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March 23, 1989

Honorable Robert C. Chambers
Speaker of the W. Va. House of Delegates
State Capitol, Room 232-M
Charleston, West Virginia 25305

Dear Mr. Speaker:

This is to acknowledge receipt of your letter dated March 10, 1989 in which you requested an opinion regarding the implementation of the statewide property reappraisal performed as a result of the Property Tax Limitation and Homestead Exemption Admendment of 1982. In your letter, you set forth the following facts:

"On March 9, 1987, the Legislature passed Committee Substitute for S.B. 276, which provided for additional review of property appraisal and implementation thereof for ad valorem tax purposes. This bill amended Article 1B of Chapter 11 of the Code of W. Va., as amended.

"In particular, [Section] 11-1B-18 of said bill, provides that the property reappraisal shall be implemented in the year for which a lien would attach on July 1, 1987, upon the State Tax Commissioner ascertaining [sic] that the review procedures provided in Article 1B, Chapter 11 have been substantially complied with and that the results are substantially correct.

"The State Tax Commissioner has not informed the Governor, Senate President or Speaker of the House of Delegates, as to whether or not the review procedures have been complied with and are substantially correct.

"As you are well aware, July 1, 1987, has long since come and gone, and there is uncertainty as to whether or not the State Tax Commissioner can, upon findings that the review procedures have been substantially complied with and are substantially correct, implement the property reappraisal program."

You requested an opinion from this office on the following question:

"Therefore, as Speaker of the House of Delegates, I am requesting an opinion from you, as Attorney General, as to whether or not the State Tax Commissioner can now certify the property reappraisal and implement the same without additional enabling legislation by the Legislature or whether the State Tax Commissioner can implement the property reappraisal without such additional enabling legislation."

ANALYSIS

On November 2, 1982, the people of West Virginia adopted at a general election what has come to be known as the "Property Tax Limitation and Homestead Exemption Amendment of 1982". Accordingly, Article 10, Section 1b, subsection B, of the Constitution of West Virginia now reads, in relevant part:

"The results of each statewide appraisal shall upon completion be certified and published and errors therein may be corrected, all as provided by general law. The first such statewide appraisal shall be completed, certified and published on or before the thirty-first day of March, one thousand nine hundred eighty five, for use when directed by the Legislature.

"The Legislature shall further prescribe by general law the manner in which each statewide reappraisal shall be employed to establish the value of the various separately assessed parcels or interests in parcels of real property and various items of personal property subject to ad valorem property taxation, the methods by which increases and reductions in value subsequent to the base year of each statewide reappraisal shall be ascertained, and require the enforcement thereof." (Emphasis added).

This constitutional language clearly requires legislation to be enacted before the statewide reappraisal can be implemented.

On June 2, 1983, the Legislature passed Enrolled Committee Substitute for Senate Bill No. 10, codified as West Virginia Code 11-1A-1 et seq. This legislation spelled out in detail how the constitutional mandate for statewide reappraisal was to be carried out.

West Virginia Code Section 11-1A-14(c) reads:

"At the time of making available information as to appraised value as provided for in this section which shall not be later than the thirty-first day of March, one thousand nine hundred eighty-five, the tax commissioner shall certify and publish such results for use

when directed by the legislature... However, none of the appraised values ascertained during the course of the statewide reappraisal of property shall be utilized for assessment purposes unless and until the statewide reappraisal is completed for all classes and species of property in all counties and the use of the results have been directed by the legislature." (Emphasis added).

In 1986, during the First Extraordinary Session, the Legislature passed Enrolled House Bill No. 153, which expanded the procedures available to property owners to inquire of and object to the results of any statewide reappraisal prior to any implementation by the Legislature. West Virginia Code Section 11-1B-1(c) reads, in pertinent part:

"It is therefore the intent of the Legislature to provide a process by which property owners, if they so desire, may inquire of and object to the results of such reappraisal and have the same reviewed and, in the proper cases, adjusted so as to reflect the true value of all property subject to ad valorem taxes prior to the implementation of such reappraisal by the Legislature." (Emphasis added).

West Virginia Code Section 11-1B-2 goes on to say:

"The provisions of this article...shall not apply to any appraisal or reappraisal of any such property...prior to the adoption of such [constitutional] amendment nor subsequent to the year one thousand nine hundred eighty-seven."

As amended in 1987, West Virginia Code Section 11-1B-18(c) reads in relevant part:

"Upon completion of the review procedures provided in this article, and after certification by the tax commissioner to the Governor, President of the Senate and Speaker of the House of Delegates that, [with certain listed exceptions] said review procedures have been substantially complied with and further that the results thereof are substantially correct, the final evaluations arrived at, by, and through the appraisal process to establish value of all property for the year one thousand nine hundred eighty-three, as provided for in article one-a [Section 11-1A-1 et seq.] of this chapter and by this article, shall be and the same are hereby directed to be used for ad valorem property taxation in the year for which lien would attach on the first day of July, one thousand nine hundred eighty-seven.... (Emphasis added).

