

**ADMINISTRATION OF GOVERNMENT GENERALLY: SECRETARY OF
ADMINISTRATION — INVESTMENT OF PUBLIC FUNDS — TREASURY,
STATE TREASURER AND COMPTROLLER.**

Virginia War Memorial Foundation may expend donated funds in accordance with sound fiduciary and fiscal responsibilities and its public purpose of honoring patriotic Virginians. Foundation has no basis to handle donated funds differently from appropriated funds. Investment of Foundation's endowment fund is limited to specific types of investment instruments. Rule of strict liability would apply for losses resulting from unauthorized investment activity.

The Honorable Frank D. Hargrove Sr.

Chairman, Board of Trustees, Virginia War Memorial Foundation

December 15, 1998

You ask several questions regarding funds received by the Virginia War Memorial Foundation. You first inquire whether any Virginia law constrains the way in which the Foundation expends funds donated to it. You next ask whether the Foundation is required to handle donated funds differently from the funds the Foundation receives pursuant to the Appropriation Act. Finally, you inquire whether there is any restriction on the Foundation's endowment fund investments.

Section 2.1-51.27:1(A) of the *Code of Virginia* establishes the Virginia War Memorial Foundation. Your first inquiry concerning any restrictions on the expenditure of funds received by the Foundation is governed by the Foundation's enabling statute. Section 2.1-51.27:1(A) provides:

There is hereby created the Virginia War Memorial Foundation The Foundation shall be governed and administered by a board of trustees for the purpose of honoring patriotic Virginians who rendered faithful service and sacrifice in the cause of freedom and liberty for the Commonwealth and the nation in time of war.

To further this purpose, § 2.1-51.27:2 vests the Foundation with "full authority," to "[m]anage, control, maintain, and operate the Virginia War Memorial"; "[c]reate, invest and use an endowment fund for the purposes set forth in this section;"² and to "[r]eceive, expend and administer on behalf of the Commonwealth donations, gifts, grants, bequests and devises of real and personal property for the endowment of the Memorial or for any special purpose designated by the donor which is consistent with the purposes of the Memorial."³

A long-standing principle of statutory construction is that "[i]f the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it."⁴ The enabling statute expressly provides that the

Foundation was created for the purpose of honoring patriotic Virginians.⁵ Section 2.1-51.27:2 grants the Foundation broad authority to accomplish this purpose.⁶ Consistent with the plain meaning and intent of these statutes,⁷ the Foundation is authorized to make expenditures from funds it receives in furtherance of such purpose.⁸

Additionally, it is incumbent upon the Foundation to exercise sound fiduciary judgment in its determination of which expenditures best achieve its purpose.⁹ Thus, any such expenditure must adhere fully to fiduciary principles and fiscal responsibility.¹⁰ The answer to your first inquiry, therefore, is that while the Foundation enjoys broad, discretionary authority in its management of the Virginia War Memorial, it is only authorized to make expenditures to the extent such expenditures are consistent with its fiduciary duties and its public purpose.¹¹

You next ask whether the Virginia War Memorial Foundation must handle funds received from donations differently from the funds it receives pursuant to the Appropriation Act.¹² Section 2.1-180 requires that public funds "from any source" be deposited promptly into the state treasury without any deductions.¹³ Additionally, pursuant to 2.1-51.27:3, the Auditor of Public Accounts is responsible for establishing "[t]he accounts and records of the Foundation showing the receipt and disbursement of funds *from whatever source derived.*" (Emphasis added.)

The plain language of § 2.1-180 clearly encompasses funds from any source as public funds falling within its purview. Similarly, § 2.1-51.27:3 clearly includes all funds from whatever source derived within the system of accounts and records established by the Auditor of Accounts for the Foundation. It is my opinion, therefore, that, absent statutory authority to do otherwise,¹⁴ the Foundation has no basis to handle funds derived from donations differently from those appropriated to it.

You last inquire whether Virginia law limits the Foundation's investment of its endowment funds.

