



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Robert F. McDonnell
Attorney General

June 8, 2006

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

The Honorable William J. Howell
Speaker of the House of Delegates
P.O. Box 8296
Fredericksburg, Virginia 22404

The Honorable Thomas K. Norment, Jr.
Member, Senate of Virginia
P.O. Box 6205
Williamsburg, Virginia 23188

Dear Speaker Howell and Senator Norment:

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 inquire regarding the authority of the Governor to initiate and execute a spending plan should the legislature fail to enact a budget bill prior to the beginning of the fiscal year on July 1, 2006.

Response

This issue is a matter of first impression for which there is no definitive guidance from the courts of the Commonwealth of Virginia. It is my opinion that the Constitution of Virginia imposes the clear and certain duty solely upon the General Assembly to make appropriations. The Constitution states that no funds are to be paid out of the state treasury unless appropriated by law by the General Assembly. Further, it is my opinion that it is a question of fact whether conditions exist constituting an emergency under the Emergency Services and Disaster Law of 2000, and it is within the authority of the Governor to make that factual determination. It is my opinion that when an emergency exists, the Constitution does not expressly grant to the Governor authority to expend state funds when there are no existing appropriations made by law. While the Governor does have certain implied executive power, such implied authority cannot overcome the sole and specific express grant of spending authority to the legislature. **Thus, in order to prevent an unprecedented constitutional crisis, it is critical that the legislature immediately enact a 2006-2008 biennial budget or, in the alternative, enact short-term legislation authorizing ongoing spending for state services and obligations.**

Applicable Law and Discussion

I. General Constitutional Principles

Article X, § 7 of the Virginia Constitution and § 2.2-1819 both provide that no funds are to be paid out of the state treasury unless such funds have been duly appropriated. Article X, § 7 provides:

No money shall be paid out of the State treasury except in pursuance of appropriations made by law; and no such appropriation shall be made which is payable more than two years and six months after the end of the session of the General Assembly at which the law is enacted authorizing the same.

Article IV, § 11 of the Constitution further provides:

No law shall be enacted except by bill. A bill may originate in either house, may be approved or rejected by the other, or may be amended by either, with the concurrence of the other.

....

No bill which creates or establishes a new office, or which creates, continues, or revives a debt or charge, or which *makes*, continues, or revives any *appropriation of public or trust money or property*, or which releases, discharges, or commutes any claim or demand of the Commonwealth, or which imposes, continues, or revives a tax, shall be passed except by the affirmative vote of a majority of all the members elected to each house, the name of each member voting and how he voted to be recorded in the journal. [Emphasis added.]

Constitutional language that is clear and unambiguous must be given its plain meaning.¹ The Virginia Constitution clearly states that no payments are to be made from the treasury except by appropriation² enacted by legislation. The plain language of the Constitution provides that the General Assembly, the legislative branch of government, is responsible for appropriating funds. The appropriations for the 2004-2006 biennium, by express terms, expire at midnight on June 30, 2006.³

It is beyond dispute that the Governor has implied authority under the Virginia Constitution. Article V, § 1 of the Virginia Constitution provides that “[t]he chief executive power of the Commonwealth shall be vested in [the] Governor.” Article V, § 7 further provides that “[t]he Governor shall take care that the laws be faithfully executed.”

Reconciliation of the express and exclusive appropriations authority of the legislature under Article X of the Virginia Constitution with the implied authority of the executive branch under Article V to ensure the laws are faithfully executed is the key to ascertaining the Governor’s spending authority in the absence of a budget. The pragmatic interpretation would be to sanction a governor’s intention to act

¹Scott v. Commonwealth, 247 Va. 379, 384, 443 S.E.2d 138, 141 (1994).

²VA. CONST. art. X, § 7.

³See 2004 Va. Acts Spec. Sess. I ch. 4, cl. 4, at 36, 565.

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unilaterally upon the failure of the legislature to pass a budget to forestall a disastrous government shutdown. However, longstanding rules of statutory construction to resolve conflicts in laws do not permit such an interpretation. Such rules dictate that the specific law controls over the general.⁴ Thus, the implied plenary authority of the Governor to faithfully execute the laws does not overcome the specific, clear, and exclusive grant of authority to the legislature to make appropriations by law.

