

00-109

TAXATION: PERSONAL PROPERTY TAX RELIEF ACT OF 1998.

CONSTITUTION OF VIRGINIA: TAXATION AND FINANCE (COLLECTION AND DISPOSITION OF STATE REVENUES).

Transfer of \$15.9 million from 2000-2002 biennial budget, containing approximately \$5 million in anticipated excess revenues, prior to enactment, effected tax relief in manner consistent with terms of Tax Relief Act and Appropriation Acts for 1998-2000 biennium. Criteria established in Tax Relief Act for funding tax relief exceeding estimates of Department of Motor Vehicles is consistent with constitutional mandate directing General Assembly to establish criteria ensuring equitable expense-revenue ratio. Provided Governor proposes budget amendments addressing difference between estimated cost of funding personal property tax relief for year ended June 30, 2000, and localities' requests for reimbursements of their qualifying reduced revenues for that year, revenues will be sufficient to meet expenditures, and \$15.9 million transfer will not create unbalanced budget, in violation of Constitution. Responsibility of Comptroller to reimburse localities for reduced personal property tax revenues attributable to contemplated tax relief within 2 business days of submission of proper claims is consistent with Appropriation Acts and Tax Relief Act, and is presumed consistent with Constitution. Transfer of funds to meet reimbursement requirements of Act, therefore, was authorized by General Assembly.

The Honorable Phillip A. Hamilton
Member, House of Delegates
January 8, 2001

In a previous request for an official opinion, you inquired whether funds that are not available in a current state budget may be transferred from the next biennial budget without prior approval from the General Assembly. Your inquiry arose from the reported transfer of approximately \$15.9 million from the budget approved by the General Assembly for fiscal year 2001¹ in order to pay for car tax relief in June 2000, as set out by the General Assembly in the 1998 and 1999 Appropriation Acts. I analyzed the transfer in the context of the Personal Property Tax Relief Act of 1998, the 1998 and 1999 Appropriation Acts for the 1998-2000 biennium, and relevant correspondence between the Auditor of Public Accounts and the Comptroller. Assuming that the necessary approvals within the Executive Branch for transfers in general occurred and the transfer in question was proper in that respect, I concluded that the transfer of funds to meet the reimbursement requirements of the Personal Property Tax Relief Act of 1998 was within the overall intent of the Act, and thus, was authorized by the General Assembly.²

You now provide additional information that the 2000-2002 biennial budget contains approximately \$5 million in anticipated excess revenues. Furthermore, approximately \$15.9 million was transferred from the 2000-2002 biennial budget, prior to its enactment, for expenditures that were anticipated to be paid from revenue in the 1998-2000 biennial budget. You observe that the transferred revenue of \$15.9 million exceeds the budgeted excess revenue of \$5 million anticipated in the 2000-2002 budget.

In construing the constitutionality of the transfer of funds, I note the following. The *Code of Virginia* constitutes a single body of law.³ Moreover, whenever possible, courts accord statutes that meaning which renders them constitutional.⁴ Thus, individual provisions, whether constitutional or statutory, are rarely construed in a vacuum.⁵ Rather, the legislature is presumed to have intended each enactment to have a meaning that is consistent with other provisions of the law and that is not superfluous.⁶

"The powers of the General Assembly are broad and plenary,"⁷ except as restrained by the Constitution of the United States or the Constitution of Virginia.⁸ The Supreme Court of Virginia has stated, "[m]oreover, an act of the General Assembly is presumed to be constitutional, and every reasonable doubt must be resolved in favor of the act's constitutionality."⁹

