No requirement that fiduciary obtain court approval before distributing property or debt to custodial trustee for use and benefit of incapacitated individual in amount exceeding $10,000.

The Honorable William J. Howell
Member, House of Delegates
April 18, 2000

You ask whether § 55-34.5 of the Code of Virginia requires a fiduciary exercising administrative powers under § 64.1-57(1)(p)(5) to obtain court approval before distributing to a custodial trustee under the Uniform Custodial Trust Act an amount exceeding $10,000.

In the letter enclosed with your request, a constituent observes that, pursuant to § 55-34.3, a person may make gifts under the Virginia Uniform Custodial Trust Act in a will or trust without limitation. He believes the General Assembly intends § 64.1-57(1)(p)(5) to authorize a fiduciary to make transfers of such gifts for an incapacitated beneficiary to an authorized custodial trustee. Because § 55-34.5 authorizes the distribution of amounts both over and under $10,000, with and without court approval, the constituent argues there is no need to exercise the administrative power of § 64.1-57(1)(p)(5). Furthermore, if such administrative power were subject to the limitation in § 55-34.5, it could not operate separately. The constituent concludes that § 55-34.5 is a "facility of payment" provision that is available absent any controlling provision in a will or trust, and further, that § 55-34.5 imposes no restriction on a fiduciary making distribution under such documents in accordance with §§ 55-34.3 and 64.1-57(1)(p)(5).

Section 55-34.5 permits "the debtor of an incapacitated person who has no conservator to make an effective payment of the debt to an adult member of the beneficiary's family or a trust company as custodial trustee." Section 55-34.5(A) permits the transfer of property or debt to "an adult member of the beneficiary's family or to a trust company as custodial trustee for the use and benefit of the incapacitated individual." A court, however, must approve any transfer exceeding $10,000 in value. Section 55-34.5(B) requires court approval for the transfer of property or debt "to any person as a custodial trustee for the use and benefit of the incapacitated individual." (Emphasis added.) Section 55-34.5(C) permits "[a] written acknowledgment of delivery, signed by a custodial trustee," to constitute "a sufficient receipt and discharge" of the property so transferred. I am required to ""take the words as written"" … and give them their plain meaning." The provisions of § 55-34.5(A) and (B) clearly require court approval for certain types of transfers. The first type pertains to the transfer of property or debt, which exceeds $10,000 in value, to an adult member of a beneficiary’s family or to a trust company acting as a custodial trustee; the second pertains to the transfer of property or debt to any person acting as custodial trustee for the use and benefit of an incapacitated individual.

Your inquiry is directed to distributions of property or debt in excess of $10,000 in value to a custodial trustee under the Virginia Uniform Custodial Trust Act. For the purposes of this opinion, therefore, I shall assume that the term "custodial trustee" refers to an adult member of the beneficiary’s family or to a trust company acting as custodial trustee for the incapacitated individual under § 55-34.5(A). I shall also assume that such transfer is to an incapacitated individual who does not have a conservator.

Section 64.1-57(1) itemizes administrative powers that may be granted, in whole or in part, to a fiduciary in a will or trust. In 1992, the General Assembly amended § 64.1-57(1)(p), granting the
power to make distributions to an incapacitated beneficiary under the Virginia Uniform Custodial Trust Act:

During the minority, *incapacity* or the disability of any beneficiary, the fiduciary may, in his sole discretion, distribute income and principal to such beneficiary in any one of the following ways: …

(5) to an adult person or bank authorized to exercise trust powers as custodial trustee for an incapacitated beneficiary under the Uniform Custodial Trust Act (§ 55-34.1 et seq.) to be held as custodial trustee under the terms of such act.[8]

In 1990, prior to the enactment of § 64.1-57(1)(p)(5), the General Assembly created the Uniform Custodial Trust Act.9 Section 55-34.5 is the Act’s “facility of payment” statute, and provides:

Unless otherwise directed by an instrument designating a custodial trustee pursuant to § 55-34.3, a person, including a fiduciary other than a custodial trustee, who holds property of or owes a debt to an incapacitated individual not having a conservator may make a transfer to an adult member of the beneficiary’s family or to a trust company as custodial trustee for the use and benefit of the incapacitated individual. If the value of the property or the debt exceeds $10,000, the transfer is not effective unless authorized by the court.[10]

The 1995 Session of the General Assembly amended § 55-34.5, designating the 1990 enactment as subsection A, adding subsection B, and inserting subsection C:

B. With court approval, any person, including a conservator, guardian or other fiduciary who holds property of or owes a debt to an incapacitated individual, may make a transfer to any person as a custodial trustee for the use and benefit of the incapacitated individual. The court, in the exercise of its discretion, may require the custodial trustee to furnish a bond with surety for the faithful performance of his fiduciary duties.