II. Implied and Emergency Powers of the Governor

A budget crisis of this nature, with the looming possibility of appropriations directed by the executive branch independent of the legislature, is the result of a failure of legislative duty not contemplated by the drafters of the Constitution or previous legislatures. Thus, no definitive remedy for the Governor to resolve such a crisis exists in the Constitution or statute. While there are instances in which the Governor has the inherent power to act,⁵ this authority does not exist where the Constitution specifically requires legislative action.⁶

Notably, in considering whether the Governor had the authority without action by the legislature to increase the salary of the Secretary of the Commonwealth to compensate him for additional duties, the Supreme Court of Virginia found that:

The Constitution places the duty and responsibility of fixing the salary of the Secretary of the Commonwealth on the General Assembly and not on the chief executive of the State. Section 83 provides that the salary of that officer “shall be fixed by law.” The General Assembly is the legislative branch of the government and is clothed with the power and duty of enacting laws.⁷

If unilateral executive action in the absence of a legislative enactment is not permitted to set a cabinet member’s salary, certainly such unilateral action to approve broad spending for state services and obligations is even more constitutionally problematic.

It is not unreasonable to argue that Virginia’s founders would not have intended that the entire executive branch be thwarted by legislative inaction. However, the conundrum arises from the Constitution’s silence on this issue. The Attorney General must interpret not what the Constitution ought to say, but rather what it does say.

⁴“It is firmly established that, ‘when one statute speaks to a subject generally and another deals with an element of that subject specifically, the statutes will be harmonized, if possible, and if they conflict, the more specific statute prevails.’” *Gas Mart Corp. v. Bd. of Supvrs.*, 269 Va. 334, 350, 611 S.E.2d 340, 348 (2005) (quoting *Commonwealth ex rel. Dep’t of Corr. v. Brown*, 259 Va. 697, 706, 529 S.E.2d 96, 101 (2000)). Thus, when faced with a choice between a specific and a general statute, the former is controlling. 2001 Op. Va. Att’y Gen. 59, 60. When statutes provide different procedures on the same subject matter, the general gives way to the more specific. 2000 Op. Va. Att’y Gen. 94, 95

⁵See 1977-1978 Op. Va. Att’y Gen. 5, 7 (concluding that Governor has inherent power to issue executive orders to “take care that the laws be faithfully executed”).

⁶See *Jackson v. Hodges*, 176 Va. 89, 10 S.E.2d 566 (1940).

⁷*Id.* at 94, 10 S.E.2d at 567 (quoting § 83 of the 1902 Constitution of Virginia).

The Virginia Constitution requires all appropriations to be made by law.⁸ Where the Constitution has established the responsibility for action solely with the legislative branch of government, there is no inherent power of the executive branch to perform that function. The Supreme Court of Kentucky recently reviewed the spending authority and duties of the Governor and legislature during a similar budget crisis.⁹ The Court, interpreting a Kentucky constitutional provision that virtually is identical to Virginia's Constitution, found that the Governor could not unilaterally make appropriations when the legislature failed to do so.¹⁰ However, the Kentucky Court found that where the legislature mandated specific expenditures on a continuing basis, they were appropriations and could continue at current levels.¹¹ The Kentucky and the Virginia Constitutions differ in an important manner, since the Virginia Constitution does not contemplate self-executing, long-term appropriations. Kentucky's Constitution provides that "[n]o money shall be drawn from the State Treasury, except in pursuance of appropriations made by law."¹² The Virginia Constitution contains an additional limitation on such continuing appropriations as it provides that "appropriations [must be] made by law; and no such appropriation shall be made which is payable more than two years and six months after the end of the session of the General Assembly at which the law is enacted authorizing the same."¹³ There is one specific provision of the Virginia Constitution that permits action where an appropriation is not sufficient. Article X, § 9(b) of the Virginia Constitution allows the Governor to meet certain general obligation debt requirements from general revenues when appropriations are insufficient.¹⁴ The Governor may be able to spend without an appropriation only in such certain limited instances where the Constitution provides direction. In addition, the Virginia Supreme Court already has determined that when the Virginia Constitution mandates an efficient system of free schools that means "it *must* appropriate funds" for such purpose.¹⁵

The determination of when, pursuant to Article V, §§ 1 and 7 and § 2.2-103,¹⁶ a governor properly may use implied powers to issue an executive order or when a governor may assume the prerogatives constitutionally authorized for other branches of government has been the subject of much debate.¹⁷ Prior

⁸ See VA. CONST. art. X, § 7.

