

01-032

**AVIATION: AIRCRAFT, AIRMEN AND AIRPORTS
GENERALLY.**

**ADMINISTRATION OF GOVERNMENT GENERALLY:
TREASURY, STATE TREASURER AND COMPTROLLER.**

TAXATION: RETAIL SALES AND USE TAX.

Virginia Aviation Board may enter into loan agreement to borrow money and issue note to finance infrastructure projects at airport facility owned by local government, upon approval of Treasury Board, provided Aviation Board receives appropriations or grants to finance such projects at airports categorized as air carrier, air carrier/reliever, and general aviation, and infrastructure projects fall within context of constructing, enlarging or improving airport facility.

Mr. George P. Ramsey III
Chairman, Virginia Aviation Board
March 23, 2001

You inquire regarding the authority of the Virginia Aviation Board to create debt by using a loan to finance certain infrastructure projects at an airport facility owned by a local government.

You advise that the Virginia Aviation Board desires to grant the use of borrowed funds to the airport facility owned by the local government. You relate that the loan will be repaid within twenty-five years from grants and state-appropriated funds received by the Board.

The Virginia Aviation Board is "a public body corporate and politic."¹ The General Assembly has granted the Board "all the powers necessary or convenient to carry out the purposes of" Chapter 1 of Title 5.1 of the *Code of Virginia*.² One of the purposes expressed in Chapter 1 of Title 5.1 is "[t]o plan, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities."³ Another express power is "[t]o execute such contracts and other instruments and take such other action as may be necessary or convenient to carry out the purposes of" Chapter 1 of Title 5.1.⁴ While the Board has the authority to issue revenue bonds,⁵ such ability is limited to airports owned by the Board on January 1, 1980.⁶ "The Board is authorized to accept, receive, receipt for, disburse, and expend federal and state moneys and other moneys, public or private, made available by grant or loan or both, to accomplish [its] purposes."⁷

The General Assembly has not authorized the Virginia Aviation Board to issue revenue bonds to finance infrastructure projects at any airport facility owned by a local government. The General Assembly has, however, authorized the Board to "receive ... other moneys, public or private, made available by grant or loan"⁸ and "[t]o execute such ... other instruments and take such other action as may be necessary or convenient to carry out the purposes of" Chapter 1 of Title 15.1.⁹ One of the purposes contained in Chapter 1 includes the ability to construct, enlarge or improve airports and air navigation facilities.¹⁰ Consequently, should the infrastructure projects you describe fall within the context of constructing, enlarging or improving the airport facility, the Board may enter into, execute and deliver a loan agreement to borrow money and issue a note, subject, however, to the receipt of appropriations or grants. The practical effect of such is that the Board acknowledges an obligation to repay the debt.

You also inquire regarding the extent of limitations on the Board's ability to execute and deliver loans, notes and other forms of indebtedness. My review of the amount of annual appropriations the General Assembly has made available to the Board in the past requires me to conclude that it is unlikely that the Board may execute a demand note.¹¹ Further, the appropriations available to the Board for grants to airports owned by local governments or private-public use airports are categorized as air carrier, air carrier/reliever, and general aviation airports.¹² Therefore, the Board's ability to repay any indebtedness created by a loan for infrastructure improvements to an aviation facility owned by a local government is limited to airports categorized as air carrier or reliever airports or general aviation airports.

You finally inquire whether it is the responsibility of the Department of Treasury or the Treasury Board to approve such indebtedness, should borrowing be permitted. Among the powers and duties assigned to the Treasury Board is the duty

to approve the terms and structure of bonds *or other financing arrangements* executed by or for the benefit of state agencies, boards and authorities where debt service payments on such bonds *or other financing arrangements* are expected by such agency, board or authority to be made, in whole or in part, directly or indirectly, from appropriations of the Commonwealth.^[13]

The Supreme Court of Virginia has noted that, "[w]hile in the construction of statutes the constant endeavor of the courts is to ascertain and give effect to the intention of the legislature, that intention must be gathered from the words used, unless a literal construction would involve a manifest absurdity."¹⁴ The Court has stated the related principle that

"the plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction."¹⁵ Statutes should not be interpreted in ways that produce absurd or irrational consequences.¹⁶

The Virginia Aviation Board is both "a public body corporate and politic,"¹⁷ and a state board.¹⁸ The Board must pay the debt owed on any loan from appropriations of the Commonwealth. Since you advise that the Aviation Board desires to create debt by using a loan to finance certain infrastructure projects, it is my opinion that such a loan constitutes a "financing arrangement" subject to approval by the Treasury Board.¹⁹ Consequently, it is also my opinion that it is the responsibility of the Treasury Board to approve any loan agreement entered into by the Virginia Aviation Board to finance the specific airport facility infrastructure projects.

¹Va. Code Ann. § 5.1-2.1(A) (Michie Repl. Vol. 1999).

²Va. Code Ann. §§ 5.1-1 to 5.1-25.4 (Michie Repl. Vol. 1999) (governing aircraft, airmen and airports generally).

³Section 5.1-2.2:1(3).

⁴Section 5.1-2.2:1(2).

⁵See §§ 5.1-2.7 to 5.1-2.13.

⁶Section 5.1-2.24; see also § 5.1-2.23 (explaining that Virginia Aviation Board is successor to Virginia Airports Authority).

⁷Section 5.1-2.16.

⁸Section 5.1-2.16.

⁹Section 5.1-2.2:1(2).

¹⁰Section 5.1-2.2:1(3).

¹¹See, e.g., 2000 Va. Acts: ch. 1073, § 1-128, Item 511, at 3606; ch. 1072, § 1-127, Item 519, at 3042 (appropriating funds in both acts under "Airport Assistance" for fiscal years 2001, 2002, and 1999, 2000, respectively).

¹²An aggregate of 2.4% of the state sales and use tax revenue is set aside as the Commonwealth Airport Fund, from which the Virginia Aviation Board is required to allocate 40% of the funds to air carrier airports in the form of an entitlement, and 40% and 20%, respectively, to air carrier/reliever airports and general aviation airports on a discretionary basis. Va. Code Ann. § 58.1-638(A)(1), (3) (Michie Repl. Vol. 2000).

¹³Va. Code Ann. § 2.1-179(7) (Michie Supp. 2000) (emphasis added).

¹⁴Watkins v. Hall, 161 Va. 924, 930, 172 S.E. 445, 447 (1934) (quoting Floyd, Trustee v. Harding, 69 Va. (28 Gratt.) 401, 405 (1877)).

¹⁵Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

¹⁶McFadden v. McNorton, 193 Va. 455, 461, 69 S.E.2d 445, 449 (1952); 1993 Op. Va. Att'y Gen. 192, 196, and opinions cited therein.

¹⁷Section 5.1-2.1(A).

¹⁸Va. Code Ann. § 2.1-1.6 (Michie Supp. 2000).

¹⁹Section 2.1-179(7).

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