



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable Mark L. Cole
Member, House of Delegates
Post Office Box 41965
Fredericksburg, Virginia 22404

Dear Delegate Cole:

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 inquire whether localities have the authority to provide funds raised through taxation to nonprofit organizations like the Virginia Association of Counties and the Virginia Municipal League.

Response

It is my opinion that a locality may provide such funds to either the Virginia Association of Counties or the Virginia Municipal League. There is nothing in the Virginia Constitution that would prohibit a locality from doing so, and the General Assembly has provided ample statutory authority for a locality to do so.

Background

According to its mission statement, the Virginia Association of Counties (“VACO”), whose origins spring from the early 1930s, “exists to support county officials and to effectively represent, promote and protect the interests of counties to better serve the people of Virginia.” VACO represents its membership of 95 localities at the state and national levels in legislative and regulatory processes; its legislative steering committees monitor state and national legislative activities for changes affecting local governments and recommend an annual legislative program. VACO, which also seeks to serve as a valuable resource network for planning and implementing new ideas and technologies, publishes a periodic newsletter and legislative bulletin and offers educational seminars.¹

The Virginia Municipal League (“VML”) describes itself as “a statewide, nonprofit, nonpartisan association of city, town and county governments established in 1905 to improve and assist local governments through legislative advocacy, research, education and other services.” The membership includes all 39 cities in the state, 156 towns and 10 counties. VML is governed by an executive committee made up of local government officials. VML's policy and steering committees recommend positions for

¹ <http://www.vaco.org/What.html>.

the league on issues of concern through development of annual policy statements, while a legislative committee recommends a legislative program for adoption at the annual conference.²

Applicable Law and Discussion

In your letter, you refer to a previous opinion of this Office addressing the application of the state constitutional provision against appropriations to charitable organizations not owned or controlled by the Commonwealth.³ That opinion, and the constitutional provision, concern only funds appropriated by the General Assembly and expended from the state treasury and therefore do not apply to your inquiry involving expenditures by local governments.⁴ Rather, as the prior opinion relates, Article IV, § 16 provides that the General Assembly may “authorize counties, cities, or towns to make appropriations to any charitable institution or association.” The opinion then notes that the General Assembly has enacted enabling legislation permitting such donations.⁵ The question thus becomes whether the contributions you posit fall within the purview of that enabling legislation.

The power of a local governing body, unlike that of the General Assembly, “must be exercised pursuant to an express grant[.]”⁶ Localities have “only those powers which are expressly granted by the state legislature, those powers fairly or necessarily implied from expressly granted powers, and those powers which are essential and indispensable.”⁷ Further, any doubt as to the existence of the power must be resolved against the locality.⁸

Generally, a “locality may make appropriations for the purposes for which it is empowered to levy taxes and make assessments, for the support of the locality, for the performance of its functions, and the accomplishment of all other lawful purposes and objectives”⁹ In addition, the General Assembly has specified several entities which, in certain circumstances, may receive gifts and donations from the local fisc.¹⁰ A locality further is authorized to “make appropriations of public funds, of personal property

² <http://www.vml.org/About%20the%20league.html>.

³ 2011 Op. Va. Att’y Gen. 52. *See also* 2011 Op. Va. Att’y Gen. 55 (applying the constitutional prohibition to conservation grants).

⁴ Article IV, § 16 provides:

The General Assembly shall not make any appropriation of public funds, personal property, or real estate to any church or sectarian society, or any association or institution of any kind whatever which is entirely or partly, directly or indirectly, controlled by any church or sectarian society. Nor shall the General Assembly make any like appropriation to any charitable institution which is not owned or controlled by the Commonwealth; the General Assembly may, however, make appropriations to nonsectarian institutions for the reform of youthful criminals and may also authorize counties, cities, or towns to make such appropriations to any charitable institution or association.

⁵ 2011 Op. Va. Att’y Gen. at 55 n.9 (citing VA. CODE ANN. § 15.2-953 (Supp. 2010)).

⁶ Nat’l Realty Corp. v. Va. Beach, 209 Va. 172, 175, 163 S.E.2d 154, 156 (1968).

⁷ Arlington Cnty. v. White, 259 Va. 708, 712, 528 S.E.2d 706, 708 (2000) (alteration in original) (quoting City of Va. Beach v. Hay, 258 Va. 217, 221 (1999)).

⁸ City of Richmond v. Bd. of Supvrs., 199 Va. 679, 684, 101 S.E.2d 641, 645 (1958).

⁹ VA. CODE ANN. § 15.2-950 (Supp. 2011).

¹⁰ Section 15.2-953 (Supp. 2011). Among these are chambers of commerce, industrial development authorities, state colleges and universities, organizations commemorating historical events, foundations supporting parks, libraries and law enforcement, and certain organizations providing energy efficiency services. Other eligible

or of any real estate and donations . . . to any charitable institution or association, located within their respective limits or outside their limits if such institution or association provides services to residents of the locality[.]”¹¹

Furthermore, localities are empowered to “form and maintain associations for the purpose of promoting, through investigation, discussion and cooperative effort, the interest and welfare of the several political subdivisions of the Commonwealth, and to promote a closer relation between the several political subdivisions of the Commonwealth. . . .”¹² They also are authorized to join regional organizations and “to appropriate funds to such organization or to provide goods and services to such organization, all for the purpose of advancing the welfare and economic interests of such locality and the citizens thereof.”¹³ Finally, a “locality may, in its discretion, expend funds from the locally derived revenues of the locality for the purpose of promoting the resources and advantages of the locality.”¹⁴

Although these statutes do not specifically reference either VACO or VML, the authority the General Assembly has granted localities through these statutes permits a locality to provide funds to VACO and VML, regardless of whether VACO or VML could be classified as charities. Given the lack of a constitutional prohibition and the statutory grants of authority referenced above, I conclude that localities may provide funds to these organizations.

Conclusion

Accordingly, it is my opinion that a locality may provide funds to either the Virginia Association of Counties or the Virginia Municipal League.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink that reads "Ken C II". The signature is stylized and written in a cursive-like font.

Kenneth T. Cuccinelli, II
Attorney General

organizations include those serving senior citizens, providing emergency services, or providing recreational or community beautification services.

¹¹ Section 15.2-953(A).

¹² Section 15.2-1303.

¹³ Section 15.2-1304.

¹⁴ Section 15.2-940.