



Virginia's First Regional Industrial Facility Authority

6580 Valley Center Drive, Suite 124

Radford, VA 24141

Phone (540) 639-1524 FAX (540) 831-6093

Bland County

John C. Thompson
Henry M. Blessing

Craig County

Jay Polen

Giles County

Chris McKlarney
Richard McCoy

Montgomery County

Mary W. Biggs
Clay Goodman

Pulaski County

Peter M. Huber
Shawn Utt

Roanoke County

Charlotte Moore
Douglas Chittum

Wythe County

Bucky Sharitz
Martha P. Umberger

City of Radford

Bruce Brown
Basil Edwards

City of Roanoke

Brian Townsend
Court G. Rosen

City of Salem

John Givens
Benjamin Tripp

Town of Christiansburg

Randy Wingfield
Barry D. Helms

Town of Dublin

Doug Irvin
William H. Parker

Town of Narrows

Clayton Davis
Buddy Kast

Town of Pearisburg

Kenneth F. Vittum
Brad Jones

Town of Pulaski

Morgan Welker
John Hawley

MEMORANDUM

DATE: November 5, 2008
TO: Virginia's First Regional Industrial Facility Authority Members
FROM: Dave Rundgren
SUBJECT: November 12, 2008 Meeting – *Cancelled*

The November meeting of Virginia's First Regional Industrial Facility Authority has been cancelled.

The next meeting will be held December 10, 2008 immediately following the Commerce Park Participation Committee meeting being held at 4:30 p.m. The meeting will be held at the New River Valley Competitiveness Center, Fairlawn.

If you have any questions, feel free to contact Christy Straight at cstraight@nrfdc.org or 540.639.9313



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MEMORANDUM

DATE: December 3, 2008
TO: Virginia's First Regional Industrial Facility Authority Members
FROM: Dave Rundgren
SUBJECT: December 10, 2008 Meeting

A meeting of the Virginia's First Regional Industrial Facility Authority Members will be held on **December 10, 2008**, immediately following the Commerce Park Participation Committee meeting being held at 4:30 p.m. The meeting will be held at the New River Valley Competitiveness Center, Fairlawn.

Please mark your calendar and notify me as to your plans for attendance.

Virginia's First Regional Industrial Facility Authority Agenda December 10, 2008 New River Valley Competitiveness Center Fairlawn, VA

1. Roll Call
2. Approval of the October 8, 2008 meeting minutes
3. Treasurer's Report for November 2008 and December 2008 (*to be provided at the meeting*)
4. Old Business
 - a) Attorney general's legal opinion regarding voting requirements
 - b) Staffing Committee report
5. New Business
 - a) Report from Participation Committee
 - b) Presentation on Virginia Nanotechnology Park by John Hawley and Shawn Utt
6. Administrative Staff Report
7. Other Business
8. Adjournment

Next scheduled meeting: January 14, 2008

Virginia's **FIRST REGIONAL INDUSTRIAL FACILITY AUTHORITY**
Meeting Minutes
October 8, 2008

1. Roll Call

Chairman McKlarney called the meeting of the Authority to order. Mr. McKlarney introduced Mr. Trip from Salem. A roll call was taken and a quorum determined (see attached).

2. Approval of the September 10, 2008 meeting minutes

Motion: Ms. Biggs moved the Board approve of the September 10, 2008 Authority meeting minutes. Mr. Utt seconded the motion.

Action: The motion carried.

3. Treasurer's Report for October 2008

Mr. Helms reviewed the Treasurer's Report for October 2008. The accounts payable for the month include AEP, Eire Insurance, NRVPC, and NRV Development Corporation.

Motion: Ms. Biggs moved the Board approve the October treasurer's report and authorize payment of accounts payable as presented. Mr. Sheffey seconded the motion.

Action: The motion carried.

4. Old Business

a) Consideration of request for legal opinion regarding voting requirements

The Authority's attorney had not provided a draft of his letter to the Attorney General in time for the meeting.

Motion: Mr. Goodman moved the Board authorize the chairman to review and approve the letter to be sent before the next Authority meeting. Ms. Umberger seconded the motion.

Action: The motion carried.

No other business was discussed under old business.

