

RE: Town Incorporation -- Required County Support

Wednesday, July 13, 2011 9:24 AM

From: "Williams, Susan (DHCD)" <Susan.Williams@dhcd.virginia.gov>

To: "Gene Hauze" <etabraham@yahoo.com>

Gene:

Greetings. The comment you refer to came in the part of my presentation where I attempted to describe the advantages and disadvantages of town incorporation – a necessarily subjective task because the code obviously does not set forth the “pros” and “cons” of incorporating.

Under the heading “Disadvantages,” the bullet point in my presentation “Total county support or a long and pervasive pattern of neglect of the community by the county” (which you will note are two extremes) was intended as an example, elaborating on the previous bullet statement “Legal standard for incorporation in Virginia is fairly stringent.” Certainly, if a community had either of the former (total county support or, at the other end of the spectrum, pervasive neglect), it would be easier to demonstrate to the court that the community met the legal standard for incorporation.

The first “procedure” slide in my presentation (Slide #7) indicates that are two ways to go: via charter from the General Assembly or via the statutory process. To me, it seems clear that the rest of the procedure slides (Slides 8–13) pertain to the latter – to the statutory process.

The legal standard set forth in Va. Code Section 15.2-3602 (which appears on Slide #10) pertains to the “proof” required for a court to order that a proposed town be incorporated. The legal standard does not apply to the General Assembly considering a proposed charter, though the General Assembly would certainly be free to consider the standard during their deliberations.

Susan

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From: Gene Hauze [mailto:etabraham@yahoo.com]

Sent: Wednesday, July 13, 2011 2:31 AM

To: Williams, Susan (DHCD)

Subject: Town Incorporation -- Required County Support

Susan:

I hope this message finds you and your family doing well.

We have not talked for a while, but I can tell you that the conversation about incorporating Massanutten into a town is still continuing -- it looks more likely that if we ever pursued incorporation, it would be via General Assembly rather than Court (because of cost). We will be issuing a final report on the feasibility of incorporating Massanutten into a town around September 1, 2011 -- it will be available on our website -- you will be able to download the entire report in pdf format.

Unfortunately, some people in Massanutten are taking many statements made in this matter way out of context and twisting them for political purposes -- what a surprise. Heck, believe it or not, you cannot imagine how many times I have tried to explain what a feasibility study is ... and ... what it is not. I would have never guessed that when I undertook this effort -- something to me that seems so simple. One statement that I believe is being taken out of context is one that you made at the September 2010 meeting in Massanutten.

The purpose of this message is to clarify for the record this statement you made. First of all, it is being claimed you stated that whether you incorporate a community into a town either directly via General Assembly enactment (special act) or via judicial (Court) proceeding, you **MUST** have the approval of the local county prior to undertaking the effort.

Personally, I never heard you make that statement either in our private conversations or at the September 2010 meeting we held in Massanutten. It seems odd to me that the General Assembly would not be allowed to do something without the approval of a county.

However, I believe the claim about what you said is centered around a statement on one of your briefing charts that goes as follows (quoted from your briefing of September 2010):

- Legal standard for incorporation in Virginia is fairly stringent
- Total county support or a long and pervasive pattern of neglect of the community by the county

So, I would greatly appreciate if you could answer a few short question surrounding this topic. You may be brief with your answers, especially relating to those questions that refer to **must** -- you can just say **NO**, if applicable. **MUST** versus it would be nice to have and your chances would be better if -- which I perfectly understand and it is not necessary to elaborate. Feel free to answer the questions directly in the email using a different color, if you wish.

- 1). Am I correct to assume that you intended the briefing chart statement above to refer only to incorporation via judicial (Court) proceeding and not to incorporation enactment via special act of the General Assembly?
- 2). **MUST** a community have prior approval from the local county in order to incorporate into a town via special act by the General Assembly? (if yes, could you please cite law, regulation [VAC] or precedence)
- 3). **MUST** a community have the support of the local county in order to incorporate into a town via special act by the General Assembly? (if yes, could you please cite law, regulation [VAC] or precedence)
- 4). **MUST** a community have the approval by the local county in order to seek town incorporation via judicial (Court) proceeding? (if yes, could you please cite law, regulation [VAC] or precedence)
- 5). **MUST** a community have the support of the local county in order to receive town incorporation via judicial (Court) proceeding? (if yes, could you please cite law, regulation [VAC] or precedence)

6). In your briefing chart statement, what is meant by "total county support"? The statement seems to be somewhat ambiguous.

- a). Does it mean by a vote of the governing county body?
- b). Does it mean all the Councils of the towns that lie within the County?
- c). Does it mean all the elected County officials to include the Commonwealth Attorney, Voter Registrar, Commissioner of Revenues, Clerk of the Court, etc.?
- e). Does it include all the County Administrative heads and County Attorney?

7). What would happen if the County did not take a position on town incorporation in judicial (Court) proceedings? What would happen if they did not participate in the judicial proceedings at all?

Susan, it should be noted that I personally hate to hand out briefing charts after I give a presentation. Many people tend to misinterpret the meaning, take it out of context, or incorrectly quote the meaning stated during the briefing. So, I apologize for asking what might appear to be dumb questions -- ones that I know the answer to. But, I would like to put this "that is what she said" issue to bed.

Additionally, it should be noted that I have spent some time looking for a law, regulation, or even precedence that supports the statement "a long and pervasive pattern of neglect of the community by the county". I could not find one. In fact, it was not even mentioned at all in the Prices Fork case. I have also talked to some town and county attorneys who also seemed confused by the statement. It would be helpful if there is a reference for this statement in particular.

I hope you will be able to find some time to help us out. Thanks!

Gene