The language of Article 10, Section 1b, Subsection B of the Constitution is clear and unambiguous in its statement that the first statewide appraisal shall be used only when directed by the Legislature. Similarly, West Virginia Code Section 11-1A-14(c) is unambiguous in its statement that:

"[N]one of the appraised values ascertained during the course of the statewide reappraisal...shall be utilized...unless and until...the use of the results have been directed by the legislature."

The "Plain Meaning" Rule

It is a basic maxim of constitutional and statutory construction that the meaning of a law must be "sought in the language in which the act is framed, and if that is plain,...the sole function of the courts is to enforce it according to its terms." Caminetti v. United States, 37 S.Ct. 192, 242 U.S. 470, 61 L.Ed. 442 (1917). Where the language of a statute or constitutional provision is plain, unambiguous, direct and certain, the statute speaks for itself and there is nothing left for the court to construe. State v. Hubbard, Mont., 649 P.2d 1331 (1982); Keenan v. Washington Metro Area Transit Authority, 643 F.Supp. 324 (D.D.C. 1986). The requirement that courts apply the literal meaning of clear and unambiguous statutes is based on the constitutional doctrine of separation of powers. The Rhode Island Supreme Court captured this idea in the following language:

"It is an elementary proposition that courts only determine by construction the scope and intent of the law when the law itself is ambiguous or doubtful...the remedy for a harsh law is not in interpretation but in amendment or repeal." State v. Duggan, 6 A. 787 (1886).

As clearly and unambiguously, the Legislature did at one time direct the implementation of the statewide reappraisal. It passed West Virginia Code Section 11-1B-18(c) which mandated that the reappraisal occur on a specified date -- in the year for which a lien would attach on July 1, 1987 -- after certification by the Tax Commissioner to the Governor, the President of the Senate and the Speaker of the House of Delegates that the review procedures had been substantially complied with and that the results were substantially correct. The plain meaning of this statute was that the statewide reappraisal should have been used for ad valorem property taxation on July 1, 1987, but only if the Tax Commissioner had made the necessary certifications prior to that date.

Legislative Intent

Does West Virginia Code 11-1B-18(c) either authorize or mandate that the State Tax Commissioner can now certify the property reappraisal and implement the same without additional enabling

legislation by the Legislature? The answer to this question turns on legislative intent in the use of specific dates and deadlines throughout West Virginia Code 11-1A-1 et seq. and 11-1B-1 et seq., and whether these dates were intended to be "mandatory" or merely "directory."

One applicable rule, clearly stated in Sutherland Stat. Const., Section 33.07 (4th Ed.), is that:

"A statute with a definite effective date commences operation from that time. The rule applies only where a contrary intent is not manifest in the act itself."

Similarly, in order to determine whether it was the Legislature's intent that certain acts and implementations occur on specific dates or merely after certain conditions precedent (such as the certification by the Tax Commissioner) we are guided by the well established intrinsic interpretive rule that "expressio unius est exclusio alterius". This maxim expresses the learning of common experience that when people say one thing they do not mean something else. Sutherland Stat. Const., Section 47.24 (4th Ed.). This maxim has been clearly recognized by the West Virginia Supreme Court of Appeals as applicable to statutory interpretation in West Virginia, Ratcliff v. State Compensation Commissioner, 146 W. Va. 920, 123 S.E.2d 829 (1961), State ex rel. City of Charleston v. Hutchison, 154 W. Va. 585, 176 S.E.2d 691 (1970). As pointed out in Sutherland, supra at Section 47.25:

"The maxim emphasizes the language of the statute and inferences to be drawn from the way it is written. It is closely related to the plain meaning rule in this regard."

It is an elementary rule of construction that effect must be given, if possible to every word, clause and sentence of a statute. State v. Bartley, 58 N.W. 172 (1894). If the intention of the Legislature is perfectly clear from the language used, rules of construction are not to be applied. Temple v. City of Petersburg, 182 Va. 418, 29 S.E.2d 357 (1944). If the West Virginia Legislature had intended to authorize or mandate implementation of the statewide reappraisal merely after certain events had occurred, they could have said so.

In fact, as noted on page 2 of the minutes of the May 20, 1988 meeting of the Committee on the Judiciary, this was suggested and then withdrawn in an amendment proposed by Delegate Fullen:

"Delegate Fullen moved to amend the bill [H.B. 153 - Section 11-1B-18] on page 32, section 18, line 27, by striking the words 'one thousand nine hundred eighty-seven' and inserting in lieu thereof the following: 'following the said certification by the Commissioner set out in this subsection.' Delegate Fullen requested unanimous consent to withdraw his amendment. No objection was heard."