5. New Business

a) Report from Participation Committee

a. EDA grant for water and sewer

The award acceptance letter was presented with the participation committee's recommendation to accept the EDA offer. Congressman Boucher will be at the New River Valley airport on October 16 at 3:30pm to announce the grant.

Motion: Ms. Biggs moved to accept the EDA grant offer. Mr. Welker seconded the motion.

Action: The motion carried.

b. Staffing recommendation

The staffing committee's report and the participation committee's recommendation were presented to the Board for consideration.

Motion: Mr. Goodman moved the Board authorize hiring of a contractor to be paid on an hourly basis as recommended by the participation committee. Mr. Irvin seconded the motion.

Action: The motion carried.

b) Financial audit for FY 2008

The auditor's letter was provided to the Board. Mr. Rundgren reviewed the Board's responsibilities. A final report will be provided when it is available.

No other business was discussed under old business.

6. Administrative Staff Report

No additional staff report was given under this item.

7. Other Business

There was no other business to come before the Authority.

8. Adjournment

With no further business to discuss, the meeting adjourned at 6:30 pm. The next meeting will be November 12, 2008.

Respectfully Submitted,

David W. Rundgren

Approved by,


Barry Helms

Virginia's FIRST REGIONAL INDUSTRIAL FACILITY AUTHORITY
Attendance

October 8, 2008
New River Competitiveness Center
Radford, VA

Jurisdiction	Member	Alternate
Bland County	() <i>John C. Thompson</i> () Henry M. Blessing	
Craig County	() (x) Jay Polen	
Giles County	(x) <i>Chris McKlarney</i> () Richard McCoy	
Montgomery	(x) Mary Biggs (x) Clay Goodman	(x) Bob Isner () Carol Edmonds
Pulaski County	(x) <i>Shawn Utt</i> (x) Peter Huber	(x) Joe Sheffey (x) Ronnie Coake
Roanoke County	() Charlotte Moore (x) Douglas Chittum	() Joseph "Butch" Church () Jill Loope
Wythe County	() Bucky Sharitz (x) Martha P. Umberger	
City of Radford	() <i>Bruce Brown</i> (x) Basil Edwards	
City of Roanoke	(x) <i>Court Rosen</i> () Brian Townsend	() Anita Price
City of Salem	() John Givens (x) Benjamin Tripp	
Town of Christiansburg	(x) Randy Wingfield (x) <i>Barry Helms</i>	
Town of Dublin	() Samuel Gregory Jr. (x) <i>Doug Irvin</i>	
Town of Narrows	(x) <i>Clayton Davis</i> () Buddy Kast	
Town of Pearisburg	(x) <i>Brad Jones</i> (x) Ken Vittum	
Town of Pulaski	(x) <i>Morgan Welker</i> () John Hawley	

Others Present: Gary McCollum, Trevor Kimzey

Staff Present: Dave Rundgren

Guyann, Memmer & Dillon, P.C.

ATTORNEYS AT LAW
415 S. COLLEGE AVENUE
SALEM, VA 24153
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NOV 20 2008

NRVPDC

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November 19, 2008

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Mr. David W. Rundgren
Executive Director
Virginia's First Regional Industrial Facility Authority
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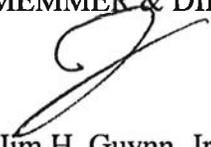
Dear Dave:

Enclosed please find a copy of correspondence from the Attorney General and attached opinion. You will note that the Attorney General declines to give us an opinion because he is not authorized to provide opinions to attorneys for Authorities. It seems to me that the opinion attached to the Attorney General's correspondence supports the hypothesis that Authority funds can be used for projects that a majority of the Authority members support and it does not require a majority approval. However, if there is a need for a more specific opinion, I would suggest that one of the Authority members ask their attorney to request such an opinion from the Attorney General.

Please give me a call if you have any questions.

Very truly yours,

GUYNN, MEMMER & DILLON, P.C.



Jim H. Guyann, Jr.

JHG/lsu
Enclosure



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Robert F. McDonnell
Attorney General

November 7, 2008

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

Mr. Jim H. Guynn
Guynn, Memmer & Dillon, P.C.
415 S. College Avenue
Salem, Virginia 24153

Dear Mr. Guynn:

Thank you for your letter to Attorney General Robert F. McDonnell regarding Regional Industrial Facilities.

