



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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June 28, 2013

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The Honorable Joe T. May
Member, House of Delegates
Post Office Box 2146
Leesburg, Virginia 20177-7538

Dear Delegate May:

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 Loudoun County School Board (LCSB) currently has the legal authority to pay a portion of the capital renovation costs for the Thomas Jefferson High School for Science and Technology (TJHS), an educational facility owned by the Fairfax County School Board (FCSB).

Response

It is my opinion that the Loudoun County School Board does not currently have the legal authority to fund capital renovation costs for school property that it does not lease and which is fully owned and operated by the Fairfax County School Board.

Background

You state that TJHS is a facility that is neither owned in any part nor under lease to the LCSB, but rather, is a regional Academic-Year Governor's School that is wholly owned and operated exclusively by the FCSB. In addition, you note that TJHS has no joint governing board and, there is no joint ownership of the land upon which it is situated. The contract between the two school divisions regarding the establishment and operation of TJHS provides for the LCSB to pay to FCSB "the full costs for each student attending based on the per-pupil costs at Thomas Jefferson adjusted for transportation and state aid"¹

Applicable Law and Discussion

The powers and duties of a local school board are specifically enumerated, in part, within § 22.1-79 of the *Code of Virginia*. The statute provides that:

¹ Cooperative Agreement Concerning the Establishment and Operation of Thomas Jefferson High School for Science and Technology, Fairfax County Public Schools, ¶ 9, dated 2011 (hereinafter "Cooperative Agreement").

A school board *shall*:

...

3. Care for, manage and control the property of the school division and provide for the erecting, furnishing, equipping, and noninstructional operating of necessary school buildings and appurtenances and the maintenance thereof by purchase, lease, or other contracts; . . .

5. Insofar as not inconsistent with state statutes and regulations of the Board of Education, operate and maintain the public schools in the school division . . .^[2]

The statute vests the responsibility for maintenance and improvements of school property in the board that has authority in the locality in which a given facility is located. Moreover, § 22.1-129(B) limits a school board's authority to expend funds in regard to property it leases to repairs or improvements with a "useful life" that is equal to *or shorter than* the term of the lease, demonstrating the intent of the General Assembly to limit a school board's expenditures for leasehold improvements to ensure that its division will yield the full benefit of them.³ In addition, Virginia's school tuition statute, § 22.1-5(C), specifically excludes capital outlays and debt service from inclusion in tuition between school divisions *unless* the school boards have fixed tuition by contract.⁴

In regard to TJHS, the two-year Cooperative Agreement, in effect until June 30, 2013, defines the relationship between LCSB and FCSB. This Agreement specifically states that the FCSB "established" TJHS "within the Fairfax County School Division" and that "Thomas Jefferson is an institution of Fairfax County Public Schools under the sole direction and control of FCSB."⁵ In that agreement, LCSB commits only to pay for "actual costs" for special services and "full costs for each student attending based on per-pupil costs[.]"⁶ The agreement's terms therefore make no mention of LCSB's payment of capital expenditures through fixed tuition, but instead, appear to tie those payments to per-pupil educational costs. Indeed, the agreement does not contractually fix tuition amounts. Notably, your inquiry indicates that any requirement for LCSB to pay for a portion of FCSB's capital expenditures represents a new development; heretofore, it has been foreign to the parties' understanding and interpretation of the Cooperative Agreement's terms.⁷

Thus, it is my opinion that no general statutory authority exists to enable the LCSB to pay for a portion of capital renovation costs to TJHS, an educational facility located outside of its division in which it neither owns any part nor possesses a leasehold interest.⁸ Moreover, based upon the information you provide, it further is my opinion that, under the terms of the existent Cooperative Agreement with FCSB,

² VA. CODE ANN. § 22.1-79(3) & (5) (2011) (emphasis added).

³ Section 22-129(B) (Supp. 2012).

⁴ Section 22.1-5(C) (2011).

⁵ Cooperative Agreement, ¶ 1.

⁶ *Id.* at ¶¶ 8-9.

⁷ In relevant part, you state that the FCSB, "proposes to add a charge for a portion of the capital renovations costs for . . . [TJHS] . . . to the tuition bill paid by the . . . [LCSB] . . . and other participating school divisions."

⁸ Prior Opinions of this Office have reached similar conclusions. See 1955-56 Op. Va. Att'y Gen. 175; 1960-61 Op. Va. Att'y Gen. 265-266; and 1996 Op. Va. Att'y Gen. 121.

the terms of § 22.1-5(C) do not apply so as to allow LCSB to contribute to such improvements through contractually fixed tuition payments on behalf of the students from its division that attend TJHS.⁹

Conclusion

Accordingly, it is my opinion that the Loudoun County School Board does not currently have the legal authority to fund capital renovation costs for school property that it does not lease and which is fully owned and operated by the Fairfax County School Board.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken C II". The signature is written in a cursive style with a horizontal line under the "C" and the Roman numeral "II".

Kenneth T. Cuccinelli, II
Attorney General

⁹ See § 22.1-5(C) (which states in relevant part that, “No tuition charge authorized . . . in this section shall exceed the total per capita cost of education, exclusive of capital outlay and debt service, . . . except that if the tuition charge is payable by the school board of the school division of the pupil’s residence pursuant to a contract entered into between the two school boards, the tuition charge shall be that fixed by such contract.”).