



# COMMONWEALTH of VIRGINIA

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July 2, 2015

The Honorable Frank W. Wagner  
Member, Senate of Virginia  
Post Office Box 68008  
Virginia Beach, Virginia 23471

Dear Senator Wagner:

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 General Assembly may enact a general law<sup>1</sup> requiring the State Corporation Commission (“SCC” or “Commission”) to regulate the rates, charges, and services of electric utilities operated by municipal corporations.

## Applicable Law and Discussion

Article IX of the Constitution of Virginia establishes the SCC and sets forth its powers and duties.<sup>2</sup> Several provisions of Article IX are relevant to your inquiry.

Article IX, § 2 provides that “[s]ubject to such criteria and other requirements as may be prescribed by law, the Commission shall have the power and be charged with the duty of regulating the rates, charges, and services . . . of railroad, telephone, gas, and electric companies.”<sup>3</sup> Article IX, § 7 excludes “all municipal corporations, other political subdivisions, and public institutions owned or controlled by the Commonwealth” from the term “corporation” or “company” as it is used in Article IX.<sup>4</sup> Thus, the Constitution does not grant to the SCC the authority to regulate the rates, charges, and services of electric utilities operated by municipal corporations.

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<sup>1</sup> Because your inquiry specifically refers to general laws to expand the jurisdiction of the SCC, it is not necessary for this opinion to discuss the legality of possible special acts for that purpose.

<sup>2</sup> VA. CONST. art. IX.

<sup>3</sup> VA. CONST. art. IX, § 2.

<sup>4</sup> VA. CONST. art. IX, § 7. In accord, § 56-1 of the *Code of Virginia* provides generally that a “‘public service corporation’ or a ‘public service company’ shall not include a municipal corporation, other political subdivision or public institution owned or controlled by the Commonwealth . . . .”

It is critical to observe that while Article IX fails to grant the SCC express authority to regulate municipal utilities, it does not bar the SCC from regulating them. Article IX also authorizes the General Assembly to expand the jurisdiction of the SCC: Article IX, § 2 states that “[t]he Commission shall have such other powers and duties not inconsistent with this Constitution as may be prescribed by law.”<sup>5</sup> This provision affirms the General Assembly’s power to add to the SCC’s authority.<sup>6</sup> That is, the General Assembly has the power to enact laws that augment or supplement the SCC’s jurisdiction provided that such laws do not contravene the SCC’s fundamental power and duty to regulate the “rates, charges, and services . . . of railroad, telephone, gas, and electric companies.”<sup>7</sup> Moreover, the Constitution of Virginia gives the General Assembly broad authority, stating, “[t]he authority of the General Assembly shall extend to all subjects of legislation not . . . forbidden or restricted [by the Constitution]; and a specific grant of authority in [the] Constitution upon a subject shall not work a restriction of [the General Assembly’s] authority upon the same or any other subject.”<sup>8</sup> Thus, the General Assembly has all powers except those prohibited by either the Virginia or United States Constitutions.<sup>9</sup>

The General Assembly’s authority to confer powers to the SCC that are not explicitly provided by Article IX has been recognized by the Supreme Court of Virginia.<sup>10</sup> To the same end, a previous Attorney General’s opinion addressed questions surrounding the constitutionality of placing a municipal water authority under the regulation of the SCC.<sup>11</sup> It opined that the General Assembly has “the authority to confer upon the Commission jurisdiction over any subject matter not clearly and expressly limited by the Constitution . . . .”<sup>12</sup> The opinion also finds that Article IX, § 7 represents an express limitation upon the constitutional grant of power of the *Commission* over municipal corporations, but is not a limitation on the power of the *General Assembly*.<sup>13</sup> In other words, Article IX, § 7 “does not constitute a prohibition

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<sup>5</sup> VA. CONST. art. IX, § 2.

<sup>6</sup> Compare VA. CONST. art. IX, § 2 (providing the SCC with the express power and duty to regulate the rates, charges, services, and facilities of only railroad, telephone, gas, and electric companies) with VA. CODE ANN. § 56-232 (2012) (defining certain companies that provide water and sewerage services as public utilities to be regulated by the SCC).

<sup>7</sup> See VA. CONST. art. IX, § 2; accord *Marshall v. N. Va. Transp. Auth.*, 275 Va. 419, 428 (2008) (“An act is unconstitutional if it is expressly prohibited or is prohibited by necessary implication based upon the provisions of the Constitution of Virginia or the United States Constitution.”). Although the General Assembly cannot remove the SCC’s Article IX, § 2 power and duty to regulate the rates of utility companies generally, it may limit the scope of the Commission’s jurisdiction. See *Commonwealth v. Va. Elec. & Power Co.*, 214 Va. 457 (1974) (exempting governmental customers from the SCC’s regulation of rates charged by electric companies does not violate Article IX, § 2 of the Virginia Constitution).

<sup>8</sup> VA. CONST. art. IV, §14.

<sup>9</sup> See *Fairfax Cnty. Indus. Dev. Auth. v. Coyner*, 207 Va. 351, 355 (1966) (“It is an elementary principle of constitutional law that the General Assembly does not function under a grant of powers, and it may enact any law which is not prohibited by the Constitution of Virginia.”); *Harrison v. Day*, 201 Va. 386, 396 (1959) (“The Constitution of the State is not a grant of legislative powers to the General Assembly, but is a restraining instrument only . . .”).

<sup>10</sup> *Lewis Trucking Corp. v. Commonwealth*, 207 Va. 23, 29 (1966) (decided under former constitutional provision) (“[The Constitution] is not inclusive of all the powers and duties of the [SCC]; it does not prohibit or limit the power of the legislature to impose additional duties on the [SCC] in the performance of its duties.”).

<sup>11</sup> 1974-75 Op. Va. Att’y Gen. 421, 423.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

against action by the General Assembly to confer such jurisdiction upon the Commission.”<sup>14</sup> I find that this rationale is equally applicable to the rates, charges, and services of electric utilities operated by municipal corporations.

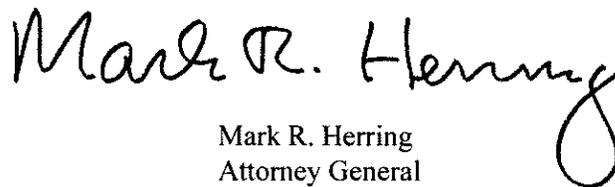
In sum, the Constitution vests the SCC with the express, fundamental power and duty to regulate the “rates, charges, and services . . . of railroad, telephone, gas, and electric companies.”<sup>15</sup> While that power does not extend to municipal electric utilities, the General Assembly may grant the SCC additional “powers and duties not inconsistent with [the] Constitution.”<sup>16</sup> Although the Constitution does not give the SCC jurisdiction over electric utilities operated by municipal corporations, the General Assembly retains the authority to enact a general law giving the SCC that jurisdiction.

#### Conclusion

Accordingly, it is my opinion that the General Assembly may enact a general law requiring the SCC to regulate the rates, charges, and services of electric utilities operated by municipal corporations.

With kindest regards, I am

Sincerely yours,

A handwritten signature in black ink that reads "Mark R. Herring". The signature is written in a cursive style with a large, looping "H" and "R".

Mark R. Herring  
Attorney General

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<sup>14</sup> *Id.*

<sup>15</sup> VA. CONST. art. IX, § 2.

<sup>16</sup> *Id.*