

**00-047**

**CONSTITUTION OF VIRGINIA: LOCAL GOVERNMENT  
(DEBT).**

**COUNTIES, CITIES AND TOWNS: PUBLIC FINANCE ACT –  
PROVISIONS APPLICABLE TO ALL BONDS.**

**ELECTIONS: THE ELECTION – SPECIAL ELECTIONS.**

**Construction of new Westover Library in Arlington County on different site than its present location is permitted by bond referendum approved by county's voters in 1998. Proposed construction does not constitute substantial change from question posed to voters.**

The Honorable James F. Almand  
Member, House of Delegates  
February 15, 2001

You ask whether the question approved in 1998 by the voters of Arlington County is broad enough to authorize the expenditure of bond funds for the construction of a new library on school-owned property or whether such proposed construction constitutes a substantial change from the question posed to the voters, and if so, whether the question is invalidated.

You state that the ballot question approved in 1998 asked the voters of Arlington County whether the county should contract debt and issue general obligation bonds in the maximum amount of \$8 million to finance, with other available funds, the expansion and renovation of, or the building of a new, Westover and Shirlington branch library. You advise that a preliminary proposal recommends the building of a new Westover Library, with an underground parking area, in conjunction with the replacement of an older part of an elementary school. You relate that, under current standards, the sixty-year-old section of the elementary school building is inappropriate for use as a school or other public building. The Westover Library is located on a small portion of county-owned land and is surrounded on two sides by school-owned property. You report that there are several problems, particularly parking problems, associated with expanding and renovating the library on its present site. You also note that many area residents oppose connecting a library and parking facility with the school. The school is used for preschool and community programs. You advise that, due to the growing population of young children, the school could be reopened as a neighborhood or special focus school.

A county may contract debt only as authorized by general law pursuant to Article VII, § 10(b) of the Constitution of Virginia. Subject to certain exceptions in § 10(b), the general law authorizing the debt must provide that the question of contracting the debt be submitted by referendum to the qualified voters of the county.<sup>1</sup> Prior opinions of the Attorney General subscribe to the rule that funds derived from a district levy made for a specific purpose, e.g., the repayment of a loan from the Literary Fund or the retirement of a particular school bond issue, may not be diverted to another purpose, albeit temporarily, even if the funds exceed the amount required for annual debt service, until such indebtedness is repaid in full.<sup>2</sup> The purpose of a particular levy, or the allowable use of bond proceeds, must be derived from the record of the action of the board of supervisors or from the instrument authorizing creation of the debt obligation.<sup>3</sup>

You have provided with your request the explanation of the ballot question, which was prepared and distributed as authorized by § 24.2-687 of the *Code of Virginia*; a memorandum from the county manager dated July 1, 1998, detailing the proposed uses of the bond proceeds; and a copy of a newspaper article which appeared shortly before the November 1998 referendum was held. Each of those documents clearly indicates the possibility that the bond proceeds would be used to build a new Westover Library on a different nearby site, rather than on the existing site.

The documents you provide establish a record supporting a conclusion that the construction of a new Westover Library on a different site would be within the allowable uses of the bond proceeds. Assuming the information provided constitutes the full and accurate record of relevant actions of the board of supervisors and statements of purpose applicable to the bonds, it is my opinion that the construction of a new Westover Library on a different site than its present location is permitted by the bond referendum approved by the Arlington County voters in 1998. Therefore, it is also my opinion that the proposed construction does not constitute a substantial change from the question posed to the voters.

<sup>1</sup>See 1995 Op. Va. Att'y Gen. 44, 45.

<sup>2</sup>1982-1983 Op. Va. Att'y Gen. 425, 425; *id.* at 146, 146.

<sup>3</sup>See, e.g., Op. Va. Att'y Gen.: 1970-1971 at 39, 40 (citing 1956-1957 Op. Va. Att'y Gen. 225) (citing rulings of Attorneys General that bond proceeds may be used only for projects listed on referendum ballots); 1967-1968 at 233, 233-34 (concluding that bond issue proceeds are not to be used for any purpose not specified in question submitted in referendum; purpose of special district levies is to be determined from analysis of records of board of supervisors); 1960-1961 at 260, 262-63 (stating that use of bond proceeds is limited to specific purpose recited in school board resolution which was basis for bond issuance; question submitted to voters may have been, but was not, couched in general language); 1950-1951 at 31 (concluding that board of supervisors has no authority to divert bond proceeds to purpose not stated in resolution authorizing issuance of

bonds). See also Va. Code Ann. § 15.2-2610 (Michie Repl. Vol. 1997) (requiring that certified copy of resolution or ordinance requesting referendum be filed with circuit court).

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