Article X, § 7 of the Constitution of Virginia (1971) provides that "the Governor, subject to such criteria as may be established by the General Assembly, shall ensure that no expenses ... be incurred which exceed total revenues." The General Assembly authorizes the Governor to address discrepancies between the funding for personal property tax relief based on estimated local revenue reductions and the localities' subsequent requests for actual property tax reimbursements.¹⁰ There are two additional pieces to the tax relief package enacted by the General Assembly that are relevant to your inquiry. First, the General Assembly clearly stated in the 1998 and 1999 Appropriation Acts that the contemplated tax relief would be provided on an equitable basis.¹¹ Second, the General Assembly decreed that the localities would be reimbursed, subject to any appropriate adjustments after a postpayment reconciliation process, within two business days of submitting a proper claim.¹² Construing all the legislative enactments as a harmonious whole, with a presumption of constitutionality, the Personal Property Tax Relief Act sets forth the criteria for providing funding if the estimated costs of the tax relief are less than the subsequently incurred actual reimbursements to the localities. Section 58.1-3533 of the Act includes the measures for balancing the Personal Property Tax Relief Fund. While the General Assembly apparently did not anticipate the precise set of facts that led to the transfer in question, it specifically authorized similar actions in comparable circumstances, as noted in the prior opinion to you.¹³

You first ask whether any Virginia statute, including the Personal Property Tax Relief Act, supersedes Article X, § 7.

While the Personal Property Tax Relief Act, of course, does not supersede any article of the Constitution, the Act, along with the pertinent provisions of the Appropriation Acts, must be interpreted in conjunction with, rather than separate and apart from, Article X, § 7. The Comptroller's action effected the tax relief the General Assembly intended to provide in a manner consonant with the terms of the Personal Property Tax Relief Act and the relevant Appropriation Acts. Thus, according to the Act a construction that is consistent with Article X, § 7, the General Assembly established criteria for funding temporarily any actual tax relief that exceeded the estimates of the Department of Motor Vehicles. Assuming the shortfall is addressed in the Governor's next budget, as contemplated by the Personal Property Tax Relief Act, the questioned transfer was within the criteria, and thus, was authorized by the General Assembly.

You next ask whether it is permissible under Article X, § 7 to transfer revenue from one state biennial budget, prior to its effective date, to another state biennial budget, if the Commonwealth's expenses exceed total biennial budget revenues from which the revenues are transferred.

Article X, § 7 requires the Governor to ensure that there is a balanced budget in accordance with the "criteria ... established by the General Assembly." Such requirement must be harmonized with the provisions of the Personal Property Tax Relief Act, i.e., the criteria that establish the timing and method of payments intended to ensure that the Act is revenue neutral from a local personal property tax perspective. Provided the Governor's proposed budget amendments allocate funds to fully address any underestimation of the cost of the tax relief, less overpayments of reimbursements to the various localities (which had not been calculated at time of the transfer in question), I must conclude that the Act is being administered in a manner that is consistent with the criteria established by the General Assembly. Moreover, in such circumstances, if the Commonwealth's anticipated expenses exceed its anticipated revenues, the shortfall will not be attributable to the questioned transfer.

You also ask whether the transfer of revenue from a biennial budget, prior to its effective date, which exceeds the amount of revenue anticipated to be available upon enactment of the budget, causes the future biennial budget to be out of balance and in violation of any provision of the Virginia Constitution.

As noted above, under the criteria established by the General Assembly for the administration of the Personal Property Tax Relief Act, provided the Governor proposes budget amendments that address the difference between the estimated cost of funding personal property tax relief for the year ended June 30, 2000, and the localities' requests for reimbursements of their qualifying reduced revenues for that year, there will be sufficient revenues to meet the expenditures that have been incurred. Thus, there is no reason to believe that the transfer in question created a budget which was unbalanced, in violation of the Constitution.

Your final inquiry is whether any state official may transfer state revenues that exceed the revenues budgeted in an appropriation act, prior to its effective date, to an existing state biennial budget, without the approval of the General Assembly.

The Personal Property Tax Relief Act charges the Comptroller with the responsibility of reimbursing localities for reduced personal property tax revenues attributable to the contemplated tax relief within two business days of the submission of proper claims.¹⁴ That statutory responsibility is consistent with the 1998 and 1999 Appropriation Acts, the remaining provisions of the Act, and is presumed consistent with the Constitution. I, therefore, conclude that the action taken was consistent with the overall intent of the Act and was authorized by the General Assembly.