⁹ See *Fletcher v. Kentucky*, 163 S.W.3d 852, 2005 Ky. LEXIS 167 (2005).

¹⁰ *Id.* at 863-64, 2005 Ky. LEXIS, at *26-31.

¹¹ *Id.* at 865, 2005 Ky. LEXIS, at *32.

¹² KY. CONST. § 230.

¹³ VA. CONST. art. X, § 7. In the present situation, Virginia's 2004-2006 biennial budget expires at midnight on June 30, 2006. See 2004 Va. Acts Spec. Sess. I, *supra* note 3, cl. 4, at 565.

¹⁴ See *Button v. Day*, 203 Va. 687, 695, 127 S.E.2d 122, 128 (1962) (recognizing that Literary Fund is separate constitutional fund and payments therefrom are not subject to prohibition against extended appropriations).

¹⁵ *Harrison v. Day*, 200 Va. 439, 450, 106 S.E.2d 636, 645 (1959) (emphasis in original).

¹⁶ Section 2.2-103(A) authorizes the Governor to formulate and administer the policies of the executive branch of government. Additionally, subsections B and C of § 2.2-103, respectively, establish the Governor as the Chief Personnel Officer and the chief planning and budget officer of the Commonwealth.

¹⁷ See, e.g., 2 A.E. DICK HOWARD, COMMENTARIES ON THE CONSTITUTION OF VIRGINIA 587-90 (1974) [hereinafter HOWARD]; Note, *Gubernatorial Executive Orders as Devices for Administrative Direction and Control*, 50 IOWA L. REV. 78 (1964); Michael S. Herman, *Gubernatorial Executive Orders*, 30 RUTGERS L.J. 987 (1999); Benjamin S. Longlet, Comment, *Gubernatorial Executive Orders in Wisconsin: The Case For Judicial Enforcement*, 2000 WIS. L. REV. 1323 (2000).

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opinions of the Attorney General have recognized that the Governor has a general reservoir of implied powers as the chief executive of the Commonwealth.¹⁸ Situations in which the Governor has such implied powers include:

(1) Where a provision of the *Virginia Code* expressly confers that authority upon the Governor;¹⁹

(2) Whenever there is a genuine emergency that requires the Governor, pursuant to a constitutional responsibility and power, to abate a danger to the public regardless of the absence of explicit authority;²⁰ and

(3) Whenever the order is administrative in nature, as opposed to legislative.

When an emergency exists, there is authority for the Governor to exercise powers he normally could not.²¹ As I conclude below, unfortunately such authority does not extend to expending public funds without constitutionally required legislative action.

A broad statutory delegation of power to the Governor to act is in the event of an emergency. The question arises whether the failure of the legislature to make appropriations, or the attendant consequences upon the citizenry through a cessation of key government services, is an emergency or disaster as contemplated by statute. The Commonwealth of Virginia Emergency Services and Disaster Law of 2000²² (the “Disaster Law”) sets forth the statutory framework for the Governor and the executive heads or governing bodies of the political subdivisions of the Commonwealth to deal with emergency situations caused by natural²³ and man-made disasters.²⁴ Among the stated purposes of the Disaster Law,

¹⁸See Op. Va. Att’y Gen.: No. 05-094 (Feb. 24, 2006), available at <http://www.vaag.com/OPINIONS/2006opns/05-094w.pdf>; 1983-1984 at 180, 182; 1945-1946 at 144, 147.

¹⁹See, e.g., VA. CODE ANN. §§ 2.2-203, 2.2-208, 2.2-212, 2.2-215, 2.2-221 (2005) (permitting assignment or reassignment of agencies to cabinet secretaries by executive order); VA. CODE ANN. § 44.1-146.17(1) (Supp. 2005) (permitting issuance of executive orders to carry out purposes of Commonwealth of Virginia Emergency Services and Disaster Law of 2000).

²⁰Specific statutory provisions related to emergency orders are found in the Commonwealth of Virginia Emergency Services and Disaster Law of 2000. See §§ 44-146.13 to 44-146.28:1 (2002 & Supp. 2005).

²¹A 1978 opinion of the Attorney General implies that the Governor’s powers may extend where they generally would not in the event of a “genuine emergency.” See 1977-1978 Op. Va. Att’y Gen., *supra* note 5, at 7-8; see also 2002 Op. Va. Att’y Gen. 202 (discussing Governor’s role in public health emergency).

