



COMMONWEALTH of VIRGINIA

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March 7, 2008

The Honorable William T. Bolling
Lieutenant Governor
P.O. Box 1195
Richmond, Virginia 23218

Dear Lieutenant Governor Bolling:

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 that amounts in the Lottery Proceeds Fund must be appropriated directly to counties, cities, and towns and the school divisions thereof for the purposes of public education absent a four-fifths vote of the members voting in each house.

Response

It is my opinion that Article X, § 7-A of the Constitution mandates that the General Assembly establish a Lottery Proceeds Fund, deposit net lottery proceeds into the Fund, and appropriate amounts from the Fund directly to counties, cities, and towns and the school divisions thereof to be expended for the purposes of public education. Absent an affirmative vote of four-fifths of the members voting in each house, any budget/appropriation item diverting lottery funds would be unconstitutional.

Applicable Law and Discussion

The Constitution establishes “super majority” votes for certain actions, including the distribution of net lottery proceeds. Article X, § 7-A of the 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.

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 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. [Emphasis added.]

By its plain and unambiguous language,¹ paragraphs 1 and 2 of § 7-A require the direct appropriation of funds from the Lottery Proceeds Fund to counties, cities, and towns and the school divisions thereof for the purposes of public education. However, paragraph 4 of § 7-A provides an alternate appropriation method only by an affirmative “vote of four-fifths of the members *voting* in each house.” Any appropriation which diverts net lottery proceeds in a manner inconsistent with Article X, § 7-A is unconstitutional.

Conclusion

Accordingly, it is my opinion that Article X, § 7-A of the Constitution mandates that the General Assembly establish a Lottery Proceeds Fund, deposit net lottery proceeds into the Fund, and appropriate amounts from the Fund directly to counties, cities, and towns and the school divisions thereof to be expended for the purposes of public education. Absent an affirmative vote of four-fifths of the members voting in each house, any budget/appropriation item diverting lottery funds would be unconstitutional.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, reading "Robert F. McDonnell". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Robert F. McDonnell

1:875; 1:941/08-024

¹“[E]very 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.” 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)), *quoted in* 2003 Op. Va. Att’y Gen. 32, 33. “It is the duty of the court in construing the Constitution to give effect to an express provision rather than to an implication.” *Id.* at 945-46, 172 S.E. 889, *quoted in* 2003 Op. Va. Att’y Gen., *supra*, at 33.