In summary, the additional information you have provided gives no basis for altering the conclusion contained in the initial response to your inquiry. Consequently, it remains my opinion that the transfer of funds to meet the reimbursement requirements of the Personal Property Tax Relief Act of 1998 was within the overall intent of the Act and, thus, was authorized by the General Assembly.

¹⁴"The fiscal year shall commence on the first day of July and end on the thirtieth day of June." Va. Code Ann. § 2.1-197.

²See op. to Hon. Phillip A. Hamilton, H. Del. Mbr. (Dec. 8, 2000).

³See *Branch v. Commonwealth*, 14 Va. App. 836, 419 S.E.2d 422 (1992) (declaring that statutes should be construed to harmonize with other statutes, because Virginia Code is one body of law).

⁴See *Caldwell v. Seaboard System Railroad*, 238 Va. 148, 152, 380 S.E.2d 910, 912 (1989); *City Council v. Newsome*, 226 Va. 518, 311 S.E.2d 761 (1984); *Kohlberg v. Real Estate Comm.*, 212 Va. 237, 239, 183 S.E.2d 170, 171 (1971); see also 17 M.J. *Statutes* § 29 (1994).

⁵See *King v. Commonwealth*, 221 Va. 251, 254, 269 S.E.2d 793, 795 (1980) (noting that constitutionality of statute is not considered in vacuum). See, e.g., *Op. Va. Att’y Gen.*: 1980-81 at 79, 81; 1979-1980 at 305, 306; 1972-1973 at 351, 351 (stating that standards of quality cannot be prescribed in vacuum, but must be realistic in relation to Commonwealth’s educational needs and practices and are inextricably intertwined with appropriation of public funds).

⁶See *School Board v. Patterson*, 111 Va. 482, 487-88, 69 S.E. 337, 339 (1910) (stating that courts generally consider body of law as harmonious and symmetrical whole).

⁷*Trucking Corporation v. Commonwealth*, 207 Va. 23, 29, 147 S.E.2d 747, 751 (1966).

⁸*Harrison v. Day*, 200 Va. 764, 770, 107 S.E.2d 594, 598 (1959); *Railway Express v. Commonwealth*, 199 Va. 589, 593, 100 S.E.2d 785, 788 (1957), *aff’d*, 358 U.S. 434 (1959); *Lipscomb v. Nuckols*, 161 Va. 936, 944, 172 S.E. 886, 889 (1934); *Supervisors Cumberland County v. Randolph*, 89 Va. 614, 619, 16 S.E. 722, 723 (1893).

⁹*Terry v. Mazur*, 234 Va. 442, 449, 362 S.E.2d 904, 908 (1987). In assessing the transfer, in addition to the considerations discussed in my previous opinion to you (*see supra* note 2) and the analysis set forth in the above text, I am also guided by the doctrine that an act is not to be declared unconstitutional unless the court is driven to that conclusion. See *Roanoke v. Michael’s Bakery Corp.*, 180 Va. 132, 142, 21 S.E.2d 788, 792 (1942); *Richmond Linen Co. v. Lynchburg*, 160 Va. 644, 647, 169 S.E. 554, 555 (1933), *aff’d*, 291 U.S. 641 (1934). “Every reasonable doubt should be resolved in favor of the constitutionality of an act of the legislature.” *Roanoke v. Michael’s Bakery Corp.*, 180 Va. at 143, 21 S.E.2d at 793 (quoting *Hunton v. Commonwealth*, 166 Va. 229, 236, 183 S.E. 873, 876 (1936)).

¹⁰See §§ 58.1-3527, 58.1-3529, 58.1-3533.

¹¹1998 Va. Acts ch. 464, at 666, 1052-54, *amended by* 1999 Va. Acts ch. 935, at 1796, 2294-96 (citing Item 554).

¹²Section 58.1-3526(C).

¹³See *supra* note 2.

¹⁴Section 58.1-3526(C).

[Back to January 2001 Index](#)