

**Legal Working Group
Northern Virginia Transportation Authority**

MEMORANDUM

TO: Christopher Zimmerman, Chairman
Northern Virginia Transportation Authority

Members
Northern Virginia Transportation Authority

FROM: David Snyder, Chairman
Legal Working Group
Northern Virginia Transportation Authority

SUBJECT: Report of the Legal Working Group

DATE: June 1, 2007

Recommendations of the Working Group:

The Legal Working Group recommends that NVRTA take the following actions on June 6, 2007:

1. Direct the Legal Working Group to prepare the following documents for NVRTA consideration on July 12, 2007:
 - a. proposed resolutions for adopting each of the taxes and fees authorized by the General Assembly;
 - b. a proposed resolution of intent to issue debt for specifically identified projects
 - c. and a proposed resolution authorizing the filing of a bond validation suit on July 13, 2007.
2. Authorize the Legal Working Group to develop a scope of services and, using a panel identified by the Authority consisting of appropriate Authority members and legal and technical staff, to interview, select, and retain bond counsel subject to a specified, not to exceed cost for services to be provided through July 12, 2007, which contract for services shall be subject to extension and amendment upon approval by the Authority.
3. Direct the Legal Working Group to continue to coordinate with the Governor's staff, the Attorney General's office and representatives of the Hampton Roads jurisdictions.

4. Subject to approval by the respective NVTA constituent member localities, establish a small "Council of Counsels," consisting of attorneys from the City of Alexandria, and Arlington, Fairfax, and Prince William Counties, and, tentatively identified as Christopher P. Spera, Esq., Stephen A. MacIsaac, Esq., Ellen F.M. Posner, Esq., and Ross G. Horton, Esq. The NVTA "Council of Counsels" would provide on a voluntary, uncompensated, and as needed basis, legal advice, legal support, and legal services to NVTA. Such legal services would include, but not necessarily be limited to, providing general legal advice, offering litigation support, developing memoranda of understanding, assisting in the development of implementation policies, drafting of contracts and other legal documents, analyzing legislation, and providing advice at NVTA meetings and subcommittee meetings. It is envisioned that the provision of legal services under the "Council of Counsels" concept would continue until such time as NVTA determines that it would be in NVTA's best interest to obtain independent counsel, until an impermissible conflict of interest arises as between NVTA and its constituent member localities, or three constituent member localities have chosen to withdraw their attorneys from the "Council of Counsel" concept. In addition, independent counsel may be recommended for a particular issue(s) while the "Council of Counsels" continues to provide the legal services outlined above.
5. Direct the Financial Working Group to include \$100,000 in the start up budget to cover short term legal expenses that can not be included in the cost of the bond validation suit.

Response to Overarching Question

Legal

- How will NVTA secure legal support for implementing taxes and fees, issuing bonds and defending NVTA's actions in the event of court challenges?

The Legal Working Group recommends that NVTA proceed with a small bond issuance and a bond validation proceeding as a way to address legal challenges that may arise from NVTA's imposition of some or all of the taxes and fees authorized by the General Assembly. The Legal Working Group further recommends that NVTA continue to coordinate with the Commonwealth and its agencies with respect to addressing any such challenges. This approach has several advantages that will be discussed at the meeting. In order to proceed with such a bond validation suit, the Legal Working Group recommends hiring bond counsel on a contingent basis prior to the July 12, 2007, NVTA meeting. NVTA should authorize hiring bond counsel at its June 6, 2007, meeting.

Regarding NVTA's short term legal representation, the Legal Working Group recommends a small "Council of Counsels" consisting of local government attorneys to provide short term legal advice to NVTA during the start up period, to provide legal support for developing financial memoranda of understanding, developing model project agreements, developing employment contracts and policies, and to provide legal advice at NVTA meetings. After the bond validation is complete, initial financial memoranda of understanding are complete, a model project agreement is prepared and initial employment contracts are evaluated, the Legal Working Group recommends that NVTA reevaluate its ongoing legal needs. At that point, it would be appropriate to select a more long term approach to legal representation by NVTA either by hiring a staff attorney, hiring a contract attorney, or continuing the Council of Counsels approach.

Responses to Other Questions Submitted to Working Group:

Questions – Financial

- Is there any particular time, from a legal standpoint, that NVTA should or shouldn't implement the new revenue sources?

For various reasons, the Legal Working Group recommends that the NVTA consider whether or not to adopt the taxes and fees as soon as possible, see "Recommendations" section.

- What legal controls should NVTA establish before implementing the new taxes and fees?

In the short term the Legal Working Group recommends establishing a Council of Counsels to provide legal support. In addition, the Working Group recommends that bond counsel be retained on a contingent basis prior to the July 12, 2007, NVTA meeting.