Section 2.1-51.27:2(9) grants the Foundation the authority to "[c]reate, invest and use an endowment fund" for the various purposes (relating to the operation of the Virginia War Memorial) set forth in this section. Accordingly, the Foundation is authorized to establish an endowment fund.

The issue of the investment of public funds is governed by Virginia's "Investment of Public Funds" law, Chapter 18 of Title 2.1, §§ 2.1-327 through 2.1-329.1. Specifically, § 2.1-328(A) provides that "public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, other than sinking funds,"¹⁵ in certain enumerated investment vehicles.¹⁶ This section generally has been interpreted as an enabling statute authorizing the investment of public funds in specific types of investment instruments while limiting the scope of the investment activity authorized to those types of instruments specified.¹⁷ Furthermore, if a public investor engages in investment activities other than those so specified, the protection against potential liability provided in § 2.1-329.1¹⁸ will not be available and a rule of strict liability for losses will apply.¹⁹

It is my opinion that the authority to invest an endowment fund outside the scope of the instruments set forth in the Investment of Public Funds law is not expressly

provided.²⁰ The answer to your final inquiry, therefore, is that the Foundation is limited to the type of investments authorized under the Investment of Public Funds law for the investment of its endowment fund.

¹Section 2.1-51.27:2(1).

²Section 2.1-51.27:2(9).

³Section 2.1-51.27:2(11).

⁴Temple v. City of Petersburg, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944).

⁵Section 2.1-51.27:1(A).

⁶*Compare* 1995 Op. Va. Att'y Gen. 39 (Virginia Outdoors Foundation is authorized to accomplish intent of General Assembly of preserving Commonwealth's open-space and recreational areas).

⁷See 1997 Op. Va. Att'y Gen. 88, 89 (stating that statutes plain meaning and intent govern).

⁸See 1995 Op. Va. Att'y Gen. 97, 99 (stating that Virginia Coalfield Economic Development Authority may make grants for specified eligible purposes).

⁹*Id.* at 100.

¹⁰1990 Op. Va. Att'y Gen. 1, 4 (discussing fiduciary responsibilities of members of state agencies and boards).

¹¹*Compare* 1982-1983 Op. Va. Att'y Gen. 638, 639 (noting that school board's charge to manage and control its funds must be construed in context of its authority to determine how public school funds should be spent).

¹²I assume that you are referring to the depositing and accounting of these funds.

¹³"Every state department, division, officer, board, commission, institution or other agency owned or controlled by the Commonwealth, ... collecting or receiving public funds, or moneys *from any source*, belonging to or for the use of the Commonwealth, ... shall hereafter pay the same promptly into the state treasury, without any deductions" Section 2.1-180 (emphasis added).

¹⁴*Compare* § 2.1-180 (providing that its provisions "shall not apply to the endowment funds or gifts to institutions owned or controlled by the Commonwealth").

¹⁵Section 2.1-327 enumerates the legal investments for public sinking funds and is not applicable here.

¹⁶See § 2.1-328(A)(1)-(6) (obligations of Commonwealth, United States, other states, public bodies in Commonwealth, public bodies of other states, and

obligations of International Bank, Asian Development Bank and African Development Bank); see also §§ 2.1-328.1 to 2.1-328.15 (providing for additional legal investments of public funds).

¹⁷ See Op. Va. Att'y Gen.: 1986-1987 at 25, 26; 1982-1983, *supra* note 11, at 639.

¹⁸ Section 2.1-329.1 states: "When investments are made in accordance with this chapter, no treasurer or public depositor shall be liable for any loss therefrom in the absence of negligence, malfeasance, misfeasance, or nonfeasance on his part or on the part of his assistants or employees."

¹⁹ See 1982-1983 Op. Va. Att'y Gen., *supra* note 11, at 640.

²⁰ See 1989 Op. Va. Att'y Gen. 4, 6 (holding that institution that has been expressly authorized to acquire broad range of investment instruments other than those instruments specified in § 2.1-328 is not restricted in its investment activities to such instruments).