



COMMONWEALTH of VIRGINIA

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Anthony C. Williams, Esquire
City Attorney for the City of Winchester
15 North Cameron Street
Winchester, Virginia 22601

Dear Mr. Williams:

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

Issues Presented¹

You inquire regarding the application of the term “public facility” as used in § 58.1-608.3 of the *Code of Virginia*, which entitles the municipal owner of such a facility to recoup certain sales tax revenues. You specifically ask whether a hotel with any of the following descriptions may qualify as a “public facility” under subsections (iii) or (iv) of § 58.1-608.3(A):

- (i) A hotel not originally constructed as part of a qualifying public facility;
- (ii) A hotel located across a public street from a qualifying public facility; and
- (iii) A hotel located across a public street from a qualifying public facility and connected to that facility via a bridge or walkover.

Background

You relate that the City of Winchester has purchased certain property for the purpose of constructing a convention center satisfying the requirements of the definition of “public facility” under § 58.1-608.3 of the *Code of Virginia*. You further advise that a hotel is located directly across the street from the proposed convention center property and that the city’s consultant for the convention center has identified the hotel as an integral part of the convention center project. You state that there are no other hotels within a two-mile radius of the proposed convention center site and no other hotels capable of supporting a convention center within the entire city. In addition to the hotel’s current ninety guestrooms, the feasibility study for the convention center indicates that the project will require an additional fifty guestrooms, which may be constructed either as part of the existing hotel structure or upon the property purchased for the convention center. The question has arisen as to whether the existing hotel will qualify as part of the proposed

¹ I note that your inquiry arises from a specific factual situation. Although I am unable to comment definitely on the particular circumstances about which you inquire, I offer the analysis herein as general guidance. Whether the specific hotel in question qualifies in fact as a “public facility” for purposes of § 58.1-608.3 is beyond the scope of this Opinion. See 2009 Op. Va. Att’y Gen. 80, 81 and n.17 (“Attorneys General consistently have declined to render official opinions on specific factual matters”); 2010 Op. Va. Att’y Gen. 56, 58 (the Attorney General “refrain[s] from commenting on matters that would require additional facts[.]”)

convention center (“public facility”), entitling the City to all sales tax revenue generated by the hotel under § 58.1-608.3(C).

Applicable Law and Discussion

Section 58.1-608.3(C) of the *Code of Virginia* entitles selected municipalities, including the City of Winchester, to recoup all sales tax revenues generated by transactions at a public facility for which the municipality has issued bonds.²

In order for a municipality to be entitled under § 58.1-608.3 to recoup sales tax revenue from a hotel, the hotel must qualify as part of the public facility under the statute. A hotel may qualify as part of a public facility under subsection (iii) of § 58.1-608.3 if it is “attached to and is an integral part” of a qualifying facility, or under subsection (iv) of § 58.1-608.3 if it is “adjacent to a convention center owned by a public entity and where the hotel owner enters into a public-private partnership whereby the locality contributes infrastructure, real property, or conference space.”³ The focus of your inquiry concerns the application of the terms “attached to” and “adjacent to.”

You first ask whether a hotel can meet the requirements of either subsection (iii) or subsection (iv) of the statute if it was not originally constructed as part of a qualifying facility. The relevant provisions make no reference to the time or purpose of the construction of a qualifying hotel.⁴ “Under basic rules of statutory construction, [courts] determine the General Assembly’s intent from the words contained in the statute.”⁵ Because the statute does not incorporate construction dates into its definition of “public facility,” I conclude that a hotel may meet the requirements under subsections (iii) and (iv) even if it originally was not constructed as part of the qualifying facility. Thus, assuming the other definitional requirements are met, the municipal owner of the public facility would be entitled to recoup sales tax revenues on both the public facility and the hotel.

