



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Robert F. McDonnell
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

March 4, 2008

VIA HAND DELIVERY

The Honorable Stephen D. Newman
Member, Senate of Virginia
P.O. Box 396
Richmond, Virginia 23218

The Honorable Walter A. Stosch
Member, Senate of Virginia
P.O. Box 396
Richmond, Virginia 23218

The Honorable William C. Wampler, Jr.
Member, Senate of Virginia
P.O. Box 396
Richmond, Virginia 23218

Dear Senators Newman, Stosch, and Wampler:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether Article X, § 7-A of the Constitution of Virginia requires the General Assembly to establish a Lottery Proceeds Fund into which net lottery proceeds are deposited and to appropriate the amounts in that fund directly to counties, cities, and towns and the school divisions thereof.

Response

It is my opinion that Article X, § 7-A of the Virginia Constitution mandates that the General Assembly establish a Lottery Proceeds Fund into which net lottery proceeds are deposited and appropriate the amounts in that fund directly to counties, cities, and towns and the school divisions thereof.

Applicable Law and Discussion

Article X, § 7-A of the Virginia Constitution provides that:

The General Assembly shall establish the Lottery Proceeds Fund. The Fund shall consist of the net revenues of any lottery conducted by the Commonwealth. Lottery proceeds shall be appropriated from the Fund to the Commonwealth's counties, cities and towns, and the school divisions thereof, to be expended for the purposes of public education.

The Honorable Stephen D. Newman
The Honorable Walter A. Stosch
The Honorable William C. Wampler
March 4, 2008
Page 2

Any county, city, or town which accepts a distribution from the Fund shall provide its portion of the cost of maintaining an educational program meeting the standards of quality prescribed pursuant to Section 2 of Article VIII of this Constitution without the use of distributions from the Fund.

The General Assembly shall enact such laws as may be necessary to implement the Fund and the provisions of this section.

The General Assembly may appropriate amounts from the Fund for other purposes only by a vote of four-fifths of the members voting in each house, the name of each member voting and how he voted to be recorded in the journal of the house.

“Questions of constitutional construction are in the main governed by the same general rules as those applied in statutory construction.”¹ It is well-settled that, “[i]f the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it.”² Furthermore, ““every word employed in the Constitution is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it.””³ “It is the duty of the court in construing the Constitution to give effect to an express provision, rather than to an implication.”⁴

Paragraph 1 of Article X, § 7-A clearly states that “[t]he General Assembly *shall* establish the Lottery Proceeds Fund” and that “[t]he Fund *shall* consist of net revenues of [the] lottery” and “[l]ottery proceeds *shall* be appropriated from the Fund to the Commonwealth’s counties, cities and towns, and the school divisions thereof.”

Paragraph 1 consistently uses the term “shall” in establishing the procedures for the establishment of and appropriations from the Lottery Proceeds Fund. The use of the word “shall” in the statute generally indicates that the procedures are intended to be mandatory.⁵ The language in Article X, § 7-A plainly and unambiguously mandates that the General Assembly establish a fund for net lottery proceeds⁶ and distribute such funds directly to counties, cities, and towns and the school divisions thereof, for the

¹ 4C MICHIE’S JUR. *Constitutional Law* § 7, at 38 (2006).

² *Temple v. Petersburg*, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944), *quoted in* Op. Va. Att’y Gen.: 2003 at 166, 168; *id.* at 32, 33.

³ *Lipscomb v. Nuckols*, 161 Va. 936, 945, 172 S.E. 886, 889 (1934) (quoting *Quesinberry v. Hull*, 159 Va. 270, 274-75, 165 S.E. 382, 383 (1932) (further citation omitted)).

⁴ *Id.* at 945-46, 172 S.E. at 889.

⁵ *See* *Andrews v. Shepherd*, 201 Va. 412, 414, 111 S.E.2d 279, 281-82 (1959); *see also* 1994 Op. Va. Att’y Gen. 64, 68. The only provision where the permissive term “may” is used permits the General Assembly to appropriate amounts from the fund for other purposes provided the required super majority approves such appropriation. Article X, § 7-A requires a four-fifths vote of the members voting in each house to appropriate funds for other purposes.

⁶ The Lottery Proceeds Fund has been established pursuant to § 58.1-4022.1(A). I am mindful that § 58.1-4022.1(B) provides that : “For purposes of any appropriation act enacted by the General Assembly and for the purposes of the Comptroller’s preliminary and final annual reports required by § 2.2-813, all deposits to and appropriations from the Lottery Proceeds Fund shall be accounted for and considered to be a part of the general fund of the state treasury.” You do not inquire, and I provide no opinion regarding the constitutionality of that provision.

The Honorable Stephen D. Newman
The Honorable Walter A. Stosch
The Honorable William C. Wampler
March 4, 2008
Page 2

purposes of public education. It further is my opinion that such direct appropriation necessarily means that placing such funds into another fund, such as the general fund of the state treasury, prior to distribution to the localities and school divisions is prohibited.

It also is important to consider the question before the voters when Article X, § 7-A was added to the Constitution as effective July 1, 2001. The ballot contained the question “[s]hall the Constitution of Virginia be amended to provide for a Lottery Proceeds Fund and the distribution of net lottery revenues to the localities to spend for public education purposes?”⁷ It is clear that in approving this constitutional amendment, the voters believed that the net lottery proceeds would be distributed directly to localities for the purpose of funding education.

Conclusion

Accordingly, it is my opinion that Article X, § 7-A of the Virginia Constitution mandates that the General Assembly establish a Lottery Proceeds Fund into which net lottery proceeds are deposited and appropriate the amounts in that fund directly to counties, cities, and towns and the school divisions thereof.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, reading "Robert F. McDonnell". The signature is written in a cursive, flowing style.

Robert F. McDonnell

1:875; 1:941/08-023

⁷2000 Va. Acts ch. 713, at 1410, 1410.