This Office is unable to render an official opinion on the questions presented in your letter since we are not authorized by the statute to respond to a request from an attorney for a regional industrial authority. Section 2.2-505 of the *Code of Virginia*, the statutory provision that permitting the Attorney General to render official advisory opinions, provides as follows:

A. The Attorney General shall give his advice and render official advisory opinions in writing only when requested in writing so to do by one of the following: the Governor; a member of the General Assembly; a judge of a court of record or a judge of a court not of record; the State Corporation Commission; an attorney for the Commonwealth; a county, city or town attorney in those localities in which such office has been created; a clerk of a court of record; a city or county sheriff; a city or county treasurer or similar officer; a commissioner of the revenue or similar officer; a chairman or secretary of an electoral board; or the head of a state department, division, bureau, institution or board.

Our Office is limited as provided by this statute.

I am enclosing a prior opinion of this Office that addressed matters related to the powers of the Coalfield Economic Development Authority and may be of some value. I apologize that we may not be of more assistance. Should you have any questions, please feel free to call me at (804) 786-7240.

With kindest regards, I am

Sincerely,

A handwritten signature in cursive script that reads "Stephanie L. Hamlett".

Stephanie L. Hamlett
Senior Counsel to the Attorney General

Encl.

AG Op. COUNTIES, CITIES AND TOWNS: VIRGINIA COALFIELD, 2000 Va. AG 83 (00-040)

COUNTIES, CITIES AND TOWNS: VIRGINIA COALFIELD ECONOMIC DEVELOPMENT AUTHORITY — INDUSTRIAL DEVELOPMENT AND REVENUE BOND ACT.

CONSTITUTION OF VIRGINIA: TAXATION AND FINANCE.

Board of Virginia Coalfield Economic Development Authority is appropriate body to consider whether Authority may make grant to Industrial Development Authority of Wise County which will pass money to prospective company willing to locate in county. Coalfield Authority may loan or grant funds to Wise County Authority, provided Board makes independent legislative determination that contemplated use of funds furthers one or more eligible public purposes. If Wise County Authority finds that prospective project meets public purposes of Act, financing of project is within its discretionary power. Contributing to capital of company does not violate Constitution, provided attending facts and circumstances support determination that use of funds furthers requisite public purpose.

DATE: May 17, 2000

SDATE: 000517

REQUESTOR: The Honorable Terry G. Kilgore, Member, House of Delegates

CITE: 2000 83

You ask for guidance regarding the ability of the Virginia Coalfield Economic Development Authority to "pass monies on" to the Industrial Development [Page 84] Authority of Wise County ("Wise County Authority"), which will, in turn, "pass these monies on" to a prospective industry willing to locate in Wise County. Materials accompanying your request indicate that the development agreement between the prospective company and the Wise County Authority outlines the construction of a facility in Wise County which will be an information technology support center. The materials also provide that such company occupies such centers in other states and worldwide. Additionally, the materials provide that the project ultimately may create over 400 jobs in such center. These materials note that that the development agreement states that the monies are a "contribution to the capital" of the company.

Chapter 60 of Title 15.2, §§ 15.2-6000 through 15.2-6015 of the *Code of Virginia*, creates the Virginia Coalfield Economic Development Authority ("Coalfield Authority" or "Authority") and details its powers. The Coalfield Authority is created as a body politic to assist the Southwest Virginia coalfield region in achieving some degree of economic stability.¹ "All powers, rights and duties conferred . . . upon the Authority" are exercised by its sixteen-member Board.² Wise County is one of the localities participating in the Coalfield Authority, as specified in § 15.2-6002.

Chapter [60] is remedial in nature and is intended to address long-standing and intractable problems related to economic development and the absence of a diverse economic base in the coalfield region of Virginia. As a remedial statute, Chapter [60] should be liberally construed to accomplish this underlying legislative intent.^[3]

Section 15.2-6011 authorizes the Authority to make loans and grants for the benefit of qualified private, for-profit enterprises; nonprofit industrial development corporations; or industrial development authorities.⁴ Section 15.2-6011 also specifies the eligible uses and projects for which such Authority loans and grants may be made.⁵ Specifically, § 15.2-6011 provides that the Authority is "empowered to pledge its funds, and make loans and grants to . . . industrial development authorities for financing"⁶ certain enumerated purposes. Among such purposes are the "[p]urchase of real estate," "[c]onstruction . . . of buildings," and "[s]uch other improvements as the Authority deems necessary to accomplish its purpose."⁷

