

OP. NO. 03-121

**HIGHWAYS, BRIDGES AND FERRIES: COMMONWEALTH
TRANSPORTATION BOARD, ETC.**

**Question whether particular transportation facility constructed on
Metropolitan Washington Airports Authority's property is in or near Dulles
Corridor is factual determination to be resolved by Commonwealth
Transportation Board.**

The Honorable Whittington W. Clement
Secretary of Transportation
February 17, 2004

Issue Presented

You ask whether the language in Chapter 1012 of the 2003 Acts of Assembly is broad enough to encompass all Commonwealth transportation facilities constructed on the Metropolitan Washington Airports Authority property in or near the Dulles Corridor.

Response

It is my opinion that the question as to whether a particular transportation facility constructed on the Metropolitan Washington Airports Authority property is in or near the Dulles Corridor is a factual determination to be resolved by the Commonwealth Transportation Board.

Applicable Law and Discussion

The 2003 Session of the General Assembly enacted Chapter 1012, wherein the Commonwealth agrees to indemnify the Metropolitan Washington Airports Authority pursuant to agreements between the Authority and Department of Transportation regarding the use of transportation facilities constructed on the Authority's property "in or near the Dulles Corridor."¹ Specifically, Chapter 1012 provides for

a limited waiver of sovereign immunity, not to exceed \$5 million, so as to indemnify the Metropolitan Washington Airports Authority against claims, damages, losses, and expenses arising out of, resulting from, or attributable to the Commonwealth's use of Authority property, in or near the Dulles Corridor, on which transportation facilities are constructed, to the extent required in any agreement between the Virginia Department of Transportation and the Authority.^[2]

Chapter 1012 defines "Dulles Corridor" as "the transportation corridor with an eastern terminus of the East Falls Church Metrorail station and a western terminus of Route 772 in Loudoun County."³ The definition of "Dulles Corridor" in Chapter 1012 establishes the eastern and western termini of the Dulles Corridor, but does not define "in or near the Dulles Corridor."⁴

A 1998 opinion of the Attorney General reviewed the role of the Commonwealth Transportation Board in determining the extent of the Dulles Corridor for purposes of funding a commuter parking lot to serve the Dulles Corridor, using surplus revenues from the Dulles Toll Road.⁵ The opinion concludes that the appropriate use of such funds is a determination to be made by the Commonwealth Transportation Board, and that such determination should be given deference.⁶ The term "corridor" had not been defined at the time the prior opinion was issued.⁷ The opinion notes that the applicable legislation addressing the use of surplus revenues did not specify the width and depth of the corridor and explains that the agency charged with the administration of the legislation authorizing the expenditure of surplus revenues should be given deference in determining such specifications.⁸

While Chapter 1012 clearly establishes the termini of the Dulles Corridor,⁹ the Act does not address the depth, width or reach of the Dulles Corridor, except to use the phrase "in or near."¹⁰ Therefore, deference is to be given to the Commonwealth Transportation Board as the appropriate body to determine which transportation facilities constructed on the Authority's property are "in or near the Dulles Corridor."¹¹

Conclusion

Accordingly, it is my opinion that the question as to whether a particular transportation facility constructed on the Metropolitan Washington Airports Authority property is in or near the Dulles Corridor is a factual determination to be resolved by the Commonwealth Transportation Board.

¹2003 Va. Acts ch. 1012, at 1617 (quoting enacting clause 1, § 1).

²*Id.* (quoting enacting clause 1, § 1).

³*Id.* (quoting enacting clause 1, § 1).

⁴*Id.* (interpreting enacting clause 1, § 1).

⁵1998 Op. Va. Att'y Gen. 91.

⁶*Id.* at 93-94.

⁷*Id.* at 93 (using common, ordinary meaning of term "corridor").

⁸*Id.* at 93-94.

⁹While not relevant to this opinion, please note that the definition of the Dulles Corridor termini has changed from the definition of the corridor termini in the 1998 opinion. *Compare* 2003 Va. Acts, *supra* note 1, (defining "Dulles Corridor"), *and* 1998 Op. Va. Att'y Gen., *supra* note 5, at 93 (defining "corridor").

¹⁰2003 Va. Acts, *supra* note 1.

¹¹*Id.*

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