

Harry J. Parrish

Office of the Attorney General
January 24, 1995

1995 Va. Op. Atty. Gen. 39 (Va.A.G.), 1995 Va. Rep. Atty. Gen. 39, 1995 WL 228369

Office of the Attorney General

Commonwealth of Virginia

*1 January 24, 1995

*1 The Honorable Harry J. Parrish
*1 Member, House of Delegates
*1 General Assembly Building
*1 910 Capitol Street, Room 511
*1 Richmond, Virginia 23219

My dear Delegate Parrish:

*1 You ask whether the **Virginia Outdoors Foundation** (the "Foundation") is a public body for the purpose of exercising the powers authorized in the Open-Space Land Act, Chapter 17 of Title 10.1, §§ 10.1-1700 through 10.1-1705 of the Code of Virginia. You also ask whether the Foundation has the authority to borrow money.

*1 The Foundation is established under Chapter 18 of Title 10.1, §§ 10.1-1800 through 10.1-1804. The Foundation is a self-governing "body politic"¹ and has many characteristics of a state agency. It is administered by a board of trustees appointed by the Governor.² Section 10.1-1801(3) grants to the Foundation the authority to promulgate regulations in accordance with the Administrative Process Act. Section 9-6.14:4(A), a portion of the Administrative Process Act, defines "agency" as any "board or other unit of state government empowered by the basic laws to make regulations" The Foundation must submit an annual report to the Governor and the General Assembly.³ Gifts to the Foundation are deemed gifts to the Commonwealth, which are exempt from state and local taxes.⁴ The Foundation has perpetual succession until dissolved by the General Assembly, in which event its properties pass to the Commonwealth.⁵

*1 The General Assembly established the Foundation "to promote the preservation of open-space lands and to encourage private gifts of money, securities, land or other property to preserve the natural, scenic, historic, scientific, open-space and recreational areas of the Commonwealth."⁶ The purpose of the Open-Space Land Act is also to preserve open-space land in the Commonwealth.⁷ The definition of "public body" in that Act is very broad and includes many public entities other than state agencies that carry out public functions.⁸ The Foundation was created to carry out a public function, and has the authority to acquire land for a public use. Therefore, I am of the opinion that the Foundation is a public body for purposes of the Open-Space Land Act and is authorized to exercise the powers granted by the Act.

*1 You next inquire whether the Foundation has the authority to borrow money.

*1 Section 10.1-1702(A)(1) of the Open-Space Land Act authorizes a public body, among other enumerated powers, "[t]o borrow funds and make expenditures."

*1 Section 10.1-1801 gives the Foundation very broad powers with regard to matters involving accumulation of real estate. Section 10.1-1801(5) authorizes the Foundation

*1 "[t]o acquire by gift, devise, purchase, or otherwise, absolutely or in trust, and to hold and, unless otherwise restricted by the terms of the gift or devise, to encumber, convey or otherwise dispose of, any real property, or any estate or interest therein, as may be necessary and proper in carrying into effect the purposes of the Foundation[.]

*2 The enabling statute clearly provides that the Foundation is intended to obtain interests in real estate to accomplish the intent of the General Assembly of preserving "the natural, scenic, historic, scientific, open-space and recreational areas of the Commonwealth."⁹ To accomplish this intended result, the Foundation must be able to finance its acquisition activities as is customary in the purchase of real estate. In addition, the power authorized to public bodies to borrow funds to accomplish the purposes of the Open-Space Land Act under § 10.1-1702(A)(1) is supplementary to the powers conferred by any other provision of law.¹⁰

*2 I am, therefore, of the opinion that the Foundation is authorized under the provisions of §§ 10.1-1801 and 10.1-1702(A)(1) to borrow money to accomplish its purposes.

*2 With kindest regards, I am
Very truly yours,

*2 James S. Gilmore, III
*2 Attorney General

Footnotes

1 See § 10.1-1800.

2 See id.

3 Section 10.1-1802.

4 Section 10.1-1803.

5 Section 10.1-1801(1).

6 Section 10.1-1800.

7 See, e.g., § 10.1-1700 (defining “open-space land”).

8 See id.

9 Section 10.1-1800.

10 See § 10.1-1705.

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