²²Sections 44-146.13 to 44-146.28:1.

²³Section 44-146.16 defines a “natural disaster” as “any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire or other natural catastrophe resulting in damage, hardship, suffering or possible loss of life.”

²⁴Section 44-144.16 defines a “man-made disaster” as “any condition following an attack by any enemy or foreign nation upon the United States resulting in substantial damage of property or injury to persons in the United States and may be by use of bombs, missiles, shell fire, nuclear, radiological, chemical or biological means or other weapons or by overt paramilitary actions; terrorism, foreign and domestic; also any industrial, nuclear or transportation accident, explosion, conflagration, power failure, resources shortage or other condition such as sabotage, oil spills and other injurious environmental contaminations that threaten or cause damage to property, human, suffering, hardship or loss of life.”

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is to confer upon the Governor and the political subdivisions of the Commonwealth specific emergency powers.²⁵

The Disaster Law authorizes the Governor “in times of natural or man-made disasters”²⁶ to declare a state of emergency “[w]henever, in the opinion of the Governor, the safety and welfare of the people of the Commonwealth require the exercise of emergency measures due to a threatened or actual disaster.”²⁷ Section 44-146.17(1) gives the Governor broad authority to take action in the event of a disaster, “[t]o proclaim and publish such rules and regulations and to issue such orders as may, in his judgment, be necessary to accomplish the purposes of [the Disaster Law].”²⁸ Accordingly, the Governor has the authority to declare an emergency and waive state law when, in the Governor’s opinion, the safety and welfare of the people of Virginia require the exercise of emergency measures.²⁹

The Virginia Supreme Court has commented on the Governor’s powers in emergency situations concerning the shortage of motor fuels, a man-made emergency:

Our examination of the language of [the Commonwealth of Virginia Emergency Services and Disaster Law of 1973] convinces us that the Governor acted within the limits of the authority delegated to him. It is elementary that the health, safety and welfare of the people of this Commonwealth depend upon an adequate supply of motor vehicle fuel. The fuel shortages which developed in 1973 created a potentially serious situation in Virginia, and nationwide. Curtailment of the vital services performed by use of fire, police and other emergency vehicles is but one example of the grave effect a prolonged motor vehicle fuel shortage would have upon the State. Such a situation would have resulted “in damage, hardship, suffering or possible loss of life.” Prompt action was required. Manifestly, the “safety and welfare of the people of the State require[d] the

²⁵Section 44-146.14(a)(2) (2002).

²⁶Section 44-146.17.

²⁷Section 44-146.17(7).

²⁸Moreover, § 44-146.17(1) provides that “no rule, regulation, or order issued under this section shall have any effect beyond June 30 next following the next adjournment of the regular session of the General Assembly.” Section 44-146.17:1 provides that “[t]he Governor shall cause copies of any order ... proclaimed and published by him pursuant to § 44-146.17 to be transmitted forthwith to each member of the General Assembly.” This reporting requirement ensures that the General Assembly properly is apprised of the Governor’s actions during an emergency or disaster situation, and that an emergency, with its attendant concentration of power and authority in the Governor, cannot last indefinitely.

²⁹*See Boyd v. Commonwealth*, 216 Va. 16, 19, 215 S.E.2d 915, 917 (1975) (interpreting § 44-146.17(1), (7)); *see also* 1973-1974 Op. Va. Att’y Gen. 448, 449-50. I note, however, that the Disaster Law has been revised since the *Boyd* decision and the 1973 opinion were issued. *See, e.g.*, 2004 Va. Acts chs. 773, 1021, at 1139, 1162-64, 2070, 2093-95, respectively; 2000 Va. Acts ch. 309, at 448, 448-58. “[A]ny suspension must last only as long as absolutely necessary.... Another important condition is that rights can only be suspended in the area affected by the emergency.” 1 HOWARD, *supra* note 17, at 92 (discussing suspension of Federal Constitution). In the end, a court will be the final arbitrator of how the balance is struck between individual rights and the abridgement of those rights in times of emergency, disaster or war. *Id.* at 93; *but see* VA. CONST. art. I, § 7 (“[A]ll power of suspending laws, ... without consent of the representatives of the people, ... ought not to be exercised.”).

exercise of emergency measures.” We, therefore, hold that the acute motor vehicle fuel shortage of 1973 was a “disaster” within the meaning of [the Disaster Law of 1973].^[30]

