, "the Dillon Rule is applicable to determine in the first instance, from express words or by implication, whether a power exists at all. If the power cannot be found, the inquiry is at an end."[3]

The Housing Authorities Law creates "[i]n each locality" a housing authority as a political subdivision of the Commonwealth.[4] Any such local housing authority, however, may transact business and exercise its powers only after having received the affirmative approval of the qualified voters "of such locality" by a majority vote of such qualified voters voting in a referendum.[5] A housing authority is generally granted enumerated powers to act within its "area of operation," which is coextensive with the boundaries of the locality within which it was created.[6]

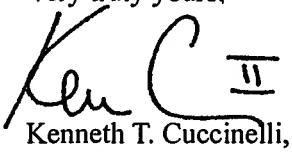
A housing authority may exercise any of its powers outside of its area of operation only upon compliance with the procedures for authorization of such actions as set forth in § 36-23, which includes receiving the approval of the governing body of each locality in which the housing authority is requesting to act.[7]

Conclusion

Accordingly, it is my opinion that a local, regional or consolidated housing authority organized pursuant to the Housing Authorities Law is not authorized to operate throughout the entire Commonwealth without first meeting the requirements of § 36-23.

With kindest regards, I am

Very truly yours,



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[3] Commonwealth v. Cnty. Bd., 217 Va. 558, 575, 232 S.E.2d 30, 41 (1977). Any fair, reasonable doubt as to the existence of such power must be resolved against the locality. *See City of Richmond*, 199 Va. at 684, 101 S.E.2d at 645.

[4] *See* § 36-4.

[5] *Id.*

[6] *See* § 36-3 ("'Area of operation' means an area that (i) in the case of a housing authority of a city, shall be coextensive with the territorial boundaries of the city; (ii) in the case of a housing authority of a county, shall include all of the county, except that portion which lies within the territorial boundaries of (a) any city, and (b) any town that has created a housing authority pursuant to this chapter; (iii) in the case of a housing authority of a town, shall be coextensive with the territorial boundaries of the town as herein defined."); *see also* §§ 36-19 (enumerating powers granted to a housing authority within its area of operation); 36-19.5 (granting certain additional powers to a housing authority to acquire dwelling units within its area of operation); and 36-26 (authorizing a housing authority to borrow money or accept other financial assistance from the federal government for or in aid of any housing project within the authority's area of operation). *See also* Va. Electric & Power Co. v. Hampton Redev. & Hous. Auth., 217 Va. 30, 33, 225 S.E.2d 364, 367 (1976) (under the terms of the Housing Authorities Law, "a municipal housing authority is an entity purely local in nature and not a state agency performing a function of state government").

[7] *See* § 36-23. This section requires a governing body to hold a public hearing and to make certain specifically enumerated findings prior to authorizing a housing authority to operate within the locality. In addition, if a housing authority already has been established for that locality, this authority also must adopt a resolution declaring that there is a need for the other housing authority to exercise its powers within the locality.