Quite clearly, the overriding purpose of the Coalfield Authority is to support the economic development of the coalfield region. To further such purpose, the legislation establishing and granting powers to the Coalfield Authority places few prohibitions on the Authority.⁸ "The Board of the Authority is [Page 85] the appropriate body to consider all of the relevant facts" [and] "the decision whether to make the grant is within the discretion of the Board of the Authority."⁹ Assuming the money will be used for one of the eligible purposes specified in § 15.2-6011, the Authority may make a loan or grant of funds.¹⁰ Thus, the Authority may loan or grant the funds, provided it makes an "independent legislative determination that the contemplated use of the funds furthers the public purposes"¹¹ enunciated in § 15.2-6011. It is my opinion, therefore, that the Coalfield Authority has the discretion to make a loan or grant to the Wise County Authority so long as it is satisfied, based on all the relevant facts, that such loan or grant is for the financing of one or more of the purposes set forth in § 15.2-6011.

The Industrial Development and Revenue Bond Act, §§ 15.2-4900 through 15.2-4920, authorizes localities to create industrial development authorities.¹² The overall purpose for creating industrial development authorities is to promote trade and industry by inducing certain types of enterprises and institutions to locate and remain in the Commonwealth.¹³ "Any activity by an industrial development authority must have a demonstrable public purpose. Whether a transaction is performed for a proper public purpose is a factual matter determined by the circumstances of each case. Generally, a transaction must benefit primarily

the public and only incidentally private interests."14

Specifically, an industrial development authority "may make loans or grants from the authority's revenues to individuals or business entities for the purpose of promoting economic development."15 Additionally, § 15.2-4901 provides that the Industrial Development and Revenue Bond Act is to be liberally construed in conformity with the stated intentions of the legislature.16 Whether a transaction in which an industrial development authority is engaged comes within any of the express or implied powers of § 15.2-4905 will depend on the facts of the particular transaction.17

In making this determination, the industrial development authority acts in its legislative capacity.18 Section 15.2-4901 confines the discretionary power of an industrial development authority to that exercised "for the benefit of the inhabitants of the Commonwealth, either through the increase of their commerce, or through the promotion of their safety, health, welfare, convenience or prosperity."19 If the authority finds that a proposed project meets the public purposes of the Industrial Development and Revenue Bond Act, then the financing of the project is within its discretionary power.20 Accordingly, it is my opinion that it is within the discretion of the Wise County Authority to engage in the transaction in issue upon its determination, based on all the [Page 86] relevant facts, that its proposed agreement with the company supports its public purposes.21

Finally, you also raise the issue of whether a grant in the nature of a contribution to the capital of the corporation violates Article X, § 10 of the Constitution of Virginia (1971).

Article X, § 10 provides:

Neither the credit of the Commonwealth nor of any county, city, town, or regional government shall be directly or indirectly, under any device or pretense whatsoever, granted to or in aid of any person, association, or corporation; nor shall the Commonwealth or any such unit of government subscribe to or become interested in the stock or obligations of any company, association, or corporation for the purpose of aiding in the construction or maintenance of its work; nor shall the Commonwealth become a party to or become interested in any work of internal improvement, except public roads and public parks, or engage in carrying on any such work; nor shall the Commonwealth assume any indebtedness of any county, city, town, or regional government, nor lend its credit to the same. This section shall not be construed to prohibit the General Assembly from establishing an authority with power to insure and guarantee loans to finance industrial development and industrial expansion and from making appropriations to such authority.

The Supreme Court of Virginia has held that the three prohibitions contained in Article X, § 10, commonly referred to as the "credit clause," "stock or obligations clause," and the "internal improvement clause," are intended "to remedy the same evil" — "the use of the State's funds and credit to foster and encourage construction and operation of private enterprises."22 In interpreting and applying these three clauses, the Court consistently has held that "the moving consideration and motivating cause of a transaction are the chief factors by which to determine if it is prohibited."23 Thus, the Court repeatedly has found that transactions which involve extensions of public credit or expenditures of public funds that benefit private enterprises do not violate Article X, § 10, provided such transactions are motivated by a clearly defined public purpose.24 "It is the animating purpose of the transaction, and not its form or the extent to which it may benefit the private business involved, that determines its constitutionality."25 [Page 87]

