HIGHWAYS, BRIDGES AND FERRIES: COMMONWEALTH TRANSPORTATION BOARD.

Board's interpretation of legislation to permit construction of commuter parking lot located in Loudoun County on property of Dulles International Airport through use of surplus Dulles Toll Road revenues is entitled to great deference.

The Honorable Kenneth R. Plum

Member, House of Delegates

May 29, 1998

You ask whether the Commonwealth Transportation Board (the "Board") or the Department of Transportation (the "Department") may authorize the expenditure of surplus revenues from the Dulles Toll Road for the construction of a commuter parking lot in Loudoun County.

You advise that the Department and the Department of Rail and Public Transportation have obtained approval from the Board to finance the construction of a commuter parking lot in Loudoun County through the use of surplus toll revenues. You understand that Chapter 251 of the 1990 Acts of Assembly[1] ("Chapter 251") limits expenditure of surplus revenues for commuter parking lots to a corridor extending from Route 7 at Tyson's Corner in Fairfax County to Route 28 at Sulley Road in Loudoun County. You advise that the site for the proposed commuter parking lot is located outside this corridor. You, therefore, express concern that the Board and Department may not expend such surplus toll revenues on a project that is not located within the Chapter 251 corridor limits.

Chapter 251 adds § 14 to the Commonwealth of Virginia Transportation Facilities Bond Act of 1989[2] (the "Act"), which provides:

> *Notwithstanding any other provisions of this act, the rates, fees, and charges established and collected pursuant to § 9 of this act shall not be used for any purpose other than for the payment of debt service on all outstanding notes and bonds, operations and maintenance cost of the facility, the purposes enumerated in Chapter 615 of the 1989 Acts of Assembly, for the funding of mass transit, and for the funding of additional improvements, as described in § 13 of this act, to the Dulles Toll Road/Dulles Access Road corridor over that portion of that corridor extending from Route 7 at Tyson's Corner in Fairfax County to Route 28 at Sulley Road in Loudoun County*.[3]

Chapter 251 also amends § 13 of the Act to provide:

> Notwithstanding any other provisions of this act and to the extent permitted by law, the Commonwealth Transportation Board may provide for additional improvements to the Dulles Toll Road *and Dulles Access Road corridor* including, but not limited to *mass transit and* capacity enhancing treatments, such as High

> Occupancy Vehicle lanes, interchange improvements, commuter parking lots and other transportation management strategies, from surplus net revenues of the Dulles Toll Road prior to provisions being made for the retirement of all bonds issued under the provisions of this act.[4]

Chapter 615 of the 1989 Acts of Assembly ("Chapter 615") authorizes the issuance of bonds to pay the construction costs of widening the Dulles Toll Road and for extending the Dulles Toll Road from Route 28 to the Route 15 bypass at Leesburg.[5] Section 14 of Chapter 615 allows the Board to use surplus net revenues of the Dulles Toll Road for "capacity enhancement treatments, such as … computer [sic] parking lots."[6] Unlike Chapter 251, however, Chapter 615 does not identify the Dulles Toll Road/Dulles Access Road corridor.

The Chapter 251 amendments begin with the phrase "[n]otwithstanding any other provisions of this act."[7] When a statute begins with such a phrase, it is presumed that the General Assembly intended to override any potential conflicts with earlier legislation in that instance.[8] Several other principles of statutory construction are applicable to this matter: "If the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it."[9] It is unnecessary to resort to any rules of statutory construction "[w]here the language of a statute is clear and unambiguous."[10] In such situations, the statute's plain meaning and intent govern. In addition, when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.[11] The use of the word "shall" in a statute ordinarily, but not always, implies that its provisions are mandatory.[12] Finally, statutes relating to the same subject are not to be considered in isolation but must be construed together to give effect to all provisions.[13]

The Chapter 251 amendment to § 13 of the Act clearly enables the Board, in its discretion, to provide for additional commuter parking lots to service the Dulles Toll Road and Dulles Access Road corridor.[14] Furthermore, the addition of § 14 clearly prohibits the expenditure of funds collected under § 9 of the Act for construction of commuter parking lots outside the Dulles Toll Road/Dulles Access Road corridor that extends "from Route 7 at Tyson's Corner in Fairfax County to Route 28 at Sulley Road in Loudoun County."[15]

The Act does not define the term "corridor." In the absence of a statutory definition, it is assumed that the legislature intended the common, ordinary meaning of the term to apply.[16] "Corridor" is defined as "a narrow tract of land forming a passageway, as one belonging to an inland country and affording an outlet to the sea."[17] Pursuant to Chapter 251, the Dulles Toll Road/Dulles Access Road corridor is designated as "extending from Route 7 at Tyson's Corner in Fairfax County to Route 28 at Sulley Road in Loudoun County."[18] The Act, however, does not specify the width and depth of this corridor. The agency charged with the administration of the Act, therefore, must provide such specifications.

