

John C. Watkins
10th District
Senate of Virginia

Contact: Lorraine Waddill, Legislative Assistant
(804) 698-7810

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Taxes and the Supreme Court

On Friday, February 29th, the Supreme Court of Virginia rendered an opinion in the case of Marshall, et al v. Northern Virginia Transportation Authority. In that case two specific questions were asked. One question was about last year's HB 3202 (Chapter 896) and whether the legislation violated Article IV, Section 12 of the Constitution. The Supreme Court ruled that, in fact, the legislation in and of itself was not in violation. But there was a savings clause embodied in the legislation that expressed if there was a finding of unconstitutionality in any section of Chapter 896, it would not render the entire chapter unconstitutional.

However, the second question to the Court was whether the General Assembly could delegate its power of taxation to a political subdivision when that political subdivision is not a county, city, town or regional government and is not an elected body. The court found that that part of HB 3202, which delegated the power of taxation, was unconstitutional.

The concern that many have about this opinion is that it goes much further than immediately meets the eye. It, indeed, calls into question the creation of authorities to operate as enterprise systems that impose fees. This not only questions the ability of the Northern Virginia Transportation Authority to raise "fees" for transportation needs but it would certainly question the ability of many other authorities (be they water and sewer authorities, toll authorities, port authorities and airport authorities) that are created either by the state or by the local governments and are operated by an appointed (non-elected) body. This will take some time to sort out, and it may, in fact, require some clarification on the part of the Supreme Court. Clearly there needs to be a clarification with regard to fees and taxes. It was clearly stated in the opinion that "if payment of regional taxes and fees is to be required by a general law, it is the prerogative and the function of the General Assembly..." In other words, the General Assembly must impose the fees or taxes. The implications of this decision could potentially be far reaching. This Supreme Court case clearly accentuates the importance of legislation dealing with the development of local and state infrastructure.

Following up on other matters, Senate Bill 768, which would change the system of infrastructure development in local governments, passed the Senate on February 12th by a vote of 21-19. The legislation was sent to the Rules Committee in the House of Delegates. The Rules Committee voted to hold the bill until a later date, and consider the bill during the time before the next regular session of the General Assembly. The continuation was agreed to by the development community, the Virginia Association of Counties, the Virginia Municipal League, the High Growth Coalition, and the Virginia League of Conservation Voters. All agreed this legislation

was a direction in which Virginia ultimately needed to move. The only outstanding disagreement was the level of the maximum impact fees.

This legislation would have broadened the base of those developers who would be required to pay impact fees. SB 768 also allowed for the continuation of cash proffers on commercial development, and for offsite infrastructure. It provided for the continuation of on-sight proffers for residential development, as well as offsite proffers for residential development on proposed capital needs generated by the new project, as long as the proffers weren't already accounted for in a service district or six-year plan.

I feel that it is extremely important that the Virginia General Assembly be up front with the citizens of Virginia about the costs and fees associated with building and maintaining infrastructure at the state and local level. I did not support HB 3202 in the 2007 session because of the methodology used to transfer the taxation authority to unelected bodies. I did not support HB 3202 because it failed to recognize the transportation needs of central Virginia and rural Virginia. I strongly believe that transportation should be paid for by the users and that it should not be a part of general fund allocations where it competes for state tax dollars that should otherwise be utilized for education, health care and public safety. Hopefully in the upcoming weeks this General Assembly will recognize the importance of clearly indicating to the citizens who pays for what.

John C. Watkins
www.senatorjohnwatkins.com