Based on these principles, this Office has concluded, for example, that the animating purpose of the Commonwealth's acquisition of a private corporation's stock was to benefit the state retirement system rather than to aid the corporation and thus did not violate Article X, § 10.26 Additionally, this Office has concluded that an industrial development authority may acquire an industrial park through the purchase of stock of the private development corporation to accomplish the transfer of the ownership of the park from the corporation to the authority with the ultimate goal of attracting industrial clients to the area.27 Also, this Office has concluded that a county may advance funds to an industrial development authority so that such authority may make a loan to a private corporation, provided that the authority makes its independent legislative determination that the contemplated use of the funds furthers the public purposes of the Industrial Development and Revenue Bond Act.28 Similarly, it is my opinion that contributing to the capital of a corporation does not violate Article X, § 10, so long as the attending facts and circumstances support a determination that the use of the funds furthers a requisite public purpose.29

FOOTNOTES

1 See §§ 15.2-6000, 15.2-6001; 1997 Op. Va. Att'y Gen. 167, 168, 1997 Va. AG 167, 168.

2 Section 15.2-6003; see also 1997 Va. AG, *supra*, at 168.

3 1989 Op. Va. Att'y Gen. 132, 134, 1989 Va. AG 132, 134 (citing Chapter 40, predecessor to Chapter 60) (citations omitted); see also § 15.2-6013 ("chapter . . . shall be liberally construed to effect the purposes thereof").

4 See 1989 Op. Va. Att'y Gen., *supra*, at 133 (citing § 15.1-1646, predecessor to § 15.2-6011).

5 *Id.*

6 The term "finance" means, among other things, "to provide capital for." *Needles v. Kansas City*, 371 S.W.2d 300, 305 (Mo. 1963) (quoting 36A C.J.S. 410, 411 (1961)); see also MERRIAM WEBSTER'S COLLEGIATE DICTIONARY 436 (10th ed. 1996) (defining "finance" as "obtaining of funds or capital").

7 Section 15.2-6011(1), (5), (10).

8 See 1995 Op. Va. Att'y Gen. 97, 99, 1995 Va. AG 97, 99.

9 *Id.* at 100.

10 *Id.* at 99 (citing § 15.1-1646, predecessor to § 15.2-6011).

11 1983-1984 Op. Va. Att'y Gen. 103, 106, 83-84 Va. AG 103, 106 (concluding that industrial development authority must make independent legislative determination that use of funds it receives from county furthers public purposes of authority).

12 Section 15.2-4901.

13 *Id.*; see 1997 Op. Va. Att'y Gen. 57, 58, 1997 Va. AG 57, 58.

14 1990 Op. Va. Att'y Gen. 88, 89, 1990 Va. AG 88, 89.

15 See 1999 Op. Va. Att'y Gen. 67, 68, 1999 Va. AG 67, 68 (citing § 15.2-4905(13)).

16 1999 Op. Va. Att'y Gen. 65, 66, 1999 Va. AG 65, 66.

17 1999 Op. Va. Att'y Gen., *supra* note 15, at 68.

18 See *I. D. A. v. La France Cleaners*, 216 Va. 277, 217 S.E.2d 879 (1975) (financing authorized by industrial development authority for construction of proposed laundry facility to benefit area hospitals was designed to promote public purpose); 1980-1981 Op. Va. Att'y Gen. 197, 198, 80-81 Va. AG 197, 198 (discussing methods industrial development authority may employ to finance construction of office building).

19 See also 1980-1981 Op. Va. Att'y Gen., *supra*, at 198 (citing § 15.1-1375, predecessor to § 15.2-4901).

20 See *id.* at 199.

21 Compare *Gordon v. Fairfax County*, 207 Va. 827, 834, 153 S.E.2d 270, 276 (1967) (county loan to airport authority promotes essential governmental functions, violates no public trust, and is not abuse of discretion); 1998 Op. Va. Att'y Gen. 96, 98, 1998 Va. AG 96, 98 (concluding that (1) housing authority generally has broad discretion in control of its assets, provided discretion is exercised in accordance with underlying purpose of housing authority legislation and does not violate public trust impressed upon authority's assets; and (2) whether transaction is consistent with purpose of housing authority legislation is question of fact).

