

COMMONWEALTH OF VIRGINIA



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DIVISION OF LEGISLATIVE SERVICES

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The Honorable Janet D. Howell, Chair
Senate Finance and Appropriations Committee
Senate of Virginia
Pocahontas Building, Room E509
Richmond, Virginia 23218

Chair Howell,

The Senate Finance and Appropriations staff requested an opinion from the Division of Legislative Services on the following question: whether the \$100,000,000 appropriation contained in Item 137, subsection C, paragraph 44 of H.B. 30 (2022) may be used to fund college laboratory schools established by private institutions or an expanded group of public institutions. As the Appropriation Act provides two definitions for the term "college partnership laboratory school" in separate parts of the bill, the question is which one controls in relation to the money so allocated.

Code Language:

Enactment 19 of H.B. 30 amended § 22.1-349.1 of the Code of Virginia to include schools established by private institutions (by including the term "eligible institution as defined in § 23.1-628" in the definition) and by a "center, institute, or authority" of a public institution of higher education. So for purposes of the Code of Virginia, these institutions are included and eligible for the college partnership laboratory school program.

Budget Language:

However, for purposes of Item 137(C), paragraph 44 of H.B. 30, the language is much more restrictive. Subdivision (f) of that paragraph specifically excludes private institutions for the purposes of Item 137(C):

Notwithstanding the provisions of subsection A of § 22.1-349.1, Code of Virginia, **for the purpose of this Item**, a "college partnership laboratory school" means a public, nonsectarian, nonreligious school in the Commonwealth established by a baccalaureate public institution of higher education.

According to the Supreme Court of Virginia, an "item" in an appropriation bill is "an indivisible sum of money dedicated to a stated purpose." Items typically carry conditions, which are accompanying language that restricts how the money is to be spent. The Court has stated that "Where a condition is attached to an appropriation, the condition must be observed." (*Commonwealth v. Dodson*, 176 Va. 281, 296 (1940) and *Brault v. Holleman*, 217 Va. 441, 447 (1976)). These precedents concerned the Governor's line item veto authority, but are instructive here as they delimit the scope of budget items and conditions.

Here, a court would likely rule that the Item in question is the \$100,000,000 allocated to the College Partnership Laboratory Schools Fund by subdivision (a). Subdivisions (b) through (g), as divisions of those funds and restrictions on how that funding is to be used, would be conditions of that item that "must be followed." The restrictive definition provided by subdivision (f) would therefore apply to all of these funds. Subdivisions (b), (c), and (d) provide the allocation of funding that the Board of Education is authorized to make. Each of those subdivisions authorize money to be distributed to "college partnership laboratory schools," which, following subdivision (f), do not include private institutions. Further, subdivision (g) provides that any monies not allocated to "college partnership laboratory schools" by 2024 shall revert to the general fund. Adopting the broader definition provided in the Code, we believe, would require disregarding these conditions that are attached to this appropriation of funds.

Scope of Authority for Public Institutions:

With respect to whether "a public higher education center, institute, or authority," as described in Enactment 19, could qualify as a "college partnership laboratory school" for purposes of the Item 137(C), paragraph 44 appropriation, it would depend upon the affiliation of such "center, institute, or authority." Again, for purposes of the Code, a public higher education center, institute, or authority would be included and qualify as a college partnership laboratory school. However, in terms of qualifying as a college partnership laboratory school for the \$100,000,000 budget appropriation, the interested center, institute, or authority would have to be established by a "public, nonsectarian, nonreligious school in the Commonwealth established by a baccalaureate public institution of higher education" per the controlling definition in subdivision (f) of Paragraph 44.

Timing of Enactment:

While changes to the Code that occur later in time would generally supersede budget language absent express language to the contrary, Item 137 and Enactment 19 are both part of the same act. H.B. 30 became law and made the language of Item 137 and Enactment 19 effective simultaneously, regardless of when the various provisions were added to the underlying budget bill. The General Assembly could have amended Item 137 if it wished to do so, but nothing in Enactment 19 overrides Item 137 for purposes of the \$100,000,000 appropriation, which specifically uses the phrase "Notwithstanding the provisions of subsection A of § 22.1-349.1,..."

Conclusion:

Based on the aforementioned findings, it is our opinion that the definition provided in budget Item 137(C), paragraph 44 limiting the use of the \$100,000,000 appropriation likely controls for purposes

of those funds allocated within that item. The language allocating these funds refers to the defined term, so adopting a different definition would disregard the clear language of subdivision (f) that explicitly applies to the Item contained in paragraph 44. Private institutions would be included in the definition of "college partnership laboratory school" for purposes of the Code or future usage unrelated to this particular budget item.

Please note that an opinion of the Division of Legislative Services is advisory in nature and not an authoritative conclusion on the law. Feel free to let us know if you have any questions or if we may assist further on this matter. Thank you.

Regards,

Joshua Kaplan and Stephen Kindermann

Attorneys
Division of Legislative Services