

OP. NO. 04-011

PUBLIC SERVICE COMPANIES: THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002.

School board may act as responsible public entity under Act. Authority of school board acting as responsible public entity to enter into comprehensive agreement only after receiving local governing body approval.

The Honorable Harry J. Parrish
Member, House of Delegates
March 24, 2004

Issues Presented

You ask whether an elected school board¹ may be a responsible public entity under the Public-Private Education Facilities and Infrastructure Act of 2002. You further ask whether a school board acting as a responsible public entity under the Act may enter into a comprehensive agreement to construct a new school without the approval of the local governing body.

Response

It is my opinion that a school board may act as a responsible public entity under the Public-Private Education Facilities and Infrastructure Act of 2002. A school board acting as a responsible public entity has authority to enter into a comprehensive agreement under the Act only after having received approval from the local governing body.

Applicable Law and Discussion

Section 56-575.1 of the Public-Private Education Facilities and Infrastructure Act of 2002 defines certain terms as used in the Act. A "responsible public entity" is "a public entity that has the power to acquire, design, construct, improve, renovate, expand, equip maintain, operate, implement, or install the applicable qualifying project."² A "qualifying project" is broadly defined to include

- (i) any educational facility ...; (ii) any building or facility for principal use by any public entity; (iii) any

improvements ... necessary to enhance public safety and security of buildings to be principally used by a public entity; (iv) utility and telecommunications ... infrastructure; (v) a recreational facility; or (vi) technology infrastructure.^[3]

A "comprehensive agreement" is an "agreement between the operator and the responsible public entity," the "operator" being "the private or other non-governmental entity that is responsible for any and all of the stages of a qualifying project, or a portion thereof."⁴

Section 56-575.16(6) of the Act provides that "[a] responsible public entity that is a school board or a county, city or town may enter into a comprehensive agreement ... only with the approval of the local governing body."

It is a general rule of statutory construction that the words of a statute are to be given their usual, commonly understood meaning.⁵ "Where the language of a statute is clear and unambiguous rules of statutory construction are not required."⁶

Under the plain language of the statute, a public entity, such as an elected school board, *may* act as a "responsible public entity" if it "has the power to acquire, design, construct, improve, renovate, expand, equip, maintain, operate, implement, or install the ... qualifying project."⁷ The Act does, however, expressly require that a school board acting as a responsible public entity have the approval of the local governing body before entering into a comprehensive agreement under the Act.⁸

Conclusion

Accordingly, it is my opinion that a school board may act as a responsible public entity under the Public-Private Education Facilities and Infrastructure Act of 2002. A school board acting as a responsible public entity has authority to enter into a comprehensive agreement under the Act only after having received approval from the local governing body.

¹Persons may be appointed or elected to a school board. See Va. Code Ann. § 22.1-29 (LexisNexis Repl. Vol. 2003). This opinion relates to an appointed or elected school board.

²Va. Code Ann. § 56-575.1 (LexisNexis Repl. Vol. 2003).

³*Id.* In your request letter, you indicate that there is a question as to whether a public entity that desires to qualify as a "responsible public entity" must have the power to condemn property through the power of eminent domain. There is nothing within the plain language of the Public-Private Education Facilities and Infrastructure Act of 2002 that *requires* a responsible public entity to have the authority to *condemn* property.

⁴*Id.*

⁵See 1985-1986 Op. Va. Att'y Gen. at 24, 25; *id.* at 65, 66; *id.* at 69, 69.

⁶*Ambrogi v. Koontz*, 224 Va. 381, 386, 297 S.E.2d 660, 662 (1982).

⁷*Id.* (defining "responsible public entity").

⁸Section 56-575.16(6) (LexisNexis Repl. Vol. 2003).

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