


Memorandum

TO: Hampton Roads Transportation
Accountability Commission Members

FROM: Thomas C. Inglima, Counsel to the Commission 

CC: Chairman Alan P. Krasnoff

DATE: August 19, 2014

SUBJECTS: I. Counsel re: (a) Appointment of Committees, and (b) Electronic Participation
at Meeting, Each in Response to Ms. Dianna Howard's July 20, 2014 (6:37 p.m.)
Email (the "Howard Email")

II. Reminders re: (a) FOIA and (b) Conflicts of Interests Acts

I. Counsel on Matters Raised in the Howard Email

(a) Power to Appoint Committees.

At the meeting of the Hampton Roads Transportation Accountability Commission (the "Commission") held on July 17, 2014, Chairman Krasnoff appointed the members of the Finance Committee. In the course of those appointments, a Commission member observed that the Chairman was taking action pursuant to a specific power under the Commission's enabling legislation. Subsequently, on July 20th, a citizen, Ms. Dianna Howard, wrote the Commission noting that the Commission's enabling legislation, Section 33.1-466 *et seq.* of the Code of Virginia (the "Act"), does not specifically address committees. Chairman Krasnoff has asked us to provide the Commission with our view on the topic.

The Act requires the Commission to elect a chairman and vice-chairman. The Act does not expressly address the formation and membership of committees. However, for the reasons explained below, we are of the opinion that the chair(person) of the Commission is authorized to appoint the members of the Finance Committee, certain members of the Technical Advisory Committee and certain ad hoc committees.

As noted above, the Act requires the appointment of a chair. The Act also empowers the Commission to establish bylaws and make all rules and regulations, not inconsistent with the Act, deemed expedient for the management of the Commission's affairs. By reference to the powers of a transportation district, the Act further grants the Commission those powers usually possessed by private corporations.

It is not uncommon for an organization to grant its chairperson the authority to carry out certain actions on behalf of the organization, and Virginia legal authorities have

validated grants of authority pursuant to bylaws, notwithstanding the fact that the enabling legislation may be silent.¹

In making decisions, the Commission is required to satisfy a multi-pronged voting structure. Pursuant to this structure, and pursuant to the power to establish bylaws, the Commission adopted initial bylaws, which granted the Chairman the authority to appoint the members of the Finance Committee, the Technical Advisory Committee as well as appoint ad-hoc committees (such as a nominating or bylaws committee). Chairman Krasnoff may exercise the power conferred thereunder to make the applicable committee appointments.

Under the Bylaws, the committees should be considered advisory in nature, meaning they are charged with providing advice and recommendations in certain realms, but the Bylaws do not empower the committees to make decisions on behalf of the Commission. If a committee purported to make a decision on behalf of the Commission, that decision would not be authorized in accordance with the requirements of the Act.

(b) Electronic Participation.

In the citizen writing referenced above, Ms. Howard also drew the Commission's attention to the exchange between Mayor Fraim and me concerning electronic participation in meetings. As you'll recall, we noted that the provisions of the Virginia Freedom of Information Act ("FOIA") regarding electronic participation² had been amended recently, and that in order to effectively operate under the statute, a written policy would have to be adopted. Mayor Fraim observed that the FOIA provision could conflict with the Act (*i.e.*, the Commission's enabling legislation) because the Act uses a "present and voting" test. We expected the FOIA provision to reconcile any conflict, and noted that we would have to come back with a recommendation.

The applicable FOIA provision does not reconcile the conflict; it does not expressly state that electronic participation constitutes presence at a meeting.³ Thus, at this time, we are unable to recommend a policy that would permit both electronic participation and voting.

¹ See 1985 Va. Op. Atty. Gen. 420; Attorney General of Virginia addressed the authority of a school board chairperson to act on behalf of a school board; the enabling legislation authorized the board to adopt bylaws and granted it powers similar to those of corporate bodies; the legislation, however, was silent regarding the specific powers of the chairman; the Attorney General found that, consistent with common corporate governance principles, the school board could adopt bylaws that gave the chairman the authority to act on the board's behalf.

² Such participation is only permitted in limited circumstances, such as when a member has an emergency or personal matter, suffers from a disability or medical condition, or, in the case of regional bodies, lives more than sixty (60) miles from the meeting location.

³ If the FOIA provision is amended to expressly state that principle, we feel it would still be necessary to research whether that amendment alone permits a member to satisfy a "presence" requirement imposed under the Act.

II. Reminders Regarding Applicable Laws

(a) FOIA.

As current representatives of other public bodies, you are likely aware of FOIA, which was enacted to ensure ready access to public records and free entry to meetings of public bodies. Section 2.2-3702 of FOIA requires that, upon appointment to public bodies such as the Commission, members must read and become familiar with FOIA. If you have not already done so, you can review FOIA online at Virginia's Legislative Information System website, which is located at <http://lis.virginia.gov/000/src.htm>. We would be happy to provide an orientation regarding FOIA upon request.

(b) Conflicts of Interests Acts.

Commission members also should be mindful of their obligations under statutes addressing conflicts of interests, including the State and Local Government Conflict of Interests Act (Va. Code § 2.2- 3100 *et seq.*) and, as applicable, the General Assembly Conflicts of Interests Act (Va. Code § 30-100 *et seq.*). Much attention has been brought to the fact that certain Commission members also serve certain financial institutions in varying capacities. If the Commission were to consider entering into a transaction or service relationship with an organization that a member serves, that member should exercise care and evaluate whether a conflict and/or exception applies, and, as applicable, disclose such conflict and disqualify himself or herself. The Conflicts of Interests Acts are also online at the Virginia Legislative Information website. If anyone would like to be provided a hard copy, please contact us.