



COMMONWEALTH of VIRGINIA

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The Honorable Jeffrey L. McWaters
Member, Senate of Virginia
1207 Laskin Road
Virginia Beach, Virginia 23451

Dear Senator McWaters:

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

Issues Presented

Your inquiry concerns the potential expenditure of funds from the Chesapeake Bay Restoration Fund (the "Fund"). You ask whether the Chesapeake Bay Restoration Fund Advisory Committee (the "Committee") may disburse monies from the Fund in the form of grants for the development of a marketing strategy to promote the sale of "Friend of the Chesapeake" specialty license plates, and, if so, whether those grants may be awarded to a "for profit" entity or organization.

Background

The Committee is authorized by law to exercise general oversight over the expenditure of monies in the Fund, which are derived from the sale of the "Friend of the Chesapeake" license plate. You relate that, in 1995, the Committee developed guidelines pursuant to § 30-256(D) for the use of monies in the Fund. Under these guidelines, the Committee established a grant program to award monies in the Fund to nonprofit organizations; to local, state and federal public agencies; and to educational institutions for the purposes of environmental education and restoration projects related to the Chesapeake Bay.

Currently, the Committee is interested in funding grants for the development of a marketing strategy to increase sales of the "Friend of the Chesapeake" license plate. Increased sales of the license plate would result in more revenue for the Fund, which would in turn allow the Committee to provide more grant funding to the entities engaged in educational and restoration efforts related to the Chesapeake Bay. You inquire whether the Committee has the statutory authority to fund the development of a marketing strategy for the license plate in this manner.

Applicable Law and Discussion

Section 46.2-749.2 provides that the Commissioner of the Department of Motor Vehicles shall issue a special license plate bearing the words "Friend of the Chesapeake,"¹ and that a portion of the

¹ VA. CODE ANN. § 46.2-749.2(A) (2014) (stating that the Commissioner shall issue the plates upon receipt of an application and payment of fees prescribed by subsection B).

proceeds from the sale of these plates “shall be paid into the state treasury and credited to the special nonreverting fund known as the Chesapeake Bay Restoration Fund.”² The statute provides that monies in the Fund are “for use by the Commonwealth of Virginia for environmental education and restoration projects relating to the Chesapeake Bay and its tributaries.”³

The Chesapeake Bay Restoration Fund Advisory Committee was created to advise the General Assembly on the expenditure of monies received in the Chesapeake Bay Restoration Fund.⁴ Pursuant to § 30-256, the Committee is directed to develop goals and guidelines for the use of the Fund, which

may include but not be limited to cooperative programs with, or project grants to, state agencies, the federal government, or any not-for-profit agency, institution, organization, or entity, public or private, whose purpose is to provide environmental education and projects relating to the restoration and conservation of the Chesapeake Bay.⁵

The only additional condition listed is that monies in the Fund may not be used to supplant existing general fund appropriations, except as provided in the *Code*.⁶

I must consider both statutes when making a determination as to how monies in the Fund may be disbursed. The application and meaning of a statute are controlled by “the plain language used by the legislature . . . unless that language is ambiguous or otherwise leads to an absurd result.”⁷ In addition, “statutes dealing with a specific subject must be construed together in order to arrive at the object sought to be accomplished.”⁸

Based on the plain language of the statutes, it is clear that the purpose of the Fund is for “environmental education and restoration projects” relating to the Chesapeake Bay.⁹ Using these monies to pay an organization to develop a marketing strategy to increase sales of license plates, whatever the end goal may be, does not fall into either of those categories. Paying a marketing firm is, simply stated, advertising, and a part of commerce. It is not environmental education, nor is it a restoration project. Each of these statutes, read separately, and more importantly, read together, emphasizes this requirement, and this requirement cannot be ignored.

Given the above analysis, the Committee may not use the Fund to finance a grant to develop a marketing strategy to promote the sale of the license plates. Having answered this inquiry in the negative, it is unnecessary to address your second inquiry regarding the “for-profit” or “non-profit” status of the proposed recipient of the funding.

² Section 46.2-749.2(B) (stating that the annual fee for the plate is \$25 in addition to the prescribed fee for state license plates; furthermore, for each \$25 collected in excess of 1,000 registrations, \$15 shall be paid into the state treasury and be credited to the Fund).

³ *Id.*

⁴ VA. CODE ANN. § 30-256(A) (2011).

⁵ Section 30-256(D).

⁶ *Id.*

⁷ *Reston Hosp. Ctr., L.L.C. v. Remley*, 59 Va. App. 96, 106 (2011).

⁸ *Prillaman v. Commonwealth*, 199 Va. 401, 406 (1957).

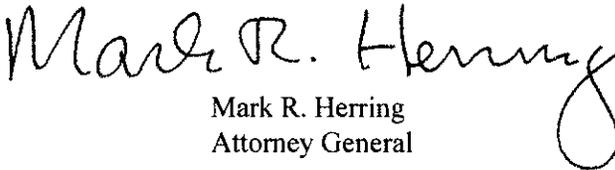
⁹ *See* § 46.2-749.2(B); *see also* § 30-256(D) (stating that the purpose of the Fund is for “environmental education and projects relating to the restoration and conservation of the Chesapeake Bay”).

Conclusion

Accordingly, it is my opinion that the Chesapeake Bay Restoration Fund Advisory Committee may not disburse monies from the Fund in the form of grants for the development of a marketing strategy to promote the sale of the "Friend of the Chesapeake" specialty license plates.

With kindest regards, I am

Sincerely yours,


Mark R. Herring
Attorney General