I am advised by the Board that in September 1990, it adopted measures to develop a Dulles corridor plan that recognizes the need for additional park-and-ride facilities at the western end of the Dulles Toll Road. I am further advised that in April 1991, the Board authorized the Department to proceed with a study of a western regional park-and-ride lot to be funded from surplus net revenues from the Dulles Toll Road. I am also advised that during the summer of 1994, the Boards of Supervisors for the Counties of Fairfax and Loudoun, and the Town Council for the Town of Herndon, adopted resolutions endorsing western regional park-and-ride lots on sites in both counties, and requested that preliminary engineering work on the two sites commence as

soon as possible. Finally, in June 1995, the Board identified funding for the construction of western regional park-and-ride lots from surplus net revenues of the Dulles Toll Road in its six-year improvement program. These actions clearly demonstrate that the Board has interpreted the plan for construction of a western regional park-and-ride lot to serve the Dulles corridor as an appropriate expenditure of surplus net revenues of the Dulles Toll Road, as provided in Chapter 251.[19] The interpretation by the Board is entitled to great weight.[20] In addition, the General Assembly is presumed to be cognizant of an administrative or executive construction of a particular statute and, when such construction continues without legislative alteration, will be presumed to have acquiesced in it.[21]

Chapter 251 designates the Board as the agency responsible for determining and providing additional improvements to the Dulles Toll Road/Dulles Access Road from funds received pursuant to the Act.[22] Great deference must be given to the administrative interpretation of statutes by the agency charged with such responsibility.[23] Clearly, the Board has concluded that it may expend excess funds received pursuant to the Act for construction of a commuter parking lot located in Loudoun County.[24]

Based on the above, I must give great deference to the actions of the Board and conclude that §§ 13 and 14 of the Act, read together, and as interpreted by the Board, permit the construction of a commuter parking lot located in Loudoun County on the property of Dulles International Airport.

[1]1990 Va. Acts ch. 251, at 343.

[2]Chapter 251 amends Chapter 620 of the 1989 Acts of Assembly, known as the Commonwealth of Virginia Transportation Facilities Bond Act of 1989, by amending and reenacting § 13 and adding a section numbered 14. *Compare* 1990 Va. Acts, *supra*, *and* 1989 Va. Acts ch. 620, at 959.

[3]1990 Va. Acts, *supra* note 1, at 344.

[4]1990 Va. Acts, *supra* note 1, at 344.

[5]*See* 1989 Va. Acts ch. 615, § 2, at 938, 939.

[6]*Id.* § 14, at 941.

[7]1990 Va. Acts, §§ 13, 14, *supra* note 1, at 344.

[8]Op. Va. Att'y Gen.: 1996 at 197, 198; 1987-1988 at 1, 2.

[9]Temple v. City of Petersburg, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944); *see also* 1993 Op. Va. Att'y Gen. 256, 257.

[10]Ambrogi v. Koontz, 224 Va. 381, 386, 297 S.E.2d 660, 662 (1982); 1993 Op. VA. Att'y Gen. 99, 100.

[11]*See* 2A Norman J. Singer, Sutherland Statutory Construction § 47.23 (5th ed. 1992 & Supp. 1998); 1992 Op. Va. Att'y Gen. 145, 146, and opinions cited therein.

[12]*See* Andrews v. Shepherd, 201 Va. 412, 414, 111 S.E.2d 279, 281-82 (1959); *see also* Schmidt v. City of Richmond, 206 Va. 211, 218, 142 S.E.2d 573, 578 (1965); Op. Va. Att'y Gen.: 1996 at 178, 178; 1991 at 238, 240; 1989 at 250, 251-52; 1985-1986 at 133, 134.

[13]*See* Prillaman v. Commonwealth, 199 Va. 401, 405-06, 100 S.E.2d 4, 7-8 (1957); 2B Singer, *supra* note 11, § 51.02; 1995 Op. Va. Att'y Gen. 146, 147.

[14]*Compare* 1990 Va. Acts, supra note 1, at 344, *with* 1989 Va. Acts, supra note 2, at 962.

[15]1990 Va. Acts, *supra*.

[16]*See* 1995 Op. Va. Att'y Gen. 91, 91.

[17]Webster's Encyclopedic Unabridged Dictionary of the English Language 328 (1989).

[18]1990 Va. Acts, § 14, *supra* note 1, at 344.

[19]*See* 1990 Va. Acts, § 13, *supra* note 1, at 344.

[20]*See* Forst v. Rockingham, 222 Va. 270, 276, 279 S.E.2d 400, 403 (1981).

[21]*See* Peyton v. Williams, 206 Va. 595, 600, 145 S.E.2d 147, 151 (1965).

[22]*See* 1990 Va. Acts, § 13, *supra* note 1, at 344.

[23]*See* County of Henrico v. Mgt. Rec., Inc., 221 Va. 1004, 277 S.E.2d 163 (1981); Dept. Taxation v. Prog. Com. Club, 215 Va. 732, 739, 213 S.E.2d 759, 763 (1975); Commonwealth v. Appalach. El. Power Co., 193 Va. 37, 68 S.E.2d 122 (1951).

[24]I am advised by the Department that the proposed park-and-ride lot is to be constructed on the property of Dulles International Airport.