

02-100

**HIGHWAYS, BRIDGES AND FERRIES: COMMONWEALTH  
TRANSPORTATION BOARD, ETC. --- FERRIES, BRIDGES AND TURNPIKES  
– STATE REVENUE BOND ACT.**

**Attorney General defers to determination by Commonwealth  
Transportation Board that funds set aside in Virginia Transportation Act for  
Southeast Bypass project are to be spent solely on planning, engineering  
and construction of bypass ; mayand not on be expended to improvinge  
roads along bypass corridor and alternatives to bypass.**

The Honorable Christopher B. Saxman  
Member, House of Delegates  
December 11, 2002

**Issue Presented**

Your request focuses on legislation passed during the 2000 Session of the General Assembly, pertaining to construction of the Southeast Bypass around the City of Harrisonburg. You ask whether the \$20 million allocated by the Virginia Transportation Act for the Southeast Bypass may be used only for that project, or to pay the costs of improving existing roads along the bypass corridor and alternatives to the bypass.

**Response**

The interpretation given the term "Southeast Bypass" by the Commonwealth Transportation Board is entitled to deference unless it clearly is wrong. Accordingly, I defer to the Board's interpretation that the \$20 million in the Virginia Transportation Act allocated for the Southeast Bypass project is to be expended solely for that project, and may not be expended to improve roads along the bypass corridor and alternatives to the bypass. Any change in such interpretation must be made by the Commonwealth Transportation Board.

**Facts**

The 2000 Session of the General Assembly passed the Commonwealth of Virginia Federal Highway Reimbursement Anticipation Notes Act of 2000<sup>1</sup> ("Virginia Transportation Act" or "Act"), relating to funding of transportation projects.

The Virginia Transportation Act authorizes the Commonwealth Transportation Board to fund specific projects from the proceeds of Commonwealth of Virginia Federal Highway Reimbursement Anticipation Notes, the Priority Transportation Fund and other available funds.<sup>2</sup> The General Assembly has established the Priority Transportation Fund to finance priority transportation projects identified in the Virginia Transportation Act.<sup>3</sup> The Act identifies for funding seven specific projects

in the Staunton District and denotes one additional project as a statewide project.<sup>4</sup> One of the seven projects is identified as "Harrisonburg - Southeast Bypass," with \$20 million in funding set aside for that specific project.<sup>5</sup>

The Virginia Transportation Act provides no definition for the project described as "Southeast Bypass." In the absence of a statutory definition or a definition contained in the Act, it is assumed that the legislature intended a common, ordinary meaning of the phrase to apply.<sup>6</sup> The word "bypass" means "[a] road or highway that passes around or to one side of an obstructed or congested area."<sup>7</sup> It is my understanding that the Commonwealth Transportation Board interprets the "Southeast Bypass" to be a four lane road.<sup>8</sup> The Virginia Transportation Six-Year Development Program describes the "Southeast Bypass" as "I-81/Route 257 Intrchg. (Exit 240) - Just North of Route 33 (Exact tiedown location to be determined)."<sup>9</sup> This description pertains only to a road known as the "Southeast Bypass." It does not include alternatives to the bypass.

Great deference should be given to the administrative interpretation of statutes by the agency charged with the responsibility for carrying out legislation.<sup>10</sup> The Commonwealth Transportation Board and the Department of Transportation are charged with implementing the provisions of the Virginia Transportation Act. The Board has determined that the Act requires the allocated funds to be spent on the planning, engineering and construction of a road known as the "Southeast Bypass." This determination does not appear to include alternatives to the bypass. Prior opinions of the Attorney General defer to the interpretations of the law by an agency charged with administering the law, unless the agency interpretation clearly is wrong.<sup>11</sup> Given the lack of specificity in the Virginia Transportation Act concerning what constitutes the "Southeast Bypass," I cannot say the interpretation of the Commonwealth Transportation Board clearly is wrong.

### **Conclusion**

The interpretation given the term "Southeast Bypass" by the Commonwealth Transportation Board is entitled to deference unless it clearly is wrong. Accordingly, I defer to the Board's interpretation that the \$20 million in the Virginia Transportation Act allocated for the Southeast Bypass project is to be expended solely for that project, and may not be expended to improve roads along the bypass corridor and alternatives to the bypass. Any change in such interpretation must be made by the Commonwealth Transportation Board.

<sup>1</sup>2000 Va. Acts chs. 1019, 1044, at 2396, 2403, 2513, 2520-21, respectively (enacting cl. 2, § 1) (codified at Va. Code Ann. § 33.1-267 ed. note (LexisNexis Supp. 2002)) [hereinafter Chapters 1019 and 1044].

<sup>2</sup>Chapters 1019, 1044, *supra* note 1, at 2403, 2521 (enacting cl. 2, § 2); *id.* at 2405-08, 2523-26 (enacting cl. 3), *amended by* 2002 Va. Acts ch. 899, Item 491(H)(2), at 2222, 2615. The 2002 amendment does not affect the conclusion in this opinion regarding the \$20 million allocated for the "Harrisonburg – Southeast Bypass." *Id.* at 2407, 2525.

<sup>3</sup>Va. Code Ann. § 33.1-23.03:8 (LexisNexis Supp. 2002).

<sup>4</sup>Chapters 1019, 1044, *supra* note 1, at 2407-08, 2524-26.

<sup>5</sup>*Id.* at 2407, 2525.

<sup>6</sup>See *Murphy v. Norfolk Community Services Board*, 260 Va. 334, 339, 533 S.E.2d 922, 925 (2000) (citing *Sansom v. Board of Supervisors*, 257 Va. 589, 594-95, 514 S.E.2d 345, 349 (1999)); *Op. Va. Att'y Gen.*: 1998 at 91, 93; 1995 at 91, 91.

<sup>7</sup>The American Heritage Dictionary 223 (2d c. ed. 1985).

<sup>8</sup>See Virginia Department of Transportation Web site, at <http://www.extranet.vdot.state.va.us/syp/PublicReport.asp> (search city: Harrisonburg/county: Rockingham).

<sup>9</sup>*Id.*

<sup>10</sup>See *County of Henrico v. Mgt. Rec., Inc.*, 221 Va. 1004, 1010, 277 S.E.2d 163, 166 (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).

<sup>11</sup>See *Op. Va. Att'y Gen.*: 1998 at 87, 88 (Board of Pharmacy); 1996 at 124, 126 (State Board of Elections).

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