



# ***COMMONWEALTH of VIRGINIA***

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May 14, 2021

Michelle R. Robl, Esquire  
Attorney for Prince William County  
One County Complex Court, Suite 240  
Prince William, Virginia 22192

Dear Ms. Robl:

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

## **Issues Presented**

You ask several questions about the possible assessment of a special school tax by the Prince William County Board of Supervisors under § 22.1-102 to fund certain expenditures for the Prince William County school system:

- 1) If the Prince William County Board of Supervisors (the "PWC Board") chooses to levy the special school tax, should the tax be levied as a special county tax or a special district tax?
- 2) What are "capital expenditures," "indebtedness," and "rent" under § 22.1-102?
- 3) If special school taxes are levied for a fiscal year, must the PWC Board appropriate the entirety of the funds within that fiscal year?
- 4) How are unspent special school tax levies treated from one fiscal year to the next?
- 5) Must the PWC Board appropriate the entire school funding by major classification instead of lump sum in order to appropriate the special school tax?
- 6) Can the PWC Board direct the use of the special school taxes for specific school projects?
- 7) Will a special school tax impact the annual general real estate tax levy?
- 8) If the PWC Board desires to levy the tax, what is the proper procedure to implement the special school tax?

### **Background**

You advise that the Prince William County Board of Supervisors is considering creating a fund for the construction of new schools and/or additions to existing schools. The goal of the fund is to build cost-effective school facilities that maximize classroom capacity.

### **Applicable Law and Discussion**

The Code of Virginia provides that a locality is required to levy a general school tax and provide sufficient appropriations to maintain an educational system that meets the standards of quality prescribed by law.<sup>1</sup> In addition to these required sources of funding, a locality is permitted to levy a special school tax for certain purposes set forth in the Code. In particular, § 22.1-102 of the Code provides that:

For capital expenditures and for the payment of indebtedness or rent, a governing body may, in addition to the levy and appropriation required under the provisions of §§ 22.1-94 and 22.1-95, levy a special county tax, a special district tax, a special city tax or a special town tax, as the case may be, on all property subject to local taxation. Such levy or levies shall be at such rate or rates as the governing body levying the tax may deem necessary for the purpose or purposes for which levied, except that where the tax is for raising funds for capital expenditures the rate shall not be more than \$2.50 on each \$100 of the assessed value of such property in any one year.<sup>[2]</sup>

Your questions address the potential application of this special school tax in Prince William County.

1. If the PWC Board chooses to levy a special school tax, § 22.1-102 directs that the tax be levied as a special county tax.

Your first question is whether, in the event the PWC Board chooses to levy the special school tax, the tax should be assessed as a special county tax or a special district tax.

The Code of Virginia gives governing bodies the option to levy the special school tax as a special county tax, special district tax, special city tax, or special town tax, depending on which type is applicable.<sup>3</sup> The Commonwealth is divided into school divisions by the Board of Education, which “as they existed on July 1, 1978, shall be and remain the school divisions of the Commonwealth until further action of the Board of Education.”<sup>4</sup> You advise that the Prince William County school system is a separate school division and has no school districts within it.<sup>5</sup>

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<sup>1</sup> VA. CODE ANN § 22.1-95, -96. These and all other citations to the Code of Virginia herein are from the electronic version of the Code on LexisNexis and are current through the 2021 Regular Session of the General Assembly and Acts 2021 Sp. Sess. I, cc. 55, 56, 78, 82, 110, 117, 118, 171, 216, 220 and 243.

<sup>2</sup> VA. CODE ANN. § 22.1-102.

<sup>3</sup> *Id.*

<sup>4</sup> VA. CODE ANN. § 22.1-25.

<sup>5</sup> In comparison, you advise that the West Point Public School District is a district located within the Town of West Point in King William County.

Having no school districts, I am of the opinion that the PWC Board may levy the special school tax as “special county tax,” not a “special district tax.” This special county tax should be levied at a uniform rate on all property within the County subject to local taxation.

2. The terms “capital expenditures,” “indebtedness,” and “rent” should be afforded their ordinary meaning.

As noted above, the special school tax may be levied only for “capital expenditures” and for the “payment of indebtedness or rent.”<sup>6</sup> These terms are not defined in the statute. “When . . . a statute contains no express definition of a term, the general rule of statutory construction is to infer the legislature’s intent from the plain meaning of the language used.”<sup>7</sup>

Black’s Law Dictionary defines a “capital expenditure” as “[a]n outlay of funds to acquire or improve a fixed asset.”<sup>8</sup> A prior opinion of this Office concluded that expenditures for items with a useful life of more than one year would generally constitute “capital expenditures.”<sup>9</sup> Based on the common understanding of the term, in my opinion expenditures for school construction or additions to existing schools would constitute “capital expenditures” for purposes of § 22.1-102.