22 *Almond v. Day*, 197 Va. 782, 793, 91 S.E.2d 660, 668 (1956); see also 1992 Op. Va. Att'y Gen. 138, 140, 1992 Va. AG 138, 140.

23 *City of Charlottesville v. DeHaan*, 228 Va. 578, 585, 323 S.E.2d 131, 134 (1984) (quoting *Almond v. Day*, 197 Va. at 790, 91 S.E.2d at 666), quoted in 1992 Op. Va. Att'y Gen., *supra*, at 141.

24 See, e.g., *City of Charlottesville v. DeHaan*, 228 Va. at 578, 323 S.E.2d at 131 (under animating purpose test, city's appropriation of funds to redevelopment authority, which, in turn, lent funds to private hotel developer, served purposes of Housing Authorities Law and did not violate credit clause); *Fairfax County v. County Executive*, 210 Va. 253, 169 S.E.2d 556 (1969) (localities' guarantee of debts of metropolitan transit authority serves valid public purpose, notwithstanding benefit to bondholders and private contractors operating transit service); *Development Authority v. Coyner*, 207 Va. 351, 150 S.E.2d 87 (1966) (upholding authority's issuance of revenue bonds to finance facility for lease to private industry based on legislative finding that promotion of industrial development is for public purpose); *United States Fidelity Co. v. Carter*, 161 Va. 381, 406, 170 S.E. 764, 773 (1933) ("credit clause" does not prohibit deposit of state or county funds in bank in usual course of business, unless deposit is made for specific purpose of aiding bank); *Holston Corp. v. Wise County*, 131 Va. 142, 157-58, 109 S.E. 180, 184 (1921) (county's guarantee of payment to quarry for crushed stone furnished to county road contractors does not violate "credit clause," because guarantee is motivated by need to ensure supply of stone at favorable price and not to aid credit of private business).

25 1992 Op. Va. Att'y Gen., *supra* note 22, at 141.

26 See *id.*; 1991 Op. Va. Att'y Gen. 213, 216, 1991 Va. AG 213, 216.

27 *See* 1990 Op. Va. Att'y Gen. 88, 1990 Va. AG 88.

28 *See* 1983-1984 Op. Va. Att'y Gen. 103, 106, 83-84 Va. AG 103, 106.

29 Note 1992 Op. Va. Att'y Gen., *supra* note 22, at 141-42 (expenditures must benefit governmental entity's public purpose; other possible public benefits are not to be considered).

Guynn, Memmer & Dillon, P.C.

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NOV 10 2008

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November 5, 2008

The Honorable Robert F. McDonnell
Attorney General
Commonwealth of Virginia
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219

Re: Request for Opinion on behalf of Virginia's First Regional Industrial
Facility Authority

Dear Attorney General McDonnell:

As counsel for the Virginia's First Regional Industrial Facility Authority (hereafter "VFRIFA") and pursuant to Virginia Code § 2.2-505, I hereby request an opinion of the Attorney General on the issue presented below. As required, this letter provides a statement of the facts together with my legal conclusions.

STATEMENT OF THE FACTS

VFRIFA is a body corporate organized and created pursuant to the Virginia Regional Industrial Facilities Act, Chapter 64 of Title 15.2 of the Code of Virginia (the "Act") by concurrent resolutions of the Board of Supervisors of Bland, Craig, Giles, Montgomery, Pulaski, Roanoke and Wythe Counties and the City Councils of Roanoke, Radford and Salem and the Town Councils of Christiansburg, Dublin, Narrows, Pearisburg and Pulaski on September 1, 1998. The Authority is governed by thirty directors appointed by the participating localities. Each jurisdiction appoints two directors. The purpose of the Authority is to enhance the economic base for the member localities by developing, owning and operating one or more facilities on a cooperative basis. As such, the Authority is authorized to expend such funds as may be available to it for the purpose of developing industrial facilities, including but not limited to (i) purchasing real estate; (ii) grading sites (iii) improving, replacing and extending water, sewer, natural gas, electrical and other utility lines; (iv) constructing, rehabilitating and expanding buildings; (v) constructing parking facilities; (vi) constructing access roads, streets, and rail lines; (vii) purchasing or leasing machinery and tools; and (viii) making any other improvements deemed necessary by the Authority to meet its objectives. Each member of the VFRIFA pays an annual fee of \$5,000 to VFRIFA to participate.

