COMMONWEALTH OF VIRGINIA

Office of the Attorney General

William C. Mims
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

October 2, 2009

The Honorable David L. Bulova
Member, House of Delegates
P.O. Box 106
Fairfax Station, Virginia 22039

Dear Delegate Bulova:

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 Fairfax County may adopt an ordinance requiring the private corporation that manages the George Mason University Patriot Center to collect admissions tax on persons who pay to attend non-university events held at the Patriot Center.

Response

It is my opinion, based upon the facts you provide, that Fairfax County may adopt an ordinance requiring the private corporation that manages the George Mason University Patriot Center to collect admissions tax on persons who pay to attend non-university events.

Background

You relate that George Mason University has a large multi-purpose facility on its Fairfax County campus known as the Patriot Center ("Center"). You advise that the Center is a successful venue that is the site of many university functions and is also used for non-university functions. You relate that non-university functions include musical concerts and various other entertainment shows. The Center is managed by a private corporation that also manages other multi-purpose venues.

Applicable Law and Discussion

Section 58.1-3818, entitled "[a]dmissions tax in certain counties," provides that:

A. Fairfax … Count[y is] hereby authorized to levy a tax on admissions charged for attendance at any event. The tax shall not exceed 10 percent of the amount of charge for admission to any such event. Notwithstanding any other provisions of law, the governing bodies of such counties shall prescribe by ordinance the terms, conditions and amount of such tax and may classify between events conducted for charitable and those conducted for noncharitable purposes.

Thus, § 58.1-3818(A) authorizes Fairfax County to levy a tax on admissions charged for attendance at any event. Further, the County is authorized to prescribe the terms, conditions, and amount of such admissions tax. Finally, § 58.1-3817 divides events into six classes:

> In accordance with the provisions of Article X, Section 1 of the Constitution of Virginia, events to which admission is charged shall be divided into the following classes for the purposes of taxation:
>
> 1. Admissions charged for attendance at any event, the gross receipts of which go wholly to charitable purpose or purposes.
>
> 2. Admissions charged for attendance at public and private elementary, secondary, and college school-sponsored events, including events sponsored by school-recognized student organizations.
>
> 3. Admissions charged for entry into museums, botanical or similar gardens, and zoos.
>
> 4. Admissions charged to participants in order to participate in sporting events.
>
> 5. Admissions charged for entry into major league baseball games and events at any major league baseball stadium which has seating for at least 40,000 persons.
>
> 6. All other admissions.

In a prior opinion ("2001 Opinion"), the Attorney General considered whether the City of Norfolk could require Norfolk State University to collect and remit the admission tax imposed by ordinance by the City of Norfolk.[1] The 2001 Opinion concludes that the Norfolk ordinance, which purports to impose a duty on the Commonwealth or its instrumentalities to collect an admission tax, is *ultra vires*.[2] In a similar vein, another opinion ("1983 Opinion") considered whether the Town of Blacksburg could impose upon the officers and employees of a state university the obligation to collect the town meals tax for the meals sold by the university.[3] The 1983 Opinion also concluded that the town has no authority to impose on the university the duty to collect and report the local meals tax.[4]

Finally, a 1997 opinion ("1997 Opinion") considered whether the City of Harrisonburg may require James Madison University or a private company that provides management services to the University to collect the city meals tax on the meals the University sells to its students through its dining services.[5] Because the private company did not manage the University's dining facilities, the city could not impose a tax collection duty on the private company.[6] The 1997 Opinion also noted that whether the private company has assumed responsibility for the operation of the University's dining system was a question of fact.[7]

---

[1] *See* 2001 Op. Va. Att'y Gen. 184.

[2] *Id.* at 185 (citing 1983-1984 Op. Va. Att'y Gen. 381, 383).

[3] *See* 1983 Op. Va. Att'y Gen., *supra* note 2, at 381.

[4] *Id.* at 383.

[5] *See* 1997 Op. Va. Att'y Gen. 184.

[6] *Id.* at 185.

[7] *Id.*

In the situation you present, you advise that the Center also is used for a number of popular non-university functions, such as musical concerts and various other entertainment shows. Whether the private corporation that manages the Center has assumed responsibility for such non-university functions also is a question of fact. For purposes of this opinion, I assume that the private management corporation does, in fact, have contractual responsibility for the complete management of the Center for all non-university functions. Based upon that assumption, Fairfax County would be authorized to adopt an ordinance to levy a tax on the admissions charged by the private corporation for attendance at non-university functions.

Conclusion

Accordingly, it is my opinion, based upon the facts you provide, that Fairfax County may adopt an ordinance requiring the private corporation that manages the George Mason University Patriot Center to collect admissions tax on persons who pay to attend non-university events.

Thank you for letting me be of service to you.

Sincerely,

William C. Mims

1:213; 1:941/09-066