The Disaster Law has been amended and reenacted on several occasions by the General Assembly since the Court considered this case. Amendments to the Disaster Law include a key provision pertaining to the powers of the Governor in § 44-146.17(7).³¹ The 1981 Session of the General Assembly amended the Disaster Law adding the definition for the term “emergency.”³² The Governor is authorized to declare a “state of emergency”³³ when there is either a threat or actual occurrence of an “emergency or a disaster.”³⁴ An “emergency” is either an occurrence or a threat of an occurrence that may result in substantial injury or harm to the citizens or property in the Commonwealth, and “may involve governmental action beyond that authorized or contemplated by existing law because governmental inaction for the period required to amend the law to meet the exigency would work immediate and irrevocable harm upon the citizens” of the Commonwealth.³⁵

It is reasonable to conclude that absent action by the General Assembly, the Governor could declare a state of emergency upon the premise that the health, safety, and welfare of the citizens of the Commonwealth depend on a government that would otherwise cease to function in the absence of an appropriation act after July 1, 2006. However, an emergency declaration cannot of itself create spending authority in the absence of an appropriation made by law. Thus, such a declaration might alleviate, but would not prevent, the impending constitutional crisis.

III. Emergency Power as Spending Authority

In the absence of a budget bill on July 1, 2006, the Governor may declare an emergency to avoid undue harm to the health, safety, and welfare of the public. Whether there is an “emergency” requiring

³⁰ *Boyd*, 216 Va. at 19, 215 S.E.2d at 917 (alteration in original) (citations omitted).

³¹ Section 44-146.17(7) considered by the *Boyd* court provided: “Whenever, in the opinion of the Governor, the safety and welfare of the people of the State requires the exercise of emergency measures he may declare a State disaster to exist.” *See id.* at 19 n.6, 215 S.E.2d at 917 n.6. The 1997 and 1974 Sessions of the General Assembly amended § 44-146.17(7), which currently provides: “Whenever, in the opinion of the Governor, the safety and welfare of the people of the Commonwealth require the exercise of emergency measures due to a threatened or actual disaster, he may declare a state of emergency to exist.” *See* § 44-146.16 (Supp. 2005); 1997 Va. Acts ch. 893, at 2404, 2405; 1974 Va. Acts ch. 4, at 9, 11.

³² *See* 1981 Va. Acts ch. 116, at 133, 134.

³³ Section 44-146.16 defines “state of emergency” as “the condition declared by the Governor when in his judgment, the threat or actual occurrence of an emergency or a disaster in any part of the Commonwealth is of sufficient severity and magnitude to warrant disaster assistance by the Commonwealth to supplement the efforts and available resources of the several localities, and relief organizations in preventing or alleviating the damage, loss, hardship, or suffering threatened or caused thereby and is so declared by him.”

³⁴ Sections 44-146.16; 44-146.17(7).

³⁵ Section 44-146.16. It appears that in the past twenty years, Governors have issued executive orders declaring a state of emergency that were not related to weather or terrorism. Governor Warner issued an executive order declaring an emergency based on an economic crisis. *See* Exec. Order No. 55, 19:26 Va. Reg. Regs. 3923 (Sept. 8, 2003). Governor Baliles issued an executive order declaring an emergency based on the need to rescue a competitive sporting horse from a ravine. *See* Exec. Order No. 64, 5:5 Va. Reg. Regs. 717 (Dec. 5, 1988).

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the declaration of an emergency is a question of fact,³⁶ which the Disaster Law delegates to the Governor to determine.³⁷

Assuming that the General Assembly's failure to enact a budget in a timely manner is an emergency, the Governor's authority to take emergency action does not create spending power after July 1 when there will be no existing appropriations. The Governor historically has exercised certain extraordinary spending authority in times of emergency, but the General Assembly contemplates and generally provides for such expenditures in the budget bill.³⁸ The present situation is distinguishable since in the absence of immediate action by the General Assembly, there will be no enacted budget bill on which the Governor may rely for guidance or general authorization to spend. The Virginia Constitution is quite clear that "appropriations [are] made by law."³⁹ Although the Governor may and should exercise certain powers to protect public health, safety, and welfare,⁴⁰ I find no express or implied provision of the Constitution that suggests the Governor may order spending by executive order when there is no general legislative authority.

