



COMMONWEALTH of VIRGINIA

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The Honorable Christopher K. Peace
Member, House of Delegates
P. O. Box 819
Mechanicsville, Virginia 23111

Dear Delegate Peace:

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 concerning the proper interpretation of §§ 10.1-2130 and 10.1-2131(C) of the Virginia Water Quality Improvement Act of 1997¹ regarding the issuance of technical assistance grants from the Virginia Water Quality Improvement Fund.² Specifically, you ask whether § 10.1-2131 allows the Director of the Department of Environmental Quality to disregard § 10.1-2130, which requires notice and a public review and comment period prior to issuance of a technical assistance grant.

Response

It is my opinion that § 10.1-2131(C) does not authorize the Director of the Department of Environmental Quality to issue a technical assistance grant related to nutrient reduction without the notice and the public review and comment period required by § 10.1-2130.

Applicable Law and Discussion

You inquire concerning provisions of the Virginia Water Quality Improvement Fund (the "Fund"), a portion of the Virginia Water Quality Improvement Act of 1997. You relate that your understanding is state agencies have interpreted § 10.1-2130, which requires a public notice period for all grants, not to apply to technical assistance grants pursuant to § 10.1-2131.

The General Assembly established the Fund to assist eligible wastewater treatment plant owners in complying with heightened requirements for reducing nutrient discharges into the Chesapeake Bay.³ The stated purpose of the Fund is to provide grants "to local governments, soil and water conservation districts, state agencies, institutions of higher education and individuals."⁴ The Director of the

¹See VA. CODE ANN. §§ 10.1-2117 to 10.1-2134 (2004 & Supp. 2008).

²See §§ 10.1-2128 to 10.1-2134 (2004 & Supp. 2008).

³See Water Quality Improve Fund Guidelines, Section B, ch. I.I, *10 (Nov. 2006), available at <http://www.deq.virginia.gov/export/sites/default/bay/documents/WQIFGuidelinesNov2006.pdf>.

⁴Section 10.1-2128(B) (Supp. 2008).

Department of Environmental Quality is one of the persons authorized to request expenditures and disbursements from the Fund.⁵ Furthermore, the Department of Environmental Quality oversees and disburses grant monies “for the sole purpose of designing and installing nutrient removal technologies for publicly owned treatment works designated as significant dischargers or eligible nonsignificant dischargers.”⁶ Within these guidelines, technical assistance grants are contemplated and authorized under § 10.1-2131(C).

You inquire about § 10.1-2130,⁷ which provides, in pertinent part, that:

Grant agreements shall be made available for public review and comment for a period of no less than thirty days but no more than sixty days prior to execution. The granting agency shall cause notice of a proposed grant agreement to be given to all applicants for Water Quality Improvement Grants whose applications are then pending and to any person requesting such notice.

The plain language of § 10.1-2130 applies the public review and comment period and the notice requirement to all grants issued pursuant to the Fund. Section 10.1-2131⁸ provides further conditions for issuing grants directed at addressing and reducing point source pollutants. Specifically, § 10.1-2131(C) refers to technical assistance grants and provides that:

[T]he Director of the Department of Environmental Quality shall not authorize the distribution of grants from the Fund for purposes other than financing the cost of design and installation of nutrient removal technology at publicly owned treatment works until such time as all tributary strategy plans are developed and implemented In addition to the provisions of § 10.1-2130, all grant agreements related to nutrients shall include

Subsequent to the implementation of the tributary strategy plans, the Director may authorize disbursements from the Fund for any water quality restoration, protection and improvements related to point source pollution that are clearly demonstrated as likely to achieve measurable and specific water quality improvements, including, but not limited to, cost effective technologies to reduce nutrient loads. *Notwithstanding the previous provisions of this subsection, the Director may, at any time, authorize grants, including grants to institutions of higher education, for technical assistance related to nutrient reduction.* [Emphasis added.]

The phrase “[n]otwithstanding the previous provisions of this subsection” unambiguously refers to § 10.1-2131(C). In this instance, the term “notwithstanding”⁹ is used in the context of the phrase “of this

⁵ See § 10.1-2128(A).

⁶ Section 10.1-2129(A)(2) (Supp. 2008).

⁷ I note that this section is titled “[g]eneral provisions related to grants from the Fund.”

⁸ I note that this section is titled “[p]oint source pollution funding; conditions for approval.” “The headlines of the sections ... are intended as mere catchwords to indicate the contents of the sections and do not constitute part of the act of the General Assembly.” VA. CODE ANN. § 1-217 (2008).

⁹ When a statute begins with the term “notwithstanding,” it is presumed that the General Assembly intended to override potential conflicts. See Op. Va. Att’y Gen.: 2001 at 153, 154; *id.* at 17, 18; 2000 at 112, 113; 1998 at 56, 57.

subdivision.” Therefore, it is my opinion that the use of the phrase “[n]otwithstanding the previous provisions of this subsection” in § 10.1-2131(C) indicates a legislative intent to override the prohibition against “distribution of grants from the Fund for purposes other than financing the cost of design and installation of nutrient removal technology” for grants “for technical assistance related to nutrient reduction.”¹⁰ Moreover, § 10.1-2130 clearly is not a part of subsection C of § 10.1-2131, nor is it mentioned in the “notwithstanding” phrase. The mention of § 10.1-2130 in § 10.1-2131(C) in this context adds requirements in addition to those imposed by § 10.1-2130.

Furthermore, it is well established that statutes should not be read in isolation.¹¹ Statutes relating to the same subject should be considered *in pari materia*.¹² Moreover, statutes dealing with the same subject matter should be construed together to achieve a harmonious result, resolving conflicts to give effect to legislative intent.¹³ Therefore, it is my opinion that § 10.1-2130 provides a general requirement that all grants under the Fund, including technical assistance grants, must have a public review and comment period and notice must be given. This general requirement is not specifically excepted or overruled by § 10.1-2131(C).

Conclusion

Accordingly, it is my opinion that § 10.1-2131(C) does not authorize the Director of the Department of Environmental Quality to issue a technical assistance grant related to nutrient reduction without the notice and the public review and comment period required by § 10.1-2130.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

3:1205; 1:941/08-077

¹⁰See *id.*; accord 2004 Op. Va. Att’y Gen. 120, 121 (interpreting phrase “[n]otwithstanding any contrary provisions of this section” in § 15.2-410(F) to mean indication of legislative intent to override any potential conflicts with other subsections of § 15.2-410).

¹¹2B NORMAN J. SINGER & J.D. SHAMBIE SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 51:2 (West 7th ed. 2008); Op. Va. Att’y Gen.: 1999 at 22, 22; 1998 at 123, 124; *id.* at 19, 21; 1996 at 197, 198; 1995 at 146, 147; 1993 at 160, 162; *id.* at 135, 137; 1992 at 108, 112.

¹²See *Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7-8 (1957); 1996 Op. Va. Att’y Gen. 134, 135. “*In pari materia*” is the Latin phrase meaning “[o]n the same subject; relating to the same matter.” BLACK’S LAW DICTIONARY 807 (8th ed. 2004).

¹³See 2A SINGER & SINGER § 46:5 (West 7th ed. 2008); 2000 Op. Va. Att’y Gen. 182, 185.