



COMMONWEALTH of VIRGINIA

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The Honorable Clarence E. "Bud" Phillips
Member, House of Delegates
Post Office Box 36
Castlewood, Virginia 24224

Dear Delegate Phillips:

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 the local composite index of a school division resulting from the consolidation of two existing school divisions is based upon the lower composite index of the two merged divisions.

Response

It is my opinion that, should two existing school divisions be consolidated, the Composite Index to be applied to the consolidated school division is the lower of the Composite Indices established for the two governmental entities, and that the state funding for the consolidated school divisions should not be less than that achieved by this means for a period of five years.

Applicable Law and Discussion

The Constitution of Virginia directs the General Assembly to "provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth."¹ The Constitution also charges the legislature with the duty to "determine the manner in which funds are to be provided for the cost of maintaining an educational program meeting the prescribed standards of quality, and [to] provide for the apportionment of the cost of such program between the Commonwealth and the local units of government comprising such school divisions."²

In order to ensure a quality education, the General Assembly has established a "Composite Index of Local Ability-to-Pay," which is computed for each locality.³ Localities whose indices demonstrate a lesser ability to contribute toward the cost of education receive a larger share of state funding.

¹ VA. CONST. art. VIII, § 1.

² VA. CONST. art. VIII, § 2.

³ The Composite Index currently is calculated as:

the sum of 2/3 of the index of wealth per pupil in unadjusted March 31 ADM reported for the first seven (7) months of the 2007-2008 school year and 1/3 of the index of wealth per capita

In so directing the state-local apportionment of the financial burden of public education, the General Assembly has provided for the possibility of the merger of school divisions, either separate from, or as part of, the merger of the applicable local governments. The 2010-2012 appropriations act provides:

In the event that two or more school divisions become one school division, whether by consolidation of only the school divisions or by consolidation of the local governments, such resulting division shall be paid Standard of Quality payments for all pupils in the combined division on the basis of a composite index established by the Board of Education, which shall equal the lowest composite index of any of the individual school divisions involved in such consolidation. In the event of a consolidation of local governments which shall include the transition of a city to town status, this index shall remain in effect for a period of fifteen years, unless a lower composite index is calculated for the combined division through the process for computing an index figure as set forth above. The Governor shall approve the composite index determined by the Board of Education prior to disbursement of funds under such index. The department shall report to the Chairmen of the House Appropriations and Senate Finance Committees the composite indices approved by the Governor and the Board in the event this provision is implemented.^[4]

You state that local officials are discussing the possible consolidation of the school divisions of Wise County and the City of Norton rather than merger of the local governments themselves. Should that merger occur, the Appropriations Act provides for state funding "on the basis of a composite index established by the Board of Education, which shall equal the lowest composite index of any of the individual school divisions involved in such consolidation."⁵ I therefore conclude that the lower of the composite indices for Wise County and the City of Norton is, under current law, the index to be used for the consolidated school divisions of the two governments.

(population estimates for 2007 as determined by the Weldon Cooper Center for Public Service of the University of Virginia) multiplied by the local nominal share of the costs of the Standards of Quality of 0.45 in each year. The indices of wealth are determined by combining the following constituent index elements with the indicated weighting: (1) true values of real estate and public service corporations as reported by the State Department of Taxation for the calendar year 2007 - 50 percent; (2) adjusted gross income for the calendar year 2007 as reported by the State Department of Taxation - 40 percent; (3) the sales for the calendar year 2007 which are subject to the state general sales and use tax, as reported by the State Department of Taxation - 10 percent. Each constituent index element for a locality is its sum per March 31 ADM, or per capita, expressed as a percentage of the state average per March 31 ADM, or per capita, for the same element. A locality whose composite index exceeds 0.8000 shall be considered as having an index of 0.8000 for purposes of distributing all payments based on the composite index of local ability-to-pay. Each constituent index element for a locality used to determine the composite index of local ability-to-pay for the current biennium shall be the latest available data for the specified official base year provided to the Department of Education by the responsible source agencies no later than November 15, 2009.

