



# COMMONWEALTH of VIRGINIA

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The Honorable Ben L. Cline  
Member, House of Delegates  
General Assembly Building Room 722  
Post Office Box 406  
Richmond, Virginia 23218

Dear Delegate Cline:

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 whether the General Assembly, as part of enacting the budget, may delegate authority to make spending decisions regarding Medicaid to a smaller sub-group of elected officials, including members of the General Assembly.

## Response

It is my opinion that the General Assembly may not delegate final legislative authority regarding budget or other matters to a committee composed of a subset of the members of the General Assembly.

## Applicable Law and Discussion

In your inquiry, you hypothesize a proposal for the General Assembly to enact a statute that delegates final authority regarding budget decisions related to Medicaid to what amounts to a sub-committee composed of somewhere between 6 and 12 members from the two houses of the General Assembly. Specifically, the proposal is for the General Assembly to pass budgetary language related to Medicaid that will become effective only if, at some point after the General Assembly has passed the law and the Governor has signed it, a subset of members of the General Assembly (not constituting a majority of each house) votes that certain conditions have been met.

Any analysis of a proposed statute's constitutionality begins with the recognition that the General Assembly does not operate under a grant of authority, but rather, that it has all powers except those prohibited by either the Virginia or United States Constitutions.<sup>1</sup> Enactments of the General Assembly

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<sup>1</sup> VA. CONST. art. IV, § 14 ("The authority of the General Assembly shall extend to all subjects of legislation not herein forbidden or restricted."); *Harrison v. Day*, 201 Va. 386, 396, 111 S.E.2d 504, 511 (1959) (The Virginia Constitution "is not a grant of legislative powers to the General Assembly, but is a restraining instrument only, and,

are presumed to be constitutional, and the Virginia Supreme Court “will not invalidate a statute unless that statute clearly violates a provision of the United States or Virginia Constitutions.”<sup>2</sup> The Supreme Court will “give the Constitution [of Virginia] a liberal construction in order to sustain the enactment in question, if practicable. . . .”<sup>3</sup> and “every reasonable doubt regarding the constitutionality of a legislative enactment must be resolved in favor of its validity.”<sup>4</sup>

While the General Assembly’s powers are broad, they are not absolute. “An act is unconstitutional if it is expressly prohibited or is prohibited by necessary implication based upon the provisions of the Constitution of Virginia or the United States Constitution.”<sup>5</sup> Furthermore, the General Assembly is prohibited from doing indirectly that which the Virginia Constitution prohibits it from doing directly.<sup>6</sup>

Article IV, § 11 specifies how a bill becomes a law. Specifically, it provides that:

No bill shall become a law unless, prior to its passage: (a) it has been referred to a committee of each house, considered by such committee in session, and reported; (b) it has been printed by the house in which it originated prior to its passage therein; (c) it has been read by its title, or its title has been printed in a daily calendar, on three different calendar days in each house; and (d) upon its final passage a vote has been taken thereon in each house, the name of each member voting for and against recorded in the journal, and a majority of those voting in each house, which majority shall include at least two-fifths of the members elected to that house, recorded in the affirmative.

Thus, for any enactment to become effective, it must be passed by a majority of the members of each house of the General Assembly. Furthermore, it must be then presented to the Governor for his signature or veto.<sup>7</sup>

While the general rule is that, assuming a quorum, a simple majority of those voting in each house is all that is necessary to effectuate an enactment, budgetary matters have more stringent requirements. Specifically,

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except as to matters ceded to the federal government, the legislative powers of the General Assembly are without limit.”).

<sup>2</sup> *Marshall v. N. Va. Transp. Auth.*, 275 Va. 419, 427, 657 S.E.2d 71, 75 (2008) (citing *In re Phillips*, 265 Va. 81, 85-86, 574 S.E.2d 270, 272 (2003); *City Council of Emporia v. Newsome*, 226 Va. 518, 523, 311 S.E.2d 761, 764 (1984)).

<sup>3</sup> *Id.* at 428, 657 S.E.2d at 75 (citing *Heublein, Inc. v. Dep’t of Alcoholic Beverage Control*, 237 Va. 192, 195, 376 S.E.2d 77, 78 (1989)).

<sup>4</sup> *Id.* (citing *Hess v. Snyder Hunt Corp.*, 240 Va. 49, 53, 392 S.E.2d 817, 820 (1990)). See *Blue Cross of Va. v. Commonwealth*, 221 Va. 349, 358-59, 269 S.E.2d 827, 832-33 (1980); *In re Phillips*, 265 Va. at 85-86, 574 S.E.2d at 272.

<sup>5</sup> *Id.* at 428, 657 S.E.2d at 75-76 (citing *Dean v. Paolicelli*, 194 Va. 219, 227, 72 S.E.2d 506, 511 (1952); *Kirkpatrick v. Bd. of Supvrs.*, 146 Va. 113, 126, 136 S.E. 186, 190 (1926); *Albemarle Oil & Gas Co. v. Morris*, 138 Va. 1, 7, 121 S.E. 60, 61 (1924); *Button v. State Corp. Comm’n*, 105 Va. 634, 636, 54 S.E. 769, 769 (1906); *Smith v. Commonwealth*, 75 Va. (1 Matt.) 904, 907 (1880); see also *Sch. Bd. v. Shockley*, 160 Va. 405, 413, 168 S.E. 419, 422 (1933)).

<sup>6</sup> *Marshall*, 275 Va. at 435, 657 S.E.2d at 80.

<sup>7</sup> VA. CONST. art. V, § 6.

[n]o 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.<sup>8]</sup>

Accordingly, budget matters require the affirmative vote of at least 51 members of the House of Delegates and 21 members of the Senate, regardless of how many members actually vote on the matter.

These provisions limit the authority of the General Assembly. The General Assembly may not avoid them by simply passing a statute that provides that an act, or part of an act, will become effective in the future if a subset of the General Assembly determines that certain conditions are met or that prudence dictates that the act becomes effective.<sup>9</sup>

Thus, while the General Assembly has the authority and responsibility to pass legislation related to budgetary matters, it may only exercise that power consistent with the provisions of Article IV, § 11 and may not delegate the decision of whether a budgetary enactment becomes effective to a subset of its members.

#### Conclusion

Accordingly, it is my opinion that the Virginia Constitution prohibits the General Assembly from delegating final legislative authority regarding budget or other enactments to a committee composed of a subset of the members of the General Assembly.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink that reads "Ken C. II". The signature is stylized, with the first name "Ken" and the last name "C." followed by a horizontal line and the Roman numeral "II".

Kenneth T. Cuccinelli, II  
Attorney General of Virginia

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<sup>8</sup> VA. CONST. art. IV, § 11.

<sup>9</sup> In your inquiry, you have not provided sufficient specifics to allow me to address other possible constitutional infirmities that may be present in such a proposal. For example, if members of the executive or judicial branches are involved in the process, the proposal may represent an unconstitutional violation of the Separation of powers. *See* VA. CONST. art. I, § 5 & art. 3, § 1. However, I would need additional specifics to address this or other potential constitutional concerns.