

*The Honorable Charles G. Flinn*Office of the Attorney General  
December 10, 1981

1981-82 Va. Op. Atty. Gen. 270 (Va.A.G.), 1981-82 Va. Rep. Atty. Gen. 270, 1981 WL 141244

Office of the Attorney General

Commonwealth of Virginia

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**\*1 OPEN - SPACE LAND ACT . STATUTES. COUNTIES. ZONING. ACT DOES NOT AUTHORIZE COUNTIES TO ACQUIRE EASEMENTS FROM OWNERS OF MULTI-FAMILY RENTAL PROPERTY RESTRICTING PROPERTY TO SUCH USE.**

\*1 The Honorable Charles G. Flinn

\*1 Acting County Attorney for Arlington County

\*1 You ask whether the **Open - Space Land Act** (the "Act"), Ch. 13 of Title 10 of the Code of Virginia (1950), as amended, authorizes a county to acquire easements from owners of multi-family rental property, under which the owners agree not to use their property except for multi-family rental purposes.

\*1 Section 10-152 provides that, to carry out the purposes of the Act, any public body may acquire by grant or otherwise any interests or rights in real property that will provide a means for the preservation or provision of open-space land.

\*1 At the time of the Act's passage in 1966, the General Assembly stated, among its legislative findings, that the provision and preservation of open-space land are necessary to help curb urban sprawl, to help provide or preserve necessary park, recreational, historic and scenic areas, and to conserve land and other natural resources. Pursuant to these findings, the General Assembly stated that the purposes of the Act are to authorize and enable public bodies to preserve open-space land in urban areas.

\*1 Under § 10-156(c), open-space land means "any land in an urban area which is provided or preserved for (1) park or recreational purposes, (2) conservation of land or other natural resources, (3) historic or scenic purposes, (4) assisting in the shaping of the character, direction, and timing of community development, or (5) wetlands as defined in § 62.1-13.2...."

\*1 Subsection (4) must be construed in accordance with the rule of "ejusdem generis," and not as a broad grant of power to acquire land in any way connected with shaping the character, direction and timing of community development.<sup>1</sup> Open-space land, under § 10-156(c), means land directly related to parks, recreation, conservation of natural resources, and historic or scenic purposes.

\*1 The legal and economic form of ownership of multi-family dwellings has nothing to do with these purposes. Under the easements proposed, the owner of multi-family rental property can still expand or otherwise physically change the rental property, and not violate the easement terms. Such physical changes can even encroach upon, or destroy recreational and scenic open-space lands, and the easements will not be violated. The proposed easements then have a socio-economic purpose, rather than a purpose to deal with physical development.<sup>2</sup> The easements are therefore beyond the grant of power made in the Act.

\*1 Accordingly, it is my opinion that the Act does not authorize a county to acquire easements from owners of multi-family rental property, under which the owners agree not to use their property except for multi-family rental purposes.

\*2 John Marshall Coleman

\*2 Attorney General

**Footnotes**

<sup>1</sup> The rule of ejusdem generis ("of the same kind") provides that where a particular class of things is spoken of in a statute and general words follow, the class first mentioned must be taken as the most comprehensive, and the later, more general words treated as referring to matters of the same kind, the effect of the general words thereby being restricted. See, for example, East Coast Freight Lines v. City of Richmond, 194 Va. 517, 74 S.E.2d 283 (1953).

<sup>2</sup> See, for example, Board of Supervisors of Fairfax County v. DeGross Enterprises, Inc., 214 Va. 235, 198 S.E.2d 600 (1973) (zoning requirement that developer build at least 15% of dwelling units as low or moderate income housing).

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