



COMMONWEALTH OF VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071

FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

April 14, 2010

The Honorable Robert G. Marshall
Member, House of Delegates
P.O. Box 421
Manassas, Virginia 20108-0421

Dear Delegate Marshall:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether a single appropriation bill that provides for raising taxes or fees and also appropriates money violates Article IV, § 12 of the Constitution of Virginia, the “single object” provision.

Response

It is my opinion that an appropriation act that appropriates money and raises funds by taxes or fees even without a separate, accompanying bill would not, therefore, violate the single object rule of the Virginia Constitution.

Background

You relate that at the time of your request, the General Assembly budget conferees tentatively had agreed to increase state-assessed fees by \$76 million. It is your understanding that these fee increases are to be included in an appropriation act, rather than by enacting separate legislation. Therefore, you inquire whether this arrangement would violate the “single object” provision of the Virginia Constitution.

Applicable Law and Discussion

Article IV, § 12 (“§ 12”) provides that “[n]o law shall embrace more than one object, which shall be expressed in its title. Nor shall any law be revived or amended with reference to its title, but the act revived or the section amended shall be reenacted and published at length.” In the leading case interpreting § 12,¹ the Supreme Court of Virginia held that the “one object” requirement was designed

¹See *Commonwealth v. Brown*, 91 Va. 762, 21 S.E. 357 (1895).

to prevent the members of the legislature and the people from being misled by the title of a law. It was intended to prevent the use of deceptive titles as a cover for vicious legislation, to prevent the practice of bringing together into one bill for corrupt purposes subjects diverse and dissimilar ... and to prevent surprise or fraud in legislation

And, on the other hand, it was not intended to obstruct honest legislation, or to prevent the incorporation into a single act of the entire statutory law upon one general subject. It was not designed to embarrass legislation by compelling the multiplication of laws by the passage of separate acts on a single subject. Although the act or statute authorizes many things of a diverse nature ..., the title will be sufficient if the things authorized may be fairly regarded as in furtherance of the object expressed in the title. It is therefore to be liberally construed and treated, so as to uphold the law, if practicable. All that is required ... is that the subjects embraced in the statute, but not specified in the title, are congruous, and have natural connection with, or are germane to, the subject expressed in the title.^[2]

The various appropriation acts all contain broad language within their titles. For example, House Bill 29 is titled:

A Bill to amend and reenact Chapter 781 of the 2009 Acts of Assembly, which appropriated the public revenues and provided a portion of such revenues for the two years ending, respectively, on the thirtieth day of June, 2009, and the thirtieth day of June, 2010.^[3]

Similarly, House Bill 30 is titled:

A tentative bill for all appropriations of the Budget submitted by the Governor of Virginia in accordance with the provisions of § 2.2-1509, Code of Virginia, and to provide a portion of revenues for the two years ending respectively on the thirtieth day of June, 2011, and the thirtieth day of June, 2012.^[4]

The Virginia Supreme Court has interpreted the predecessor to § 12 in relation to an appropriation act.⁵ In that situation, the Governor had vetoed seven provisions of the 1940 Appropriation Act which he concluded violated the predecessor section.⁶ One of the vetoed provisions was related to the Office of Legislative Director.⁷ The dissenting opinion described that particular provision as changing “a vital part of the administrative system of the State government”⁸ by substantially altering the established method of filling such an important office and by dividing “the responsibility of two most essential administrative

² *Id.* at 771-72, 21 S.E. at 360 (citation omitted).

³ See 2010 H.B. 29, available at <http://leg1.state.va.us/cgi-bin/legp504.exe?101+bud+A0-0> (prefiled bill).

⁴ See 2010 H.B. 30, available at <http://leg1.state.va.us/cgi-bin/legp504.exe?101+bud+10-0> (prefiled bill).

⁵ See *Commonwealth v. Dodson*, 176 Va. 281, 11 S.E.2d 120 (1940).

⁶ *Id.* at 289, 11 S.E.2d at 123.

⁷ *Id.* at 303-04, 11 S.E.2d at 130.

⁸ *Id.* at 315, 11 S.E.2d at 135 (Hudgins, J., dissenting).

offices *established by general law.*⁹ Despite this substantial change to state administrative offices and responsibilities established by general law, the Virginia Supreme Court held that the inclusion of such changes in a general appropriation act did not violate the Constitution, nor did the failure to list the provisions in the title of the act.¹⁰ Similarly, a 1984 opinion of the Attorney General concluded that an appropriation act did not violate the single object rule, notwithstanding the fact that it abolished a state agency and transferred its functions to another state agency.¹¹ In the Court's most recent decision on § 12, it found no violation of the single object rule for a broad and comprehensive transportation bill.¹²

The Virginia Supreme Court repeatedly has held that acts of the General Assembly “are presumed to be constitutional unless the contrary is clearly shown.”¹³ “[E]very reasonable doubt shall be resolved in favor of [an act's] constitutionality,” and “courts cannot strike down a statute enacted by the General Assembly unless it clearly appears that such statute does contravene some provision of the Constitution.”¹⁴

Of necessity, appropriation acts are complex and will affect many portions of the fabric of Virginia's government.¹⁵

The fact that many things of a diverse nature are authorized or required to be done in the body of the act, though not expressed in its title is not objectionable, if what is authorized by the act is germane to the object expressed in the title, or has a legitimate and natural association therewith, or is congruous therewith, the title is sufficient.¹⁶

Decisions of the Virginia Supreme Court¹⁷ and a prior opinion of the Attorney General¹⁸ dictate a conclusion that raising taxes and fees and appropriating funds in an appropriation act is congruous or germane to the subject matter of the appropriation act.

Conclusion

Accordingly, it is my opinion that an appropriation act that appropriates money and raises funds by taxes or fees even without a separate, accompanying bill would not, therefore, violate the single object rule of the Virginia Constitution.

⁹ *Id.* at 316, 11 S.E.2d at 136 (Hudgins, J., dissenting) (emphasis added).

¹⁰ *Id.* at 310, 11 S.E.2d at 133.

¹¹ See 1983-1984 Op. Va. Att'y Gen. 66.

¹² *Marshall v. N. Va. Transp. Auth.*, 275 Va. 419, 428-31, 657 S.E.2d 71, 76-77 (2008).

¹³ *Fairfax County Indus. Dev. Auth. v. Coyner*, 207 Va. 351, 355, 150 S.E.2d 87, 91-92 (1966).

¹⁴ *Id.* at 355, 150 S.E.2d at 92.

¹⁵ 1983-1984 Op. Va. Att'y Gen., *supra* note 11, at 67.

¹⁶ *Narrows v. Bd. of Supvrs.*, 128 Va. 572, 582-83, 105 S.E. 82, 85 (1920).

¹⁷ See *supra* notes 1-2, 5-10, and 12-14 and accompanying text.

¹⁸ See *supra* notes 11 and 15 and accompanying text.

The Honorable Robert G. Marshall
April 14, 2010
Page 4

Furthermore, I recognize that this conclusion may be difficult to accept in light of the plain language of the Constitution. Nevertheless, I am constrained to follow the Virginia Supreme Court's consistent interpretation of the single object rule in determining the scope of this provision.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken Cuccinelli, II". The signature is written in a cursive style with a horizontal line underneath the name.

Kenneth T. Cuccinelli, II
Attorney General