C. A written acknowledgment of delivery, signed by a custodial trustee, is a sufficient receipt and discharge for property transferred to the custodial trustee pursuant to this section.[11]

Section 55-34.5(B) was added to address instances where the amount owed by a debtor to an incapacitated person was so small “that a trust company would not be interested in serving, and either no adult member of the beneficiary’s family could be located or such as could be located were not thought appropriate to serve as custodial trustee.”[12]

The primary goal of statutory construction “is to ascertain and give effect to legislative intent.”[13] In addition, “the plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction.”[14] When a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.[15] The General Assembly is presumed to be aware of the law existing at the time it adopts a statute.[16] Finally, the principles of statutory construction require that statutes be harmonized with other existing statutes, if possible, to produce a consistently logical result that gives effect to the legislative intent.[17]

Section 64.1-57 contains specific administrative powers to be exercised by a fiduciary. Such powers may be incorporated by reference into a will or trust, in whole or in part.18 The
administrative power contained in § 64.1-57(1)(p)(5) specifically allows a fiduciary to distribute income and principal to a beneficiary who is a minor, or is either incapacitated or disabled. This provision does not contain any requirement for the fiduciary to obtain court approval before making any such distribution. The fiduciary may make such distribution "to an adult person or bank authorized to exercise trust powers as custodial trustee for a beneficiary … under the Uniform Custodial Trust Act … to be held as custodial trustee under the terms of such act." The Uniform Custodial Trust Act is designed to provide a simple trust that is easy to create, administer and terminate. Section 64.1-57 specifically addresses the administrative powers granted to fiduciaries in wills or trusts. The more specific statute must be deemed controlling over other general statutes. I am of the view that § 55-34.5 is a general statute in regard to the administrative powers of a fiduciary.

I must, therefore, conclude that § 55-34.5 does not require a fiduciary exercising administrative power under § 64.1-57(1)(p)(5) to obtain court approval before distributing to a custodial trustee under the Virginia Uniform Custodial Trust Act an amount in excess of $10,000.

1Tit. 55, ch. 2.1, §§ 55-34.1 to 55-34.19.

2Section 55-34.3 provides: "A person having the right to designate the recipient of property payable or transferable upon a future event may create a custodial trust upon the occurrence of the future event by designating in writing the recipient, followed in substance by: ‘as custodial trustee for ………… (name of beneficiary) under the Virginia Uniform Custodial Trust Act.’

"Persons may be designated as substitute or successor custodial trustees to whom the property must be paid or transferred in the order named if the first designated custodial trustee is unable or unwilling to serve.

"A designation under this section may be made in a will, a trust, a deed, a multiple-party account, an insurance policy, an instrument exercising a power of appointment, or a writing designating a beneficiary of contractual rights. Otherwise, to be effective, the designation must be registered with or delivered to the fiduciary, payor, issuer, or obligor of the future right."


4Section 55-34.5(A).


6Section 55-34.5(A).

7Section 55-34.5(B).


10Id. at 362.

12 Johnson, supra note 3, at 1180.


16 See Richmond v. Sutherland, 114 Va. 688, 693, 77 S.E. 470, 472 (1913); 1995 Op. Va. At'y Gen. 130, 131 (presumption that General Assembly, in amending statute, had full knowledge of existing law and construction placed upon it by courts, and intended to change then existing law); see also 1996 Op. Va. At'y Gen. 51, 52 (presumption that General Assembly, in repealing one statute and enacting another, had full knowledge of existing law and construction placed upon it by Attorney General, and intended to change then-existing law).


18 Section 64.1-57(1).

19 Section 64.1-57(1)(p)(5).