- What does NVTA need to do to defend against lawsuits related to NVTA implementing taxes?

The Legal Working Group recommends the use of a bond validation suit as the principal means to address the legal issues surrounding the imposition of taxes and fees authorized by the General Assembly. In the event of another form of challenge that would be defended by the Attorney General, NVTA may wish the Council of Counsels and/or outside counsel to represent NVTA as an intervener or as an amicus. Any other suit brought against NVTA will need to be defended by the Council of Counsels and/or outside counsel.

- What legal controls should NVTa establish before selling bonds or implementing projects and services?

If hired, a financial advisor and bond counsel will provide recommendations in this area.

- Will there be any conflicts between NVTa enacting taxes and fees and jurisdictional charters?

The Legal Working Group is not aware of any inherent conflicts. However, the Working Group suggested that legal staff from jurisdictions with charters review this issue individually and inform their NVTa member and the Legal Working Group, if they determine there is a conflict. To date, the representative of the Cities of Alexandria, Fairfax, Falls Church and Manassas Park have indicated that they do not see any conflicts with their city charters.

Questions - Other

- How will NVTa secure legal representation and bond counsel in the short term and long term? (Local jurisdiction support, private counsel, other?)

This question is discussed above. The Legal Working Group recommends a short term "Council of Counsels" and the procurement of bond counsel. This approach should be reevaluated after the bond validation is complete, initial financial memoranda of understandings are complete, a model project agreement is prepared and initial employment contracts are prepared.

- How will NVTa ensure that regardless of the type of legal representation selected, NVTa's legal representation will work closely with local legal staffs?

In the short term the "Council of Counsels" will provide this coordination. Long term coordination will depend on the reevaluation recommendations.

- How will NVTa coordinate legal matters with the Hampton Roads Transportation Authority?

Members of the Legal Working Group are coordinating with local attorneys in the Hampton Roads area to ensure that they are aware of NVTa's efforts and vice versa.

- What advocacy and lobbying authority does NVTA have?

The Code of Virginia in 15.2 – 4840, grants NVTA the duty and responsibility to serve “as an advocate for the transportation needs of Northern Virginia before the state and federal governments; “

- Are there any legal issues that also have financial implications and should be discussed jointly with the financial work group?

If the NVTA chooses to implement any the taxes and fees authorized by the General Assembly, the NVTA will likely need to enter into a Memorandum of Understanding with the state, with local governments or with others to collect the taxes/fees on NVTA’s behalf.

Responses to Additional Questions Asked by Working Group:

- How should the local jurisdictions appoint members of the NVTA Technical Advisory Committee outlined in legislation establishing NVTA?

The Legal Working Group believes that the approach suggested by the Organizational Working Group complies with the law. The Organizational Working Group is recommending the following: NVTA will recommend a list of members each year and submit that list to the local jurisdictions and the chairman of the Commonwealth Transportation Board for approval. Initially, half the locally appointed members will serve a one-year term. The other half will serve two year terms. Subsequently, the members will serve a three-year term. The members appointed by the chairman of the Commonwealth Transportation Board will serve three year terms. All members may be reappointed for additional three year terms.

- Can the taxes and fees authorized by the General Assembly be used to pay NVTA’s administrative costs?

The legal representatives on the Organizational Working Group, in conjunction with the Legal Working Group, believe that since NVTA’s activities are for “transportation purposes,” administrative expenses could be covered by the taxes and fees authorized by the General Assembly.

Christopher Zimmerman, Chairman
Members, Northern Virginia Transportation Authority
June 1, 2007
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Activities that the Working Group is Still Undertaking:

The Working Group is still working on the following outstanding items (if any):

- Drafting draft resolutions and agreements related to imposing the taxes and fees approved by the General Assembly.
- Procuring bond counsel on a contingent basis.
- Drafting model project implementation agreement
- Assisting with drafting of employment contracts, as needed

Members of the Working Group:

NVTA Members

David Snyder, City of Falls Church, Chairman
Hal Parrish, City of Manassas, Vice Chairman

Staff

Tom Culpepper, City of Alexandria
Tamara Ashby, Arlington County
Tom Biesiadny, Fairfax County
Wendy Block Sanford, City of Falls Church
Bob Bendall, City of Manassas
Dean Crowhurst, City of Manassas Park
Tom Blaser, Prince William County
Rick Canizales, Prince William County
Shiva Pant, Washington Metropolitan Area Transit Authority
Christopher P. Spera, City of Alexandria
Stephen A. MacIsaac, Arlington County
Brian Lubkeman, City of Fairfax
Ellen Posner, Fairfax County
Cindy Mester, City of Falls Church
Jack Roberts, Loudoun County
Ross Horton, Prince William County
Rick Taube, Northern Virginia Transportation Commission