



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable Laura M. Rudy
Treasurer, Stafford County
Post Office Box 68
Stafford, Virginia 22555

Dear Ms. Rudy:

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

Issues Presented

You ask two questions regarding the development of a pooled investment program for the use of local governments and other political subdivisions.¹ Specifically, you ask whether two or more political subdivisions may invest in a jointly administered investment pool, and if so, whether any such pooled investment program can be established in the form of a trust fund.

Response

It is my opinion that two or more political subdivisions may exercise their investment powers by investing in a jointly administered investment pool and that such pooled investment program may be organized in the form of a trust fund.

Background

You relate that a number of political subdivisions in the Commonwealth are interested in establishing a pooled investment program for the exclusive use of political subdivisions, to be named the "Virginia Investment Pool." You project that this pool will provide greater liquidity and diversity in investment portfolios for individual participants, as well as allowing participating political subdivisions to share investment management and administrative expenses.

You indicate that the Virginia Investment Pool will be focused on investing assets that are available for investment for periods of six months or longer. The program will select investments with an estimated average duration of 1.5 years. Investments made with the pooled funds will be only in securities or instruments listed as authorized investments in the Investment of Public Funds Act of the *Code of Virginia*. Counties, cities, and towns wanting to join will be required to approve an ordinance

¹ For purposes of this opinion, I will refer to both municipal corporations (cities, towns, and service authorities) and counties as "political subdivisions."

authorizing execution of an agreement for participation in the Virginia Investment Pool. Other political subdivisions would be required to adopt a resolution for that purpose.

Applicable Law and Discussion

In determining whether localities possess a particular power, Virginia follows the Dillon Rule, which provides that “[m]unicipal corporations possess and can exercise only those powers expressly granted by the General Assembly, those necessarily or fairly implied therefrom, and those that are essential and indispensable.”²

The Constitution of Virginia states that,

The General Assembly may provide by general law or special act that any county, city, town or other unit of government may exercise any of its powers or perform any of its functions and may participate in the financing thereof jointly or in cooperation with the Commonwealth or any other unit of government within or without the Commonwealth.^[3]

Pursuant to that enabling authority, the Joint Powers Act⁴ provides that,

Any power, privilege or authority exercised or capable of exercise by any political subdivision of this Commonwealth may be exercised and enjoyed jointly with any other political subdivision of this Commonwealth having a similar power, privilege or authority except where an express statutory procedure is otherwise provided for the joint exercise.^[5]

The Investment of Public Funds Act expressly authorizes political subdivisions to invest funds belonging to them or within their control and enumerates the types of securities in which such funds may be invested.⁶ It is thus clear that political subdivisions are authorized to make and manage independently the investments you describe. Moreover, I am not aware of any statutory procedures specifically governing the potential joint exercise of the investment powers afforded localities separately.

² *Richmond v. Confrere Club of Richmond, Inc.*, 239 Va. 77, 79, 387 S.E.2d 471, 473 (1990) (citations omitted). A corollary of this rule applies to counties. *See Bd. of Supvrs. v. Countryside Inv. Co.*, 258 Va. 497, 503, 522, S.E.2d 610, 613 (1999) (“In Virginia, the powers of boards of supervisors are fixed by statute and are limited to those conferred expressly or by necessary implication. This rule is a corollary to Dillon’s Rule that municipal corporations have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable.”)

³ VA. CONST. art. VII, §3.

⁴ VA. CODE ANN. §§ 15.2-1300 through 1310 (2012).

⁵ Section 15.2-1300(A). Previous opinions of the Attorney General have interpreted this provision, for example, to allow two or more counties to establish a joint department of real estate assessment. 2000 Op. Va. Att’y Gen. 68, and to authorize multiple localities and school boards to create a single voluntary, self-funded trust to insure health benefits for their employees and the families of their employees, 2012 Op. Va. Att’y Gen. No. 12-059, *available at* <http://www.ag.virginia.gov/Opinions%20and%20Legal%20Resources/Opinions/2012opns/Oct12opndx.html>.

⁶ The Investment of Public Funds Act, VA. CODE ANN. §§ 2.2-4500 through 2.2-4519 (2011). You indicate that any investments made by the Virginia Investment Pool will be made in accordance to and in compliance with this list of authorized securities or instruments. I therefore do not address what investments are authorized by this Act, and will assume for purposes of this opinion that all investments are to be made pursuant to this statutory authority and that no investment will be made in any category not specifically authorized therein.

The Joint Powers Act also prescribes how agreements to exercise powers jointly are to be entered into and particular elements that must be contained in the agreement.⁷ You indicate that the Virginia Investment Pool will adhere to these statutory requirements. I therefore conclude that the *Code of Virginia* authorizes two or more political subdivisions to exercise their investment powers by investing in a jointly administered investment pool.

Having answered your first question in the affirmative, I turn to your next question regarding whether such a pooled investment program can be organized as a trust fund. In authorizing local governments to enter into agreements to execute their authorized powers jointly, the Joint Powers Act provides that the agreement, in addition to the items enumerated as required, may contain "the manner of acquiring, holding (including how title to such property shall be held) and disposing of real and personal property used in the undertaking."⁸ Political subdivisions are thus given substantial discretion in determining how to title and manage funds pooled in the joint execution of their powers. Nowhere does the Code prohibit a trust fund arrangement. I therefore conclude that political subdivisions lawfully may establish a trust fund as the form of organization for the pooled investment program.

Conclusion

Accordingly, it is my opinion that two or more political subdivisions may exercise their investment powers by investing in a jointly administered investment pool and that such pooled investment program may be organized in the form of a trust fund.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

⁷ Section 15.2-1300(B), (C).

⁸ Section 15.2-1300(D)(2). In addition, subsection (D)(1) enables the participating political subdivisions to provide by agreement for "an administrator or a joint board responsible for administering the undertaking. The precise organization, composition, term, powers and duties of any administrator or joint board shall be specified."