



## Virginia Local Government Law

### Service District Ordinance Upheld: Nageotte v. Board of Supervisors of Stafford County

By: **Andrew McRoberts**. *This was posted Thursday, December 9th, 2010*

As in the Virginia Supreme Court's November 4, 2010 [FFW Enterprises v. Fairfax County opinion](#), the issue of excluding residential properties by classification from a special tax was addressed the same day in the case of [Nageotte v Board of Supervisors of Stafford County](#), by unpublished order [available here](#).

The statutes involved are Virginia Code section 15.2-2400, et seq., dealing with creation of service districts.

#### *Background*

Stafford County had adopted two service district ordinances to provide "road improvements" which "are expected to generally improve vehicular traffic flow and transportation safety" and "enhance business opportunities ... [and] improve access to businesses" in the service districts. Funding for the improvements was to come from a special tax assessment within the districts, as well as other state, county and private sources. Significantly, the Board of Supervisors excluded residential but not industrial and commercial properties from the special tax.

#### *The Challenge*

The plaintiff challenged the ordinances on several grounds. The Supreme Court disagreed with the plaintiff on all of them.

First, the plaintiff argued that the Stafford County Board of Supervisors lacked the authority to adopt the ordinances. If the Board of Supervisors had authority, the plaintiff argued that the Board's exemption of residential properties constituted unconstitutional special legislation. Lastly, the plaintiff argued that the ordinances failed to state their purpose, plan for improvements and benefits as required by Virginia Code section 15.2-2402(2), (3) and (4).

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## *The Holding*

The Supreme Court easily held that localities have express authority to adopt ordinances creating service districts, citing [Virginia Code section 15.2-2400](#).

The Court went on to uphold the tax classification scheme to exempt residential properties as expressly authorized under [Virginia Code section 15.2-2403\(6\)](#) (“Such tax may be levied on taxable real estate zoned for residential, commercial, industrial or other uses, or any combination of such use classification...”). And, citing [FFW Enterprises v. Fairfax County](#), the Court held that such a classification was not unconstitutional, as the Virginia Constitution expressly empowers the General Assembly to define and classify taxable objects.

The Court then held that the relatively simple statements of purpose, proposed plan and benefits of the service districts expressed in the ordinances (see quotes above) satisfied the requirements of [Virginia Code section 15.2-2402\(2\), \(3\) and \(4\)](#).

## *Significance*

This order is significant for many reasons, beyond the obvious importance to [Stafford County](#). All Virginia localities are facing a growing lack of state funding for infrastructure such as roads. As a result, funding for transportation and other important infrastructure are increasingly being funded through special taxes imposed within service districts, Community Development Authorities, and other authorities and means.

There are many excellent reasons why exempting or excluding residential properties from a special or additional tax is reasonable as well as legal. Some are discussed in the [FFW Enterprises opinion](#). But as a practical matter, governing bodies can more easily tax businesses that have the ability to grow and create revenue, which can be enhanced by the improvement being financed by the special tax. This goes beyond convenience and is an economic and political reality. The inability of a governing body to exclude residential property from a special tax could have severely limited the utility of these taxes to local governments.

Also importantly, the Supreme Court’s upholding the relatively simple descriptions of purpose, plan and benefits adopted by Stafford County as sufficient assists local governments by requiring a fairly low threshold of detail, and therefore allows some necessary flexibility as a major project unfolds.

Lastly, there is little authority in Virginia regarding how to adopt service district ordinances. A series of Attorney General’s Opinions from about 1981 onward is the best we have. This decision from the Virginia Supreme Court, although not in a published opinion, is a big help to local governments understanding the rules of (financing) the road.

*Note: Citing unpublished judicial dispositions like this one “is permitted as informative, but shall not be received as binding authority.” Rule 5.1(f) of the [Rules of the Supreme Court of Virginia](#). Citation to this unpublished order is controlled by Rule 5.1, which allows citation to a “publicly accessible electronic database,” and, failing that, requires “a copy of that disposition must be filed with the brief or other paper in which it is cited.”*

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