It is my opinion that the citizens of Virginia who ratified the Constitution believed the legislature would, without fail, appropriate funds for public health, safety, welfare, education, and other basic governmental functions required by constitution or statute. The Virginia Supreme Court has determined that the General Assembly has the duty to do so.⁴¹ Thus, while the Governor may not authorize spending independently, the General Assembly has the constitutional obligation to appropriate revenues and cannot

³⁶See *Barber v. Bd. of Sch. Estimate*, 71 N.J. Super. 556, 566, 177 A.2d 600, 605 (1962) (discussing emergency appropriations by board of education for school purposes); *Howard v. City of N.Y.*, 199 A.D. 596, 600-01, 1922 N.Y. App. Div. LEXIS 8057 at *9-10 (1922) (evaluating emergency powers related to health, life, and general welfare of community that were exercised by governmental agency during World War I); see also *Historic Albany Found. v. Breslin*, 724 N.Y.S.2d 113, 117, 282 A.D.2d 981, 986 (2001) (finding it to be question of fact regarding what type of emergency action is necessary to abate dangerous condition of building). Past opinions of this Office have concluded that § 2.2-505, the authorizing statute for official opinions of the Attorney General, does not contemplate that such opinions be rendered on matters requiring factual determinations, rather than matters interpreting questions of law. See 2004 Op. Va. Att'y Gen. 13, 17, and opinions cited therein. This opinion analyzes the legal issues and renders no ultimate opinion on the factual question of whether the failure to enact a budget by July 1, 2006, is an emergency or disaster under the law. The Virginia Supreme Court previously has considered the authority of the Governor to act. See *Wilder v. Attorney Gen.*, 247 Va. 119, 439 S.E.2d 398 (1994) (considering whether Governor acted outside of authority to appoint special counsel).

³⁷See § 44-146.17(7).

³⁸See, e.g., 2006 H. Doc. No. 1, Items 46 and 462, at 26, 26-27, and 403, 403-08.

³⁹VA. CONST. art. X, § 7 (emphasis added).

⁴⁰See, e.g., 2002 Op. Va. Att'y Gen., *supra* note 21, at 203 (concluding that Governor may call for privately employed personnel to assist in emergency response situation); see also *White v. Davis*, 30 Cal. 4th 528, 568-69, 68 P.3d 74, 101 (2003) (finding that when state employees work during budget impasse, workers have right ultimately to be paid, but not until enactment of applicable appropriation). The court in *White* also noted that there may be federal implications, which may include required spending in some areas. *Id.* at 575-77, 68 P.3d at 105-07 (noting federal law requirement that those employees subject to minimum wage and overtime compensation of Fair Labor Standards Act be paid for work even during budget impasse). I note, however, that California has constitutional provisions dealing with a budget impasse. *Id.* at 568-69, 571, 68 P.3d at 101, 103. Additionally, the inability to spend matching funds could result in a loss of federal dollars in some circumstances.

⁴¹See *Scott*, 247 Va. at 386, 443 S.E.2d at 142 (noting that General Assembly is required to determine manner of funding to provide cost of maintaining public school educational programs and how cost shall be apportioned).

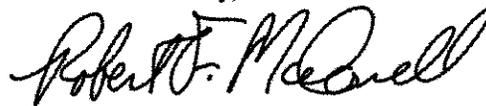
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choose by inaction to abdicate its responsibility without risking unprecedented usurpation of legislative authority, lasting diminution in stature for the legislative branch, and extraordinary proceedings in the courts.

Conclusion

This issue is a matter of first impression for which there is no definitive guidance from the courts of the Commonwealth of Virginia. Accordingly, it is my opinion that the Constitution of Virginia imposes the clear and certain duty solely upon the General Assembly to make appropriations. The Constitution states that no funds are to be paid out of the state treasury unless appropriated by law by the General Assembly. Further, it is my opinion that it is a question of fact whether conditions exist constituting an emergency under the Emergency Services and Disaster Law of 2000, and it is within the authority of the Governor to make that factual determination. It is my opinion that when an emergency exists, the Constitution does not expressly grant to the Governor authority to expend state funds when there are no existing appropriations made by law. While the Governor does have certain implied executive power, such implied authority cannot overcome the sole and specific express grant of spending authority to the legislature. **Thus, in order to prevent an unprecedented constitutional crisis, it is critical that the legislature immediately enact a 2006-2008 biennial budget or, in the alternative, enact short-term legislation authorizing ongoing spending for state services and obligations.**

Sincerely,



Robert F. McDonnell