

TAXATION: MISCELLANEOUS TAXES – TRANSIENT OCCUPANCY TAX.

CONSERVATION: OPEN-SPACE LAND ACT.

Express statutory authority granted locality to expend portion of revenues derived from imposition of transient occupancy tax to promote and generate tourism confers by implication power to determine how tax revenues are to be spent to achieve purpose of promoting tourism in locality. Whether open-space land purchased with revenues derived from transient occupancy tax promotes tourism and whether land so purchased is preserved for historic or scenic purposes consistent with Act requires factual determination to be made by local governing body.

The Honorable Jack Roberts
County Attorney for Loudoun County
July 21, 1999

You ask whether the revenues derived from the imposition of the transient occupancy tax pursuant to § 58.1-3819 of the *Code of Virginia* may be used to fund purchases of open space pursuant to the Open-Space Land Act¹ to protect historic and scenic highways or historic sites. Specifically, you inquire whether such purchases are consistent with the proviso in § 58.1-3819(A) that such revenues be used to promote tourism in the locality that imposes the tax.

Section 58.1-3819(A) provides for the imposition of "a transient occupancy tax on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms." This statute further provides, regarding certain localities, that "[t]he revenues collected from that portion of the tax over two percent shall be designated and spent for promoting tourism, travel or business that generates tourism or travel in the locality."²

The primary object of statutory construction is to ascertain and give effect to the intent of the General Assembly.³ The plain language of § 58.1-3819 articulates the General Assembly's intent that a certain portion of the revenues derived from the imposition of the tax be spent to promote and generate tourism in the locality imposing the tax.⁴ Any methods by which such localities may do so is not articulated in the statute.⁵

Dillon's rule of statutory construction generally limits powers of local governing bodies to those conferred expressly by law or by necessary implication from express grants.⁶ The power to determine how the applicable revenues are to be spent to achieve the purpose of promoting tourism in a locality is a power necessarily implied from the legislative grant of the power to spend such revenues to promote tourism.

The Open-Space Land Act authorizes public bodies to protect open space by acquiring easements in gross to preserve open space.⁷ The Act defines "open-space land" as "any land in an urban area which is provided or preserved for ... historic or scenic purposes."⁸ It also defines a "public body" to include "any county," and "urban area" is defined as "any area which is urban or urbanizing in character, including semiurban areas and surrounding areas which form an economic and socially related region."⁹ Section 10.1-1701 provides also that "[t]he use of the real property [purchased] for open-space land shall conform to the official comprehensive plan for the area in which the property is located."

Assuming that the requirements of the Open-Space Land Act are met and in order to carry out "the purpose of holding scenic and [historic] easements in perpetuity,"¹⁰ a county may "acquire by purchase ... title to ... real property that will provide a means for the preservation or provision of open-space land."¹¹ Whether the land so purchased is provided or preserved for historic or scenic purposes consistent with the Act is a question of fact for determination by the local governing

body.¹² Similarly, whether the acquisition of the land "promotes tourism" in accordance with the proviso in § 58.1-3819(A) that revenues derived from the transient occupancy tax be "designated and spent for promoting tourism" also requires a factual determination to be made by the local governing body.

¹Tit. 10.1, ch. 17, §§ 10.1-1700 to 10.1-1075.

²Section 58.1-3819(A).

³See *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); 1991 Op. Va. Att'y Gen. 58, 60.

⁴See 1998 Op. Va. Att'y Gen. 19, 20 (noting that when language of statute is plain and unambiguous, it is presumed that legislature intended what it plainly expressed).

⁵*Compare* portions of § 58.1-3819(A) (addressing certain other localities which direct that applicable revenues "be designated and spent solely for tourism, marketing of tourism or initiatives that, as determined in consultation with the local tourism industry organizations, attract travelers to the locality and generate tourism revenues in the locality").

⁶1997 Op. Va. Att'y Gen. 186, 187.

⁷See § 10.1-1703; 1993 Op. Va. Att'y Gen. 7, 8.

⁸Section 10.1-1700.

⁹*Id.*

¹⁰1984-1985 Op. Va. Att'y Gen. 249, 250.

¹¹Section 10.1-1701(i).

¹²*Compare* 1997 Op. Va. Att'y Gen. 57, 59 (noting that whether any particular use constitutes "municipal purpose" is question of fact for determination by governing body).