The Honorable Robert F. McDonnell
Attorney General
Request for Opinion
November 4, 2008
Page 2 of 3

Section VII of the "General Operations of the Authority" provisions of the agreement creating the VFRIFA provides as follows:

The Authority [VFRIFA] shall, from time to time, by majority action of the Board of the Authority, establish such fees as shall be necessary to be paid by the Member Localities to support the general activities of the Authority, provided, however, that without its express agreement, no Member Locality shall be required to pay fees and assessments in excess of five thousand dollars (\$5,000) per year to support the general activities of the Authority." The fees as of October of 2007 had resulted in a fund of approximately \$500,000. To date, only a small amount of the general account funds have been expended to support the development of new projects.

On October 14, 1999, the VFRIFA entered into an agreement with certain of its members and the town of Dublin (the Counties of Craig, Giles, Montgomery, Pulaski, Roanoke, Wythe, Bland and the Cities of Radford and Roanoke, and the Towns of Dublin, Pearisbug and Pulaski) styled "The New River Valley Commerce Park Project Participation Agreement (the members shall hereafter be referred to as "the Participation Committee"). Wythe County later withdrew from the Participation Agreement. This agreement was entered into for purposes of developing the New River Valley Commerce Park, including the purchase of approximately 580 acres of land in Pulaski County Virginia and the financing of the Commerce Park Project by the issuance of bonds by VFRIFA. The Commerce Park Participation Committee members pay their own annual share of the project above and beyond the Authority Fee to fund the Commerce Park development. As noted above, not all members of the Authority are also members of the Participation Committee.

In 2007 the Participating Committee for the New River Valley Commerce Park began the process of developing an updated business plan for the park. As part of that process a question was presented to the Board of the VFRIFA as follows:

QUESTION PRESENTED

Can general funds in the VFRIFA general account be used to support the Commerce Park Participation Committee?

The Honorable Robert F. McDonnell

Attorney General

Request for Opinion

November 4, 2008

Page 3 of 3

An argument has been put forward by an attorney for one of the members that use of VFRIFA general account funds to support the Participation Committee would result in some members contributing more than \$5,000 per year toward the general activities of VFRIFA and therefore is not permissible.

LEGAL CONCLUSION

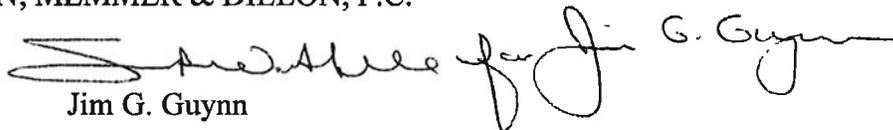
This firm is of the opinion that the question may be answered affirmatively if the expenditure is approved by the Board of the VFRIFA based on the following analysis:

VFRIFA is granted broad powers under the Virginia Regional Industrial Facilities Act, including the power to invest VFRIFA funds, to expend "such funds as may be available to it for the purpose of developing facilities," to "[e]nter into agreements with any other political subdivision of the Commonwealth for joint or cooperative action," and to do "all things necessary or convenient to carry out the purposes of this chapter." Va. Code § 15.2-6405. The expenditure of funds to support the Commerce Park Participation Committee comports with the purpose of VFRIFA and is allowed by the Act. The Board of VFRIFA must approve any general expenditure, so the interests of the non-participating localities are protected by their representatives on the Board. This firm is also of the opinion that The VFRIFA General Operating Agreement limitation on member fees to no more than \$5,000 does not by its terms prohibit VFRIFA from contributing its general funds to entities whose contributing members may include members of VFRIFA, even if this would result in a particular member of VFRIFA contributing more than \$5,000 a year toward projects supported by VFRIFA. This firm interprets the \$5,000 restriction as a cap on dues payable to VFRIFA and not as a cap on the amount that a member locality may be required to pay toward a project supported by VFRIFA and another entity, where a member of VFRIFA is also a member of another entity.

Due to the conflict of opinion between counsel, the Board of VFRIFA has requested this question to be submitted to your office for an opinion.

Respectfully submitted,

GUYNN, MEMMER & DILLON, P.C.


Jim G. Guynn

JHG/SAW

cc: Keith Holt, Chairman ✓