



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

December 30, 2010

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Mr. Scott E. Parsons
Executive Director
Virginia Small Business Financing Authority
P.O. Box 446
Richmond, Virginia 23218

Dear Mr. Parsons:

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

Issue Presented

You ask whether the Virginia Small Business Financing Authority ("VSBFA") has the legal authority pursuant to the Virginia Small Business Financing Act ("the Act")¹ to refinance bonds or other obligations previously issued by another authority, public body, or political subdivision including an industrial development authority created under the Industrial Development and Revenue Bond Act.²

Response

It is my opinion that the VSBFA is authorized to refinance bonds or other obligations previously issued by another authority, public body or political subdivision, including an industrial development authority.

Background

You state that over the past 25 years, the VSBFA has issued refunding bonds to refund bonds previously issued by industrial development authorities and other issuers. Each issuance of such refunding bonds by the VSBFA has been duly approved by its Board of Directors following a legal review by the Office of the Attorney General and the opinion of qualified bond counsel. You further state that questions have arisen recently regarding the interpretation of certain provisions of the Act as they relate to the issuance of certain refunding bonds.

¹ VA. CODE ANN. §§ 2.2-2279 through 2.2-2314 (2008 & Supp. 2010).

² VA. CODE ANN. §§ 15.2-4900 through 15.2-4920 (2008 & Supp. 2010).

Applicable Law and Discussion

Section 2.2-2280 establishes the Virginia Small Business Authority. In creating the Authority, the General Assembly identified a broad public purpose:

[T]hat (i) there exists in the Commonwealth a need to assist small business in the Commonwealth in obtaining financing for new business or in the expansion of existing business in order to promote and develop industrial development and to further the long-term economic development of the Commonwealth through the improvement of its tax base and the promotion of employment and (ii) it is necessary to create a governmental body to provide financial assistance to small business in the Commonwealth by providing loans, guarantees, insurance and other assistance to small business, thereby encouraging the investment of private capital in small business in the Commonwealth.^{3]}

To fulfill this purpose, the General Assembly granted to the VSBFA “all powers necessary or appropriate to carry out and effectuate its purposes including, but not limited to” an extensive list of enumerated powers that includes the power to “borrow money and issue bonds as provided by” Article 7.⁴

Section 2.2-2287 explicitly authorizes the VSBFA to borrow money and issue bonds to pay the cost of the projects for which the bonds have been issued. Specifically, this statute provides that “[w]henever [the VSBFA] deems refunding expedient it may refund *any* bonds by the issuance of new bonds”⁵ Section 2.2-2200 broadly defines the term “bonds” as “*any* bonds, refunding bonds, notes, debentures, interim certificates, or any bond, grant, revenue anticipation notes or any other evidences of indebtedness or obligation of an authority. . . .”⁶ This language evidences a clear legislative intent to grant the VSBFA broad discretion and authority to issue refunding bonds for the benefit of eligible projects in the furtherance of the purposes of the Act.

It is a general rule of statutory construction that the words of a statute are to be given their usual, commonly understood meaning.⁷ Generally, where the language of a statute is clear and unambiguous, rules of statutory construction are not required.⁸

Furthermore, § 2.2-2281 provides:

Nothing contained in this article shall be construed as a restriction or limitation upon any powers that the Authority might otherwise have under any other law of the Commonwealth, and this article supersedes all other laws in conflict herewith and is cumulative to such powers. Insofar as the provisions of this article are inconsistent with

³ Section 2.2-2280 (Supp. 2010).

⁴ Section 2.2-2285 (2008).

⁵ Section 2.2-2287 (2008) (emphasis added).

⁶ Section 2.2-2200 (2008) (emphasis added).

⁷ See 1985-86 Op. Va. Att’y Gen. 24, 25. See also *Covington Virginia, Inc. v. Woods*, 182 Va. 538, 548-49, 29 S.E.2d 406, 411 (1944) (“In the construction of statutes, the courts have but one object, to which all rules of construction are subservient, and that is to ascertain the will of the legislature, the true intent and meaning of the statute, which are to be gathered by giving to all the words used their plain meaning, and construing all statutes *in pari materia* in such manner as to reconcile, if possible, any discordant feature which may exist, and make the body of the laws harmonious and just in their operation.”).

⁸ *Id.* (citing *Ambrogio v. Koontz*, 224 Va. 381, 386, 297 S.E.2d 660, 662 (1982)).

the provisions of any other law, the provisions of this article shall be controlling and the powers conferred by this article shall be regarded as supplemental and additional to powers conferred by any other laws. No proceedings, notice or approval shall be required for the issuance of any bonds or any instrument or the security therefor, except as provided in this article.

The provisions of this article shall be liberally construed to accomplish the purposes of this article.^[9]

The plain language of the Act is broad and unequivocal. The General Assembly, when defining the term “bonds” in § 2.2-2200, specifically mentions the word “bond” in three separate contexts. Therefore, the legislature was aware of the broad spectrum of bonds and the various entities that might issue such bonds. If the General Assembly wished to limit the authority of the VSBFA to issue refunding bonds only to refund certain types of previously issued bonds, it could easily have done so by expressly stating such limitations in § 2.2-2287. Similarly, the General Assembly could have expressly provided that the authority of the VSBFA to issue refunding bonds under this section did not apply to bonds issued by local industrial development authorities. Such limitations, however, are not included in the statute, and no such limitation should be implied. The General Assembly uses the language “any bonds” in § 2.2-2287, and, as the Act provides, the broad implications of that term must “be liberally construed to accomplish the purposes of the” Act.¹⁰

Moreover, for the past several years, the VSBFA has issued refunding bonds to refund bonds that were originally issued by industrial development authorities or other issuers. Each issuance was reviewed by bond counsel and the Office of the Attorney General. In most instances, these refunding bonds were issued only after public hearings and approval as required by statute.¹¹ During that time, the General Assembly amended Article 7 several times, the last being in 2009. Additionally, the VSBFA is required to submit an annual fiscal report of its activities to the Governor and to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance.¹² Therefore, the General Assembly had both actual and constructive notice of the practices of the VSBFA, and it has not chosen to amend the Act to prohibit such conduct. This acquiescence further confirms the plain meaning of the statute noted above.¹³

⁹ Section 2.2-2281 (2008) (emphasis added).

¹⁰ Section 2.2-2281.

¹¹ See § 2.2-2292 (Supp. 2010).

¹² See § 2.2-2312 (2008).

¹³ See *Dep't of Taxation v. Progressive Cmty. Club*, 215 Va. 732, 739, 213 S.E.2d 759, 763 (1975). See also *Miller v. Commonwealth*, 180 Va. 36, 42, 21 S.E.2d 721, 723 (1942) (“The Legislature is presumed to be cognizant of [the construction given to a statute by public officials], and, when long continued, in the absence of legislation evincing a dissent, the courts will adopt that construction.”) (citation omitted); 1986-87 Op. Va. Att’y Gen. 194, 194 (“Board’s regulations ... have been in effect since 1980 and have not been modified by legislative action of the General Assembly, thereby indicating that the General Assembly has acquiesced in them”); 1977-78 Op. Va. Att’y Gen. 77, 78 (“The legislature, when it passes a new law, or amends an old one, is presumed to act with full knowledge of the law as it stands.”).

Conclusion

Accordingly, it my opinion that the VSBFA is authorized to refinance bonds or other obligations previously issued by another authority, public body, or political subdivision, including an industrial development authority.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink, appearing to read "Ken C II". The signature is stylized and written in a cursive-like font.

Kenneth T. Cuccinelli, II
Attorney General