By so doing they chose clear and unambiguous language that the reappraisal should take effect on July 1, 1987, not whenever the Tax Commissioner made his certification.

It is the opinion of the Attorney General that the specific dates contained in the statutes and particularly in West Virginia Code Section 11-1B-18(c) reflect the intent of the Legislature that "time is of the essence" and that these dates were intended when passed by the Legislature to be strictly construed and applied as absolute time lines.

Legislative Effect

Were the statutes that included these specific dates "mandatory" or merely "directory" as to timing? The distinction is critical. No statutory provisions are intended by the Legislature to be disregarded; but where the consequences of not obeying them in every particular are not prescribed, the courts must judicially determine them. Sutherland, supra at Section 57.01.

A mandatory provision in a statute is one in which the omission to follow it renders the proceeding to which it relates illegal and void (such as the failure in the instant case to comply with the statutes by a certain date and implement them as of July 1, 1987), while a directory provision is one which is not necessary to validate the proceeding. Shipley v. Stephenson County Electoral Board, 474 N.E.2d 905 (Ill. 1985). A statutory provision would generally be regarded as mandatory where the power or duty to which it relates is for the public benefit, good, interest or protection; it can also be for the security of public rights or for the advancement of public justice. State v. City of Greenville, 726 S.W.2d 162 (Tex. App. 1986). Ordinarily, the use of the word "shall" in a statute [such as in West Virginia Code Section 11-1B-18(c)] carries with it the presumption that it is used in the imperative rather than in the directory sense. In fact, the West Virginia Supreme Court of Appeals has addressed this very issue.

"The word 'shall' is mandatory in the absence of any contrary intention expressed in the statute." State ex rel. R.C.F. v. Wilt, 162 W. Va. 424, 252 S.E.2d 168 (1979).

Regarding time limitations, Sutherland, supra at Section 57.19 points out that where failure to obey a time limitation embodies a risk of unknown injury to public or private rights, it must be construed as mandatory:

"For example, where tax sales are required to be held on a certain date each year, time is of the essence, for this involves an exercise of official action in derogation of private property rights by ex parte proceedings of drastic and summary nature, based on constructive notice. The provision concerning the date of sale is for the benefit, protection and security of landowners, and due diligence on that date alone

should be all that is required to apprise landowners of proceedings against their property to collect taxes."

West Virginia Code Section 11-1B-18 involves an exercise of official action in derogation of private property rights by ex parte proceedings of a drastic and summary nature, based on constructive notice. Subsection (b) thereof states in part:

"If all hearings have not been held, or completed, or determinations thereon have not been issued, by the first day of June, one thousand nine hundred eighty-seven, the tax commissioner shall deem the values appealed from, and the results thereof, substantially correct and the review procedures substantially complied with, for purposes of subsection (c) of this section."

CONCLUSION

According to the West Virginia Constitution, the statewide reappraisal shall take effect only "when directed by the Legislature".

The 1983 legislation mandated and anticipated full compliance with its provisions by dates certain in 1985. When, in 1986 and 1987, it was obvious that this had not occurred, amendatory legislation was passed mandating additional safeguards and procedures to be accomplished by times certain and in no event later than July 1, 1987. Once again, because there was no timely compliance with the law, amendatory legislation is required to effect full implementation of the constitutionally mandated statewide reappraisal.

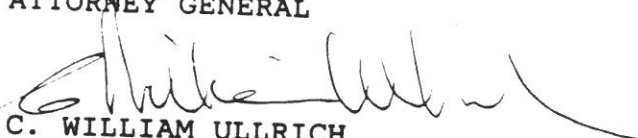
It is the opinion of the Attorney General that any attempt by the State Tax Commissioner to effect the statewide implementation of the evaluations arrived at through the statewide appraisal process -- with no statutory authority other than that provided in West Virginia Code Section 11-1B-18(c) -- would stand a substantial chance of being successfully challenged in court. The statute that directed implementation as of July 1, 1987 did so in mandatory language. It subjected West Virginia property owners to substantial changes in their rights and duties as taxpayers based on conditions that existed in 1987 -- four years after the base date of 1983 established in the constitution -- not six or seven years after the base date, as would be true today.

It is, therefore, the opinion of the Attorney General that the current law -- West Virginia Code Section 11-1B-18 -- will not effect statewide implementation of the constitutionally mandated ad

valorem property reappraisal, regardless of certification by the
Tax Commissioner. Additional legislation is required.

Sincerely,

CHARLES G. BROWN
ATTORNEY GENERAL


BY C. WILLIAM ULLRICH
CHIEF DEPUTY ATTORNEY GENERAL

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