



# COMMONWEALTH of VIRGINIA

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The Honorable M. Keith Hodges  
Member, House of Delegates  
Post Office Box 928  
Urbanna, Virginia 23175

Dear Delegate Hodges:

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 ask whether Gloucester County may divert monies collected from a sales and use tax, implemented pursuant to § 58.1-605.1(G), to debt mitigation for previous capital projects involving construction or major renovation of Gloucester's public schools.

## Applicable Law and Discussion

Section 58.1-605.1 was enacted by the General Assembly to permit localities to levy additional local sales and use taxes to fund capital projects for the construction or improvement of schools. Section 58.1-605.1(G) provides, "[t]he revenues from this tax shall be used solely for capital projects for new construction or major renovation of schools in the qualifying locality, including bond and loan financing costs related to such construction or renovation."<sup>1</sup>

When construing a statute, our primary objective is "to ascertain and give effect to legislative intent," as expressed by the language used in the statute. "When the language of a statute is unambiguous, we are bound by the plain meaning of that language." And if the language of the statute "is subject to more than one interpretation, we must apply the interpretation that will carry out the legislative intent behind the statute."<sup>2</sup>

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<sup>1</sup> VA. CODE ANN. § 58.1-605.1(G). This and all other citations to the Code of Virginia herein are from the electronic version of the Code on LexisNexis and are current through the 2021 Regular Session of the General Assembly and Acts 2021 Sp. Sess. I, cc. 55, 56, 78, 82, 110, 117, 118, 171, 216, 220 and 243.

<sup>2</sup> *Cuccinelli v. Rector & Visitors of the Univ. of Va.*, 283 Va. 420, 425 (2012) (citations omitted, alteration in original).

The plain language of § 58.1-605.1 is clear that the statute applies to “capital projects for *new* construction or major renovation of schools.”<sup>3</sup> Other subsections within § 58.1-605.1 support the fact that this statute applies to new school capital projects. Subsection (A)(2) states that

[a]ny tax imposed pursuant to this section shall expire (i) if the capital projects for the construction or renovation of schools are to be financed by bonds or loans, on the date by which such bonds or loans shall be repaid or (ii) if the capital projects for the construction or renovation of schools are not to be financed by bonds or loans, on a date chosen by the governing body and specified in any resolution passed pursuant to the provisions of subdivision B 1. Such expiration date shall not be more than 20 years after the date of the resolution passed pursuant to the provisions of subdivision B 1.

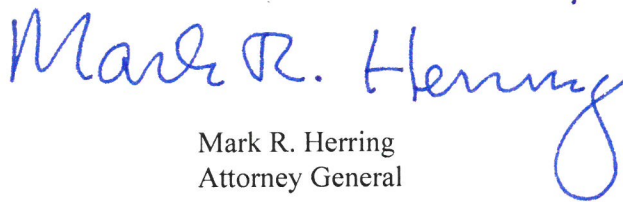
Subsection (B) requires that the “tax may be levied only if the tax is approved in a referendum.” The Sales Tax Referendum approved by Gloucester’s voters in November 2020 reads: “Should Gloucester County be authorized to levy a general retail sales tax at a rate not to exceed (1%), provided the revenue from the sales tax shall be used solely for capital projects for the construction or renovation of schools in Gloucester County and that the sales tax shall expire by July 31, 2040?” The referendum and the information released to Gloucester’s voters describing the referendum further support the fact that the sales tax revenues would be used prospectively for new construction or major renovation of Gloucester’s public schools and not for debt mitigation.<sup>4</sup>

#### Conclusion

Accordingly, it is my opinion that the Gloucester County Sales Tax revenues are to be used to fund capital projects for “new construction or major renovation” of Gloucester’s public schools and not for debt mitigation.

With kindest regards I am,

Very truly yours,



Mark R. Herring  
Attorney General

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<sup>3</sup> VA. CODE ANN. § 58.1-605.1(G) (emphasis added).

<sup>4</sup> The Gloucester County November Sales Tax Referendum is available at <https://www.gloucesterva.info/1249/November-Sales-Tax-Referendum>.