2010 Va. Acts ch. 874, item 132, ¶ A.4.a.

⁴ *Id.* item 132, ¶ A.4.c.(1).

⁵ *Id.* I note that "[i]n the event of any inconsistency between the statutory authorization and the appropriation, the Appropriations Act, which has the effect of law and which is the most recent expression of legislative intent, controls." 1976-77 Op. Va. Att'y Gen. 301, 301-02.

Although the Appropriations Act specifies that the index should be the lower of the composite indices, it does not specify the *duration* of this index for the consolidation situation under consideration in Wise and Norton. The Appropriations Act provides that, "[i]n the event of a consolidation of local governments which shall include the transition of a city to town status, this index shall remain in effect for a period of fifteen years, unless a lower composite index is calculated for the combined division through the process for computing an index figure as set forth above."⁶ Because the Appropriations Act is silent with respect to the duration of the composite index, we must turn to applicable statutes.

Section 15.2-1302 provides that:

Any state funds that were distributed to a locality, including a local school board, in support of a governmental program or function prior to a consolidation of such program or function or the governmental consolidation of the entities providing such programs or functions, shall continue to be distributed to the entity or entities carrying out the program or function after consolidation in accordance with the following schedule:

1. If the consolidation results in the governmental consolidation of the entities into a single locality, the state funds shall not be reduced below the amounts that would have been received by each entity from the Commonwealth for the governmental program or function computed on the premise that no consolidation occurred for a period of twenty fiscal years following the consolidation.

2. If the consolidation results in the consolidation of constitutional officers of the entities and the consolidation of school divisions and local school boards of the entities, the state funds shall not be reduced below the amounts that would have been received by each entity from the Commonwealth for the governmental program or function computed on the premise that no consolidation occurred for a period of fifteen fiscal years following the consolidation.

3. In all other consolidations, the state funds shall not be reduced below the amounts that would have been received by each entity from the Commonwealth for the governmental program or function computed on the premise that no consolidation occurred for a period of five fiscal years following the consolidation.

This section shall not prohibit the Commonwealth from terminating or modifying any program or function under which distribution to a locality, including a local school board, has been made, and if so terminated or modified all obligations hereunder shall cease or be reduced in proportion with such modifications, as the case may be.^[7]

This statute protects the level of state funding for twenty, fifteen, or five years, depending upon the type of consolidation. The first of these is the "governmental consolidation of the entities into a single locality."⁸ The facts you present relate to the consolidation of the school boards only, and not of the localities themselves. Norton and Wise would remain distinct localities, albeit with consolidated schools. Thus, it is my opinion that this provision of the statute would not apply to the situation in Wise and Norton.

⁶ *Id.*

⁷ VA. CODE ANN. § 15.2-1302 (2008).

⁸ *Id.*

The second is the "consolidation of constitutional officers of the entities and the consolidation of school divisions and local school boards of the entities."⁹ Although you advise that the consolidation of the local school boards is under consideration, the facts you present do not suggest that the action contemplated will also result in the consolidation of the constitutional officers of the entities involved. Thus, it is my opinion that this provision of the statute likewise does not apply.

The final provision governs "all other consolidations."¹⁰ The consolidation you propose does not fall within either the first or second class, and, therefore, it falls by default under this provision. Consequently, should Norton and Wise consolidate their schools, the level of state funding, pursuant to § 15.2-1302, would remain at not less than the amounts each locality would have received from the Commonwealth had no consolidation occurred for a period of five fiscal years following the consolidation.

Conclusion

Accordingly, it is my opinion that, should Wise County and the City of Norton consolidate their school divisions, the Composite Index to be applied to the consolidated school division is the lower of the Composite Indices established for the two governmental entities, and that the state funding for the consolidated school divisions should not be less than that achieved by this means for a period of five years.

With kindest regards, I am

Very truly yours,



Kenneth R. Cuccinelli, II
Attorney General

⁹ *Id.*

¹⁰ *Id.*