



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

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September 7, 2012

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Jason J. Ham, Esquire  
Town Attorney for the Town of Dayton  
410 Neff Avenue  
Harrisonburg, Virginia 22801-3434

Dear Mr. Ham:

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 term “domestic bank” in § 2.2-4509 of the *Code of Virginia* refers to any United States bank, or, in the alternative, is restricted to only Virginia banks.

## Response

It is my opinion that the term “domestic bank,” as used in § 2.2-4509, is not limited to banks located in the Commonwealth of Virginia, but rather refers to a bank located in the fifty United States or the District of Columbia and organized under the laws of one of the fifty states, the District of Columbia or the United States.

## Applicable Law and Discussion

Section 2.2-4509, a provision of the Virginia Investment of Public Funds Act (“VIPFA”),<sup>1</sup> generally permits the “Commonwealth and all public officers, municipal corporations, and other political subdivisions and other public bodies of the Commonwealth [to] invest [certain public] moneys . . . in negotiable certificates of deposit and negotiable bank deposit notes of **domestic banks and domestic offices of foreign banks** . . . .”<sup>2</sup> VIPFA, however, does not expressly define the terms “domestic bank” or “foreign bank.” As such, the term “domestic” in this case could mean within the Commonwealth, or, more broadly, within the United States, while the term “foreign” could refer to an entity located outside of the United States, or simply outside the borders of the Commonwealth.<sup>3</sup>

I am aware of no other place in the *Code of Virginia* where the terms “domestic bank” or “foreign bank” are specifically defined. Ordinarily, when a particular word in a statute is not defined therein, the

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<sup>1</sup> VA. CODE ANN. §§ 2.2-4500 through 2.2-4518 (2011 & Supp. 2012).

<sup>2</sup> Emphasis added.

<sup>3</sup> See *infra* notes 5 and 6 and accompanying text.

word should be accorded its ordinary meaning.<sup>4</sup> *Black's Law Dictionary* sets forth the following relevant definitions for the word "domestic": (1) "[o]f or relating to one's own country"; and (2) "[o]f or relating to one's own jurisdiction."<sup>5</sup> Moreover, *Black's Law Dictionary* further defines the word "foreign" in the following pertinent ways: (1) "[o]f or relating to another country"; and (2) "[o]f or relating to another jurisdiction."<sup>6</sup> Based on the foregoing definitions, a "domestic bank" as contemplated by § 2.2-4509 could refer to a bank located in the Commonwealth, or, in the alternative, a bank located in the United States. Because these definitions do not resolve the ambiguity, I must turn to other means of statutory construction to respond to your inquiry.

"The Code of Virginia constitutes a single body of law, and other sections can be looked to where the same phraseology is employed."<sup>7</sup> Moreover, "statutes may be considered as *in pari materia* when they relate to the same person or thing, the same class of persons or things or to the same subject or to closely connected subjects or objects."<sup>8</sup> The Virginia statutes applicable to banks<sup>9</sup> incorporate by reference the term "foreign bank" as defined by a federal statute relating to interstate branching of foreign banks.<sup>10</sup> This federal statute defines "foreign bank" as ". . . any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, which engages in the business of banking, or any subsidiary or affiliate, organized under such laws, of any such company[.]"<sup>11</sup> Because the Virginia banking statutes and § 2.2-4509 discuss closely connected subject matter (i.e., foreign versus domestic banks), I conclude that the term "foreign bank" in VIPFA refers to banks organized and operated outside of the fifty United States and the District of Columbia. Conversely, the term "domestic bank," therefore, must refer to a bank physically located in any of the fifty United States or the District of Columbia, and organized under the laws of one of the fifty states, the District of Columbia or the United States.<sup>12</sup>

This interpretation is consistent with the apparent aim of VIPFA.<sup>13</sup> Based on a review of the entirety of VIPFA,<sup>14</sup> it is evident that the purpose of the act as a whole is to safeguard monies belonging to the Commonwealth and its subdivisions by requiring investment in safe and reliable devices, and by establishing standards of care by which such monies must be invested.<sup>15</sup> Accordingly, I must assume that

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<sup>4</sup> See, e.g., *McKeon v. Commonwealth*, 211 Va. 24, 27, 175 S.E.2d 282, 284 (1970).

<sup>5</sup> BLACK'S LAW DICTIONARY 396 (abr. 7th ed. 2000).

<sup>6</sup> BLACK'S LAW DICTIONARY 521 (abr. 7th ed. 2000).

<sup>7</sup> *King v. Commonwealth*, 2 Va. App. 708, 710, 347 S.E.2d 530, 531 (1986) (citing *First Nat'l Bank of Richmond v. Holland*, 99 Va. 495, 504, 39 S.E. 126, 129-30 (1901)).

<sup>8</sup> *Prillaman v. Commonwealth*, 199 Va. 401, 405, 100 S.E.2d 4, 7 (1957).

<sup>9</sup> VA. CODE ANN. §§ 6.2-800 through 6.2-946 (2010 & Supp. 2012).

<sup>10</sup> Section 6.2-836 (2010) (definition of "home state"); 12 U.S.C. § 3103(c) (2012). See also 12 U.S.C. § 3101(7) (2012).

<sup>11</sup> 12 U.S.C. § 3101(7) (2012).

<sup>12</sup> Compare *supra* note 5 and accompanying text with *supra* note 6 and accompanying text.

<sup>13</sup> The primary purpose of statutory construction is to "ascertain and give effect to legislative intent." *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983) (citing *Tiller v. Commonwealth*, 193 Va. 418, 69 S.E.2d 441 (1952)).

<sup>14</sup> "[A] fundamental rule of statutory construction requires that courts view the entire body of legislation and the statutory scheme to determine the 'true intention of each part.' In construing statutes, courts should give the fullest possible effect to the legislative intent embodied in the entire statutory enactment." *Va. Real Estate Bd. v. Clay*, 9 Va. App. 152, 157, 384 S.E.2d 622, 625 (1989) (citations omitted).

<sup>15</sup> See VA. CODE ANN. §§ 2.2-4500 (2011) (permitting sinking funds to be invested in, among other things,

the purpose of § 2.2-4509 is to further the purpose of the VIPFA as a whole.<sup>16</sup>

### Conclusion

Accordingly, it is my opinion that the term “domestic bank” refers to a bank located in the fifty United States or the District of Columbia and organized under the laws of one of the fifty states, the District of Columbia or the United States; the term is not restricted to banks located in the Commonwealth of Virginia.

With kindest regards, I am

Very truly yours,



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federal and state debt, and Virginia municipal debt where there is no evidence of default); 2.2-4501 (permitting monies other than sinking funds to be invested in, among other things, federal and state debt, Virginia and other state municipal debt where there has been no default); 2.2-4502 (permitting investment in “prime quality” commercial paper, and other commercial paper, provided that certain safeguards taken); 2.2-4504 (permitting investment of moneys other than sinking funds into bankers’ acceptances); 2.2-4505 (permitting investment into United States treasury bonds); 2.2-4506 (permitting the Commonwealth and its subdivisions to engage in securities lending, providing that the state treasury is fully collateralized at all times); 2.2-4507 (permitting the Commonwealth and its subdivisions to invest in collateralized repurchase agreements); 2.2-4508 (permitting investment in mutual funds); 2.2-4510 (permitting investment in “high quality” corporate bonds, or other bonds, provided that strict investment guidelines established); 2.2-4511 (permitting investment in high quality asset-backed securities); 2.2-4512 (permitting investment in high quality foreign debt); and 2.2-4514 (establishing a standard of care for investment of public funds).

<sup>16</sup> See *supra* note 13.