The term “indebtedness” is defined as “liability on a claim; a specific sum of money due by agreement or otherwise.”<sup>10</sup> Indebtedness for the construction of schools or for additions to existing schools, would, in my opinion, fall under the definition of “indebtedness” for purposes of § 22.1-102.

As you note in your request, what constitutes “rent” for purposes of § 22.1-102 appears to be fairly determinable. “Rent” is commonly defined as “[c]ompensation . . . paid or given in exchange for the use and occupation of real estate.”<sup>11</sup> Accordingly, payments for leasing structures to be used as school facilities would constitute “rent.”

3. If special school taxes are levied for a fiscal year, the PWC Board generally is not required to appropriate the entirety of the funds within that fiscal year.

Virginia law provides that the imposition or collection of taxes does not itself constitute an obligation to appropriate the funds.<sup>12</sup> Therefore, absent a situation in which the county links the special school tax levy to a particular debt service obligation or contractual commitment, the county is not required to appropriate the entirety of the funds in any particular fiscal year. Any revenues that are collected but not appropriated in a fiscal year may be carried over to the succeeding fiscal years.

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<sup>6</sup> VA. CODE ANN. § 22.1-102.

<sup>7</sup> *Hubbard v. Henrico Ltd. P’ship*, 255 Va. 335, 340 (1998) (citing *City of Va. Beach v. Flippen*, 251 Va. 358, 362 (1996); *Marsh v. City of Richmond*, 234 Va. 4, 11 (1987)).

<sup>8</sup> BLACK’S LAW DICTIONARY (Bryan A. Garner et al. eds., 11th ed. 2019), accessed via WestLaw. As you note in your request, another common meaning of “capital expenditure” is “an amount spent to acquire or upgrade long term assets such as buildings, machinery, equipment and vehicles that have a useful life of more than one year.”

<sup>9</sup> 1976-1977 Op. Va. Att’y Gen. 187, 188.

<sup>10</sup> BLACK’S LAW DICTIONARY (Bryan A. Garner et al. eds., 11th ed. 2019), accessed via WestLaw (see definitions of “indebtedness” and “debt”).

<sup>11</sup> BALLENTINE’S LAW DICTIONARY (3d ed.), accessed via LexisNexis.

<sup>12</sup> See VA. CODE ANN. § 58.1-3001.



4. Any special school tax revenues that are appropriated to the School Board but unspent by that body during a particular fiscal year would revert to the local governing body for reappropriation the following year.

The Code of Virginia, addressing the use of unexpended school and educational funds, provides that:

[a]ll sums of money derived from the Commonwealth which are unexpended in any year in any school division shall revert to the fund of the Commonwealth from which derived unless the Board of Education directs otherwise. *All sums derived from local funds unexpended in any year shall remain a part of the funds of the governing body appropriating the funds for use the next year*, but no local funds shall be subject to redivision outside of the locality in which they were raised.<sup>[13]</sup>

It is clear, therefore, that any special school tax revenues that are appropriated to the School Board during a given fiscal year, but are unspent by the School Board, would revert to the local governing body for use the following year. Because the special school tax only can be used to pay for capital expenditures, indebtedness or rent, it is my opinion that any unspent special school tax funds can only be reappropriated to the School Board for such purposes.

5. Proceeds from a special school tax may be appropriated to the School Board by either lump sum or by major classification.

It is the duty of a school division's superintendent to prepare estimates of the funding the school division will need for the next fiscal year and the estimates, at a minimum, must show the amount of funding needed for each of the major classifications as set forth in § 22.1-115.<sup>14</sup> These classifications are (i) instruction, (ii) administration, attendance and health, (iii) pupil transportation, (iv) operation and maintenance, (v) school food services and other non-instructional operations, (vi) facilities, (vii) debt and fund transfers, (viii) technology, and (ix) contingency reserves.<sup>15</sup>

Section 22.1-94 of the Code provides that a local governing body may make appropriations to a school board by either lump sum or by major classification, as long as the total level of funding is not less than cost apportioned to the locality.<sup>16</sup> If a local governing body appropriates by lump sum, the school board is authorized to move funding between classifications without approval.<sup>17</sup> If school funding is appropriated by major classifications, a school board can move funds within each classification without approval of the local governing body, but not between classifications.<sup>18</sup>

If a local governing body levies a special school tax to fund the construction of new school facilities or additions to existing school facilities, the governing body may appropriate funding to the school board by classification in order to ensure and monitor the restricted use of the special county tax. If, however, a governing body determines to appropriate by lump sum, the legal obligation of the school

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<sup>13</sup> VA. CODE ANN. § 22.1-100 (emphasis added).

