



COMMONWEALTH of VIRGINIA

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October 4, 2007

The Honorable Stephen D. Newman
Member, Senate of Virginia
P.O. Box 480
Forest, Virginia 24551

Dear Senator Newman:

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

Issues Presented

You ask whether the Charlottesville-Albemarle Metropolitan Planning Organization (“MPO”) would risk losing its primary system highway construction funds should it remove the proposed U.S. Route 29 Bypass around Charlottesville (“Bypass”) from its Six-Year Transportation Improvement Plan (“Plan”). If MPO removes the Bypass from its Plan and the federal government requests reimbursement of its funds expended on the Bypass, you ask whether MPO would be required to repay such amount from its primary highway system funds.

Response

It is my opinion that if MPO removes the Bypass from its Plan and the Federal Highway Administration requires the Commonwealth to reimburse the funds spent on the Bypass, an amount equal to such reimbursement would be deducted from the primary system highway construction funds for the Department of Transportation district in which the Bypass is located. Further, an amount equal to all state funds expended on the Bypass would be deducted from the primary system highway construction funds allocated to such district.

Applicable Law and Discussion

Metropolitan planning organizations are authorized by the federal government to carry out transportation planning processes for urbanized areas with a population of more than 50,000 individuals.¹ Metropolitan planning organizations have no specific statutory authority.² Rather, they are intended to be planning bodies and organizations through which federal transportation planning money could pass.³ Section 33.1-23.03:01 provides that metropolitan planning organizations “shall be authorized to issue

¹ See 23 U.S.C.S. § 134(d)(1) (Supp. 2007).

² See 1977-1978 Op. Va. Att’y. Gen. 460, 461.

³ *Id.*

contracts for studies and to develop and approve transportation plans and improvement programs to the full extent permitted by federal law.” As such, MPO was organized to serve “the City of Charlottesville and the urbanized area of Albemarle County immediately surrounding the City, [and] it is responsible for carrying out continuing, cooperative and comprehensive transportation planning and programming process.”⁴ Your concern is that the MPO opposing the construction of the Bypass potentially removes it from the Plan.

As a condition of receiving federal highway funds, the Commonwealth, through the Department of Transportation, agrees to comply with the terms and conditions in Title 23 of the *Code of the United States* and all applicable regulations, policies, and procedures.⁵ For a right-of-way acquisition project, construction of a road on the right-of-way must be “undertaken by the close of the twentieth fiscal year following the fiscal year in which the project is authorized,” or the Department would have to repay the federal funds expended on the project.⁶ Additionally, for a preliminary engineering project, actual construction of the road or right-of-way acquisition must be “started by the close of the tenth fiscal year following the fiscal year in which the project is authorized,” or the Department must repay federal funds expended on the project.⁷

Consequently, if the proposed Bypass was in the right-of-way acquisition stage, the Commonwealth would not be required to repay federal funds until the twentieth fiscal year following the fiscal year in which the project was authorized by the federal government if construction of the Bypass is not undertaken by that time. If preliminary engineering has been undertaken for the Route 29 Bypass, repayment of federal funds by the Commonwealth would be due at the close of the tenth fiscal year following the fiscal year in which the project was authorized if neither right-of-way acquisition nor actual construction has begun.

Recognizing the importance of U.S. Route 29 to the Commonwealth, § 33.1-223.2:13 provides that:

If the construction of a U.S. Route 29 bypass around any city located in any county that both (i) is located outside Planning District 8 and (ii) operates under the county executive form of government is not constructed because of opposition from a metropolitan planning organization, and the Federal Highway Administration requires the Commonwealth to reimburse the federal government for federal funds expended in connection with such project, an amount equal to the amount of such reimbursement shall be deducted by the Commonwealth Transportation Board from primary system highway construction funds allocated or allocable to the highway construction district in which the project was located. Furthermore, in the event of such nonconstruction, an amount equal to the total of all state funds expended on such project shall be deducted by the Commonwealth Transportation Board from primary system highway construction funds allocated or allocable to the highway construction district in which the project was located.

⁴Thomas Jefferson Planning District Commission, “Metropolitan Planning Organization (MPO),” available at <http://www.tjpc.org/transportation/mpo.asp> (last visited Sept. 10, 2007).

⁵See 23 C.F.R. § 630.112(a) (2007).

⁶See 23 C.F.R. § 630.112(c)(1) (2007).

⁷See 23 C.F.R. § 630.112(c)(2) (2007).

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The city of Charlottesville and Albemarle County are located outside Planning District 8, and Albemarle County has adopted the county executive form of government.⁸ Therefore, § 33.1-223.2:13 applies to the Bypass around Charlottesville in Albemarle County.

Conclusion

Accordingly, it is my opinion that if MPO removes the Bypass from its Plan and the Federal Highway Administration requires the Commonwealth to reimburse the funds spent on the Bypass, an amount equal to such reimbursement would be deducted from the primary system highway construction funds for the Department of Transportation district in which the Bypass is located. Further, an amount equal to all state funds expended on the Bypass would be deducted from the primary system highway construction funds allocated to such district.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

1:1303; 1:941/07-069

⁸See ALBEMARLE COUNTY, VA., CODE § 2-200, p. 2-14 (1998), available at http://www.albemarle.org/upload/images/forms_center/departments/county_attorney/forms/Albemarle_County_Code_Ch02_Administration.pdf (providing that “county shall operate under the county executive form of organization and government”).