

OP. NO. 05-024

EDUCATIONAL INSTITUTIONS: FRONTIER CULTURE MUSEUM OF VIRGINIA.

Governor must consent to acquisition of Zirkle Mill by Frontier Culture Museum. American Frontier Culture Foundation, Inc., may acquire, deconstruct, and remove Mill without such consent. Governor must approve reconstruction of Mill on Museum property owned by Commonwealth.

The Honorable Allen L. Louderback
Member, House of Delegates
May 20, 2005

Issues Presented

You ask whether the purchase and subsequent deconstruction, removal, and reconstruction of the Zirkle Mill by either the Frontier Culture Museum of Virginia or the American Frontier Culture Foundation, Inc., requires the prior approval of the Governor. You next ask whether there are other legal restrictions that the Museum must consider in the purchase and subsequent deconstruction, removal, and reconstruction of the Mill.

Response

It is my opinion that the Frontier Culture Museum of Virginia must have the consent of the Governor to acquire the Zirkle Mill. Further, it is my opinion that the American Frontier Culture Foundation, Inc., may acquire, deconstruct, and remove the Mill without the consent of the Governor. Finally, it is my opinion that under either method of acquisition, the Governor must approve the reconstruction of the Mill on the property that is owned by the Commonwealth, which includes the Museum property.¹

Applicable Law and Discussion

The Frontier Culture Museum of Virginia (the "Museum") is an educational institution and state agency under § 23-296. The American Frontier Culture Foundation, Inc. (the "Foundation"), is a non-profit stock corporation. You relate that either the Museum or the Foundation intends to purchase the Zirkle Mill in Shenandoah County. Further, you relate that the purchaser then plans to dismantle the building and reconstruct it on the "campus"² of the Museum. Restrictions are dependent upon which entity is the purchaser as well as which purchaser is the legal owner of the property on which the Zirkle Mill is reconstructed. The Foundation is a private nonprofit corporation. A nonprofit corporation such as the Foundation may enter into legally binding contracts subject to any limitations set forth in the incorporating documents. The Museum is an agency of the Commonwealth.³ A state agency is an entity that serves as a subordinate or auxiliary body to fulfill a state purpose, is dependent upon state appropriations, and is subject to state control to a great degree.⁴

Chapter 25 of Title 23, §§ 23-296 through 23-298 governs the Frontier Culture Museum of Virginia. Specifically, § 23-298 enumerates the powers of the Board of Trustees for the Museum. Among the Board's powers is the authority to acquire structures to fulfill the purpose of the Museum, but only with the consent of the Governor.⁵ The factual situation you present does not suggest that the proposed acquisition of the Zirkle Mill would be contrary to the Museum's stated purpose in § 23-296. The Museum, however, must have the Governor's consent to acquire the Mill. Whether it is the Museum or the Foundation that is the "purchaser," the Zirkle Mill cannot be placed on property of the Commonwealth, including the Museum property, without the consent of the Governor.⁶

Finally, I note that § 2.2-2402(B) requires approval of the Governor, acting with the advice and counsel of the Art and Architectural Review Board, where a state agency constructs or erects any building or appurtenant structure on property belonging to the Commonwealth. Additionally, § 10.1-1190 requires the written approval of the Governor⁷ for payment of funding from the state treasury for major state projects, which by definition are projects that cost \$100,000 or more.

Conclusion

Accordingly, it is my opinion that the Frontier Culture Museum of Virginia must have the consent of the Governor to acquire the Zirkle Mill. Further, it is my opinion that the American Frontier Culture Foundation, Inc., may acquire, deconstruct, and remove the Mill without the consent of the Governor. Finally, it is my opinion that under either method of acquisition, the Governor must approve the reconstruction of the Mill on the property that is owned by the Commonwealth, which includes the Museum property.⁸

¹The American Frontier Culture Foundation, Inc., could, however, deconstruct, remove, and reconstruct the Zirkle Mill on property adjacent to the Frontier Culture Museum.

²You do not define the term campus. It is unclear whether you refer exclusively to property of the Museum or whether it might also include property owned by the Foundation located adjacent to the Museum's property.

³Va. Code Ann. § 23-296 (LexisNexis Repl. Vol. 2003).

⁴1985-1986 Op. Va. Att'y Gen. 336, 336.

⁵See § 23-298(A)(7) (LexisNexis Repl. Vol. 2003); *see also* 1997 Op. Va. Att'y Gen. 33 (concluding that Museum's Board of Trustees, with consent of Governor, may lease land in accordance with Museum's mission; Trustee's must solicit appropriate approval from Governor's office to determine whether Museum may retain lease proceeds).

⁶In addition to the approval required by the Governor, any contractual arrangements entered into by the Museum must be approved by the Attorney General. Section 23-298(A)(9). Therefore, if the Museum entered into contractual arrangements related to the acquisition or relocation of the Zirkle Mill, such contracts are subject to approval of the Attorney General.

⁷This approval is based on an environmental impact report and comments to the report that are made by the Department of Environmental Quality to the Governor. See Va. Code Ann. § 10.1-1190 (Michie Repl. Vol. 1998).

⁸See *supra* note 1.

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