The Honorable Mark H. Levine  
Member, Virginia House of Delegates  
301 King Street  
Alexandria, Virginia 22314

Dear Delegate Levine:

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 Commonwealth Transportation Board has the power to rename those portions of Jefferson Davis Highway located in Arlington County.

Background

You relate that Route 1 was designated a primary road in the state highway system in 1918 and was named “Jefferson Davis Highway” by the General Assembly in 1922. You believe that § 33.2-213 of the Code of Virginia gives the Commonwealth Transportation Board authority to rename those portions of “Jefferson Davis Highway” located in Arlington County if the Board of Supervisors adopts a resolution requesting such a change.

Applicable Law and Discussion

On January 31, 1918, the Virginia General Assembly established the state highway system and designated Route 1 as a primary road therein. On March 17, 1922, the Virginia General Assembly named Route 1 “the Jefferson Davis Highway”:

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1 1918 Va. Acts ch. 10. This portion of Jefferson Davis Highway you reference as being in Arlington County currently is classified by the Virginia Department of Transportation as a primary highway. Additionally, State Route 110 is designated on some maps as Jefferson Davis Highway and is also a primary highway. See, e.g., VA. DEP’T OF TRANSPORTATION, ROUTE INDEX at 1, 13 (rev. 7/1/2013), available at http://www.virginiadot.org/info/resources/route-index-07012003.pdf.
Be it enacted by the general assembly of Virginia, [t]hat primary road number one of the State highway system, as established by an act approved January thirty-first, nineteen hundred and eighteen, is hereby designated, and shall hereafter be known as, the Jefferson Davis highway, in honor of the only president of the Confederates [sic] States of America.\(^\text{[2]}\)

Localities are authorized by statute to name streets, roads, and alleys in their jurisdiction,\(^3\) and “[s]uch names shall take precedence over any other designation” except for names of primary highways made by the Commonwealth Transportation Board (CTB) or the General Assembly.\(^4\) The CTB, established under § 33.2-200, is vested with the authority to “give suitable names to state highways, bridges, interchanges, and other transportation facilities and change the names of any highways, bridges, interchanges, or other transportation facilities forming a part of the systems of state highways.”\(^5\) Except in the case of private naming rights, the CTB is not to name a transportation facility unless it receives a request from the governing body of the locality in which a portion of the facility is located.\(^6\)

With regard to the portion of Jefferson Davis Highway in question, the essential question is whether § 33.2-213 gives the CTB power to rename a primary highway originally named by the General Assembly. Section 33.2-213 currently references the renaming of transportation facilities “previously named by . . . the General Assembly” only in the case of renaming a facility by a private entity and, in such event, requires that the new name incorporate the previous name given by the General Assembly.\(^7\) No similar restriction or other limitation is placed on the CTB in renaming state transportation facilities originally named by the General Assembly at the request of the locality in which a portion of the facility is located.\(^8\)

This was not always the case. For many years prior to 2012, state law expressly excluded from CTB’s renaming authority “such highways, bridges, or interchanges as have been or may hereafter be named by the General Assembly.”\(^9\) In 2012, however, the General Assembly deleted this language from the statute, as reflected in the following excerpt from the Acts of Assembly:

The Commonwealth Transportation Board shall be vested with the following powers and shall have the following duties:

[. . .]

Naming highways, bridges, and interchanges, and other transportation facilities. To give suitable names to state highways, bridges, and interchanges, and other transportation facilities, and change the names of any highways, bridges, or interchanges, or other transportation facilities forming a part of the systems of state highways, except such

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\(^3\) VA. CODE ANN. § 15.2-2019 (2018).

\(^4\) See id.; VA. CODE ANN. § 33.2-213 (2014).

\(^5\) VA. CODE ANN. § 33.2-213.

\(^6\) Id. A private entity paying the Virginia Department of Transportation an annual naming rights fee, as established by the Commonwealth Transportation Board, may request the naming of a state transportation facility, in which case no resolution of the governing body is required. See id.

\(^7\) Id.

\(^8\) See id.

highways, bridges, or interchanges as have been or may hereafter be named by the General Assembly [...][10]

The deletion of this language in 2012 demonstrates a clear legislative intent to empower the CTB to rename transportation facilities that were originally named by the General Assembly.[11]

Conclusion

Accordingly, it is my opinion that the Commonwealth Transportation Board may change the name of those portions of Jefferson Davis Highway located in Arlington County, provided that its Board of Supervisors adopts a resolution requesting the renaming.

With kindest regards, I am,

Very truly yours,

Mark R. Herring
Attorney General
