

02-034

WORKFORCE INVESTMENT ACT OF 1998.

The Workforce Investment Act precludes the General Assembly from directing the Governor to reallocate Unobligated WIA Funds to a community college located within the same geographic area from which the funds were obtained. Consistent with the historical practices of prior Attorneys General, the Attorney General is unable to comment on any actions colleges may take to seek reallocation of such funds.

The Honorable Tom Bolvin
Member, House of Delegates
May 31, 2002

Issues Presented

You pose two questions regarding funds provided to the Commonwealth by the United States Department of Labor under the Workforce Investment Act of 1998¹ ("WIA Funds"). Specifically, you ask whether the General Assembly lawfully may include language in the Commonwealth's biennial budget directing the Governor to reallocate WIA Funds returned to the Commonwealth from a local workforce investment board ("Unobligated WIA Funds") to a community college that is located within the geographic area of the local board. If such reallocation is not permissible, you ask what actions community colleges may take to implement such a result.

Response

It is my opinion that the Workforce Investment Act precludes the General Assembly from directing the Governor to reallocate Unobligated WIA Funds to a community college located within the same geographic area from which the funds were obtained. Consistent with the historical practice of prior Attorneys General, I am unable to comment on any actions community colleges may take to seek reallocation of such funds.

Background

The purpose of the Workforce Investment Act is

to provide workforce investment activities, through statewide and local workforce investment systems, that increase the employment, retention, and earnings of participants, and increase occupational skill attainment by participants, and, as a result, improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation.^[2]

Eligible states receive allotments under the Workforce Investment Act for uses consistent with the purposes of the Act.³ The allocations to the participating states⁴ are further appropriated by the states' legislative bodies, consistent with the Workforce Investment Act, to fund statewide and local workforce investment activities.⁵

During the 2002 Session, the General Assembly provided in House Bills 29 and 30:

It is the intent of the General Assembly that unobligated funds appropriated by the General Assembly for the use of local Workforce Investment Boards and returned to the Commonwealth shall be reallocated by the Governor to the same geographic areas from which the unobligated funds were obtained. The reallocated funds shall be used for high-priority education programs, including allied health professions, plumbing, tractor-trailer driver training, industrial maintenance, heavy-equipment operator training, automotive technician training, industrial machinist training, and high-skills manufacturing.^[6]

Although the above language does not explicitly state that community colleges are to provide these "high-priority education programs," your letter indicates that to be the case, and for the purposes of this opinion, I assume that to be the case.

Applicable Law and Discussion

The Workforce Investment Act allocates WIA Funds to any state whose state plan has been approved by the Secretary of Labor.⁷ The allocated funds are used for adult employment and training activities and for youth services.⁸ The funds are disbursed either through local workforce investment boards or through a state workforce investment board.⁹ The local workforce investment

boards serve certain geographic areas in the state as designated by the Governor.¹⁰

Funds allocated to a state for youth activities and adult employment and training activities for any program year are available for expenditure by the receiving state "during that program year and the two succeeding program years."¹¹ Local workforce investment boards are required to obligate the funds allocated to them within the year of receipt of such funds and the year following receipt.¹² If the funds allocated to the local area are not obligated within the two-year period, the funds are returned to the state for reallocation during the third year for use in statewide projects, or by local areas that are eligible to receive reallocated funds.¹³

It is the reallocation process that is central to your inquiry. Items 125(F) and 130(E.1) of House Bills 29 and 30, respectively, express the intent of the General Assembly that Unobligated WIA Funds be reallocated by the Governor to the same geographic areas from which WIA Funds were obtained, for use in "high-priority education programs."¹⁴ Items 125(F) and 130(E.1) also detail some of the programs to be included as high priority.¹⁵

Sections 2853 and 2863 of the Workforce Investment Act govern reallocation of the unobligated balance of the local area allocation. Section 2853(c) governs the reallocation of funds for youth activities, and § 2863(c) governs the reallocation of funds for adult employment and training activities. Specifically, § 2853(c)(1) permits the Governor to reallocate to eligible "local areas"¹⁶ funds "allocated ... for youth activities and that are available for reallocation." Section 2863(c)(1) provides the same discretion in the case of funds "allocated ... for adult employment and training activities and that are available for reallocation." The amount available for reallocation under both statutes is "the amount by which the unobligated balance of the local area allocation ... at the end of the program year prior to the program year for which the determination [of availability of funds for reallocation] is made exceeds 20 percent of such allocation for the prior program year."¹⁷ In other words, if more than 20 percent of the funds allocated to a particular local area are not obligated by the local area within the appropriate time, the Governor may reallocate those funds to local areas eligible to receive such funds.¹⁸

A local area eligible to receive reallocated funds is one that "has obligated at least 80 percent of [its] allocation ... for the program year prior to the program year for which the determination ... is made."¹⁹ Thus, it follows that, if the source of reallocated funds is a

local area that has failed to obligate more than 20 percent of its allocation at the end of the program year in question, that local area would not be eligible to share in funds reallocated by the Governor.²⁰ This requirement precludes the reallocation of funds by the Governor directly to the same local areas that did not expend the required percentage of funds in the appropriate program year. Additionally, the Workforce Investment Act requires that reallocated funds go to "local areas," as that term is defined in the Act, for uses consistent with the Act. The Act requires reallocated funds to be awarded to local workforce investment boards for disbursement within the "local area."²¹ Although a community college may be located within the geographic area designated as a "local area" under the Act, it is not an appropriate entity to receive Unobligated WIA Funds directly from the Governor. Unobligated WIA Funds, as are the initial allotments, are given directly to the workforce investment boards that utilize the funds within the local geographic area of its jurisdiction. As such, the Governor does not have the authority to reallocate Unobligated WIA Funds directly to community colleges.