Next, you inquire whether a hotel can meet the definition of “public facility” under subsection (iii) or (iv) of § 58.1-608.3(A) if it is separated from the qualifying public facility by a public street. Specifically, you ask whether the hotel can be considered “adjacent to” the qualifying public facility. Because the statute itself does not define “adjacent,” the term “adjacent” should be interpreted according to its ordinary meaning.⁶ *Black’s Law Dictionary* defines “adjacent” as “lying near or close to, but not necessarily touching,”⁷ and the Supreme Court of Virginia, in construing the term, has found that, to be “adjacent,” objects need not touch, but may be separated by the intervention of some other object.⁸ Specifically, the Court determined that although a billboard was separated from a highway by a road, it was, in fact, adjacent

² VA. CODE ANN. § 58.1-608.3(C) (2013).

³ Section 58.1-608.3(A).

⁴ *Id.*

⁵ *Williams v. Commonwealth*, 265 Va. 268, 271 (2003) (citing *Vaughn, Inc. v. Beck*, 262 Va. 673, 677 (2001); *Thomas v. Commonwealth*, 256 Va. 38, 41 (1998)).

⁶ *City of Va. Beach v. Bd. of Supvrs.*, 246 Va. 233, 236 (1993) (quoting *Grant v. Commonwealth*, 223 Va. 680, 684 (1982)) (“An important principle of statutory construction is that ‘words in a statute are to be construed according to their ordinary meaning, given the context in which they are used.’”).

⁷ BLACK’S LAW DICTIONARY 44 (8th ed. 2004).

⁸ *State Highway & Transp. Comm’r of Va. v. Creative Displays of Norfolk Ltd.*, 236 Va. 352, 354 (1988) (quoting *Holston S. & P. Co. v. Campbell Trustee*, 89 Va. 396, 398 (1892)).

to the highway.⁹ Accordingly, a hotel may be considered adjacent to a convention center even if separated by a public road, and can satisfy the definition of a “public facility” under subsection (iv) of 58.1-608.3(A), so long as: (1) the convention center itself is owned by the city, and (2) the city enters into a public-private partnership with the hotel whereby the city contributes infrastructure, real property, or conference space. Provided these additional criteria are met, the municipal owner of the public facility would be entitled to recoup sales tax revenues on both the public facility and the hotel.

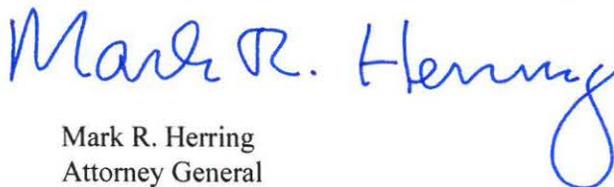
Finally, you ask whether a hotel could qualify as a “public facility” under subsection (iii) or (iv) of § 58.1-608.3(A) if the hotel were connected to a qualifying public facility via a bridge or walkover. Like “adjacent,” the word “attached” is not defined for purposes of the statute and must be given its plain meaning.¹⁰ To “attach” is “to fasten on or affix to; connect or join.”¹¹ Thus, I conclude that, should a bridge or walkway be constructed to connect a hotel with a qualifying convention center, the two structures would be “attached” for purposes of subsection (iii) of § 58.1-608.3(A). Thus, so long as the hotel also has been determined to be integral part of the public facility, the municipal owner of the public facility would be entitled to recoup sales tax revenues on both the public facility and the hotel.

Conclusion

Accordingly, it is my opinion that § 58.1-608.3 of the *Code of Virginia* allows for a hotel not originally constructed as part of a qualifying public facility to meet the definition of “public facility” under subsection (iii) and/or (iv) of § 58.1-608.3(A). It is also my opinion that a hotel separated by a public street from a qualifying public facility is “adjacent” to the facility within the definition of “public facility” under subsection (iv) of § 58.1-608.3(A). Finally, it is my opinion that a hotel which is separated from a public facility by a public street but is connected to the public facility by a bridge or walkway is “attached” to the public facility within the definition of “public facility” under subsection (iii) of § 58.1-608.3(A). If both or either of these definitions is satisfied, the municipal owner of the public facility is entitled to recoup sales tax revenues on both the public facility and the hotel.

With kindest regards, I am

Very truly yours,



Mark R. Herring
Attorney General

⁹ *Id.*

¹⁰ See *Mattaponi v. Dep't of Env'tl. Quality*, 270 Va. 423 (2005).

¹¹ THE AMERICAN HERITAGE DICTIONARY 139 (2d College ed. 1985).