<sup>14</sup> *Id.* § 22.1-92.

<sup>15</sup> *Id.* § 22.1-115.

<sup>16</sup> *Id.* § 22.1-94.

<sup>17</sup> See 2013 Op. Va. Att'y Gen. 165, 166.

<sup>18</sup> *Id.*

board to use the special school tax only for capital projects, indebtedness, or rent will remain. I am therefore of the opinion that the PWC Board may appropriate funds from the special school tax by lump sum or by classification.

6. The PWC Board may not direct the use of the special school tax revenues by the School Board for specific school projects.

The PWC Board may not direct the use of the special school tax revenues by the School Board for specific school projects. While it may appropriate the funds to the School Board by major classification, or *request* that the School Board use the funds for specific purposes, the School Board alone has authority to determine which specific construction projects the funds shall be applied toward.<sup>19</sup>

7. Assessment of a special school tax would not impact the County's annual general real estate tax levy for purposes of § 58.1-3321.

You advise that Prince William County assesses its real estate for taxation purposes on an annual basis. If any annual assessment or reassessment results in a real property tax levy that will exceed the previous year's real property tax levy by 1 percent or more, the locality must either reduce the rate of its levy to produce no more than 101 percent of the previous year's real property tax levies or advertise a proposed rate increase and hold a public hearing before adopting such increase.<sup>20</sup>

Section 58.1-3321 provides that "[s]pecial levies shall not be included in any calculations provided for under this section." The special school tax is authorized specifically for funding to pay for capital expenditures, indebtedness, or rent. It is my opinion that the special school tax is a "special levy" for purposes of § 58.1-3321. As such, this type of levy should not affect the levy of a general real estate tax in compliance with § 58.1-3321.

8. The Code of Virginia requires notice and a public hearing before a special school tax may be levied.

If the PWC Board proposes to levy a special school tax, the public notice and hearing requirements in § 15.2-1427 and § 58.1-3007 should be followed. Specifically, notice as described in § 15.2-1427 must be published for two successive weeks in a newspaper having general circulation in the county.<sup>21</sup> The notice should be specific about the proposed use of the tax, and it should also provide the citizens with "an opportunity to appear before, and be heard by," the PWC Board to express their views on the tax.<sup>22</sup>

If, following notice and public hearing, the PWC Board votes to levy the special school tax, the proceeds of the tax should be managed by the county treasurer in accordance with § 22.2-116. The treasurer should properly segregate the proceeds of the tax to ensure they are set aside for the purposes of the levy.

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<sup>19</sup> See VA. CONST. art. VIII, § 7; Russell Cty. School Bd. v. Anderson, 238 Va. 372, 383 (1989) (internal citations omitted); 1997 Op. Va. Atty. Gen. 55, 56.

<sup>20</sup> VA. CODE ANN. § 58.1-3321.

<sup>21</sup> VA. CODE ANN. § 15.2-1427.

<sup>22</sup> In my opinion, the public hearing requirement in § 58.1-3007 would apply because any special school tax would effectively function as an "increase" in local property taxes.

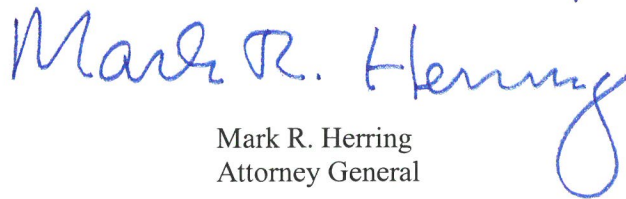
**Conclusion**

It is my opinion that the Prince William County Board may levy the special school tax as a special county tax to raise funds for capital expenditures or the payment of indebtedness or rent, in accordance with the governing law set forth above.

This opinion reaches no conclusion, however, about whether such a tax should be imposed. Judgements about the imposition of taxes lie within the discretion of the local governing body.

With kindest regards, I remain,

Very truly yours,

A handwritten signature in blue ink that reads "Mark R. Herring". The signature is fluid and cursive, with a large loop at the end of the last name.

Mark R. Herring  
Attorney General