Whether Unobligated WIA Funds are reallocated as a matter of discretion under the provisions of the Workforce Investment Act²² or recaptured for use statewide as mandated in the WIA regulations,²³ neither the Act nor the regulations direct that Unobligated WIA Funds may be reallocated to community colleges located within the areas to which such funds initially were allocated.

Turning to your second inquiry, Article V, § 15 of the Constitution of Virginia provides that the Attorney General of Virginia "shall perform such duties ... as may be prescribed by law." Historically, the Office has limited responses to requests for official opinions to matters that concern an interpretation of federal or state law, rule or regulation.²⁴ The constitutional provision declaring that the Attorney General shall perform such duties as may be prescribed by law is implemented by those sections of the Virginia Code that define the various duties of the Office.²⁵ Section 2.2-505 articulates the authority of the Attorney General of Virginia to render official legal opinions. It is acknowledged that official opinions of the Attorney General must be confined to matters of law.²⁶ The second question that you raise, concerning any action community colleges may take to receive reallocated workforce training funds, should I determine that the budget language is inconsistent with the requirements of the Workforce Investment Act, does not concern the interpretation of a federal or state law, rule or regulation. Instead, it asks this Office to offer prospective guidance to community colleges to obtain funds under the Act that they are prohibited from receiving.

Therefore, consistent with the historical practice of prior Attorneys General, I am unable to comment on any action community colleges may take to seek reallocation of Unobligated WIA Funds.

Conclusion

Accordingly, I am of the opinion that Items 125(F) and 130(E.1) in House Bills 29 and 30, respectively, are inconsistent with the Workforce Investment Act, to the extent the legislation directs the Governor to reallocate Unobligated WIA Funds directly to community colleges that are located within the same geographic areas from which the funds were obtained.

¹Pub. L. No. 105-220, 112 Stat. 936 (1998) (codified as amended at 29 U.S.C.A. ch. 30, § 2801 *et seq.* (West 1999 & Supp. 2001)).

²29 U.S.C.A. § 2811 (West 1999).

³*Id.* § 2822 (West 1999 & Supp. 2001) (authorizing governor of state to submit state plan to Secretary of Labor for approval).

⁴*Id.* §§ 2852, 2862 (West 1999) (granting state allotments for youth activities and adult and dislocated worker employment and training activities).

⁵*See id.* § 2941(a) (West 1999).

⁶2002 H.B. 29, Item 125(F); 2002 H.B. 30, Item 130(E.1), *available at* <http://leg1.state.va.us/lis.htm>. House Bill 29 amends the 2000 Appropriation Act. See 2000 Va. Acts ch. 1073, at 3220 (appropriating public revenue for 2000-2002 biennium). House Bill 29 has been approved by the Governor as Chapter 814 as of April 8, 2002. House Bill 30 is the adopted budget for the 2002-2004 biennium. House Bill 30 was approved by the Governor as Chapter 899 as of May 17, 2002.

⁷29 U.S.C.A. § 2822 (West 1999 & Supp. 2001). The state workforce investment board, established by the governor of the state, assists in the development of the state plan. *See id.* § 2821 (West 1999 & Supp. 2001).

⁸*See id.* §§ 2852, 2862.

⁹*See id.* §§ 2832, 2821 (West 1999 & Supp. 2001).

¹⁰*See id.* § 2831 (West 1999 & Supp. 2001).

¹¹20 C.F.R. § 667.107(a) (2001).

¹²*See id.* § 667.107(b)(1).

¹³*See id.* § 667.107(b)(2).

¹⁴ See *supra* legislation under "Background" heading.

¹⁵ See *id.*

¹⁶ "The term 'local area' means a local workforce investment area designated under [29 U.S.C. § 2831]." 29 U.S.C.A. § 2801(20) (West 1999). Section 2831 authorizes the Governor, consistent with the considerations and mandates of the section, to designate certain geographic areas as local workforce investment areas.

¹⁷ 29 U.S.C.A. §§ 2853(c)(2), 2863(c)(2) (West 1999). The Secretary of Labor's WIA regulations allow the local area from which funds are recaptured to retain up to ten percent of those funds to defray its administrative costs. See 20 C.F.R. § 667.160(b).

¹⁸ Presumably, the purpose behind this reallocation policy is to ensure that unused funds are put to their highest and best use by reallocating the funds from areas that are not utilizing them to areas that are utilizing the funds. Thus, unused funds are reallocated to areas that are in more need or are more efficient in using funds initially allocated to them.

¹⁹ 29 U.S.C.A. §§ 2853(c)(4), 2863(c)(4) (West 1999).

²⁰ See *id.* §§ 2853(c)(3), 2863(c)(3) (West 1999).

²¹ See *id.* §§ 2831, 2832 (West 1999 & Supp. 2001).

²² See *id.* §§ 2853, 2863 (West 1999).

²³ See 20 C.F.R. § 667.107.

²⁴ Op. Va. Att'y Gen.: 1999 at 90, 93; 1997 at 105, 107; 1991 at 237, 238; 1989 at 293, 298; 1986-1987 at 347, 348; 1977-1978 at 31, 33; 1976-1977 at 17, 17.

²⁵ See Va. Code Ann. tit. 2.2, ch. 5, §§ 2.2-500 to 2.2-518 (LexisNexis Repl. Vol. 2001) ("Department of Law").

²⁶ 2 A.E. Dick Howard, Commentaries on the Constitution of Virginia 668 (1974).

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