

TRANSCRIPT OF JUDGE BENJAMIN N.A. KENDRICK'S RULING ON NVTA BOND VALIDATION SUIT

AUGUST 28, 2007

ARLINGTON CO. CIRCUIT COURT

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1 P R O C E E D I N G S

2 THE COURT: Good morning.

3 COUNSEL COLLECTIVELY: Good morning.

4 THE COURT: Thank you for your

5 indulgence last evening, Counsel. I did need a

6 break, and I appreciate it.

7 This matter came on to be heard on a

8 bond validation proceeding instituted by

9 Northern Virginia Transportation Authority

10 pursuant to the Public Finance Act of 1991,

11 Virginia Code 15.2-2600, et seq., and the

12 Northern Virginia Transportation Authority Act,

13 Virginia Code 15.2-4829, et seq., requesting

14 that the Court validate the proposed revenue

15 bonds and the intended use of the proceeds of

16 the bonds to pay for the construction of

17 numerous transit projects and roadway

18 improvements.

19 At issue is whether the requirement of

20 approval by a locally-elected body under Article

21 7, Section 7, of the Virginia Constitution
22 applies. Under Article 7, Section 7, of the

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1 Virginia Constitution, it provides in part that
2 no ordinance or resolution appropriating money,
3 imposing taxes, or authorizing the borrowing of
4 money shall be passed except by a recorded
5 affirmative vote of a majority of all of the
6 members elected to the governing body.

7 Northern Virginia Transportation
8 Authority is an independent political
9 subdivision similar to other entities such as
10 water and sewer authorities, sanitary districts,
11 and industrial development authorities. It is
12 not a local government with an elected governing
13 body, if that term means elected directly by the
14 citizens of the general government.

15 As used in Section 7, the term
16 "governing body" is a limited reference to the
17 governing body of local governments and not to
18 the representatives of any other entity.
19 Accordingly, Article 7, Section 7 does not apply
20 to the regional taxes and fees imposed by the
21 Northern Virginia Transportation Authority.

22 The question of whether or not the

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1 authorizing act, Chapter 896, violates Article
2 4, Section 12 of the Virginia Constitution, the
3 Supreme Court of Virginia has established a
4 strong presumption that the General Assembly
5 statutes are constitutional. Legislation cannot
6 be declared unconstitutional unless it clearly
7 and plainly violates the constitution in such a
8 manner as to leave no doubt or hesitation.
9 Every reasonable doubt must be resolved in favor
10 of the act's constitutionality. The courts will
11 declare the legislative judgment null and void
12 only when the statute is plainly repugnant to
13 some provision of the state or the federal
14 constitution.

15 Under Article 4, Section 12 of the
16 Virginia Constitution, no law shall embrace more
17 than one object which shall be expressed in its
18 title. The title of an act may be general and
19 cover seemingly diverse points if it gives
20 notice to the general subject and the interest
21 likely to be affected. If there is doubt as to
22 the sufficiency of the title, the doubt must be

1 resolved in favor of its sufficiency.

2 The Supreme Court has expressed in

3 Section -- the Supreme Court has expressed

4 Section 12's purpose in part by saying, although

5 the act authorizes many things of a diverse

6 nature to be done, the title is sufficient if

7 the things authorized may be fairly regarded and

8 in furtherance of the object expressed in the

9 title. It is to be liberally construed and

10 treated so as to uphold the law if practicable.

11 All that is required by the constitutional

12 provision is that the subjects embraced in the

13 statute, but not specified in the title, are

14 congruous and have natural connection with or

15 are germane to the subject expressed in the

16 title.

17 Chapter 896 meets the one-object test.

18 The bill title makes it clear that it would

19 amend and reenact several provisions of the code

20 with all subject parts relating to

21 transportation.

22 Constitution of Virginia, Article 7,

1 Section 10(B) places restriction upon the powers
2 of the counties and districts thereof and the
3 regional governments in districts thereof to
4 incur debt by requiring a referendum. Because
5 Northern Virginia Transportation Authority is
6 not a county or a district thereof and is not a
7 regional government or district thereof, the
8 referendum requirement of Section 10(B) is not
9 applicable.

10 The General Assembly has provided that
11 the Northern Virginia Transportation Authority
12 is an independent political subdivision. It is
13 a unit organized for special purposes. The
14 enabling legislation affirms that the debt
15 incurred is the debt of the Northern Virginia
16 Transportation Authority, not the Commonwealth
17 or any county, city, town, or other political
18 subdivision.

19 The Supreme Court has held that debt
20 incurred by legislatively-created independent
21 political subdivisions, whatever their title, is
22 not debt of the Commonwealth or any other

1 governmental unit. Accordingly, the debt to be
2 incurred by the Northern Virginia Transportation
3 Authority in issuing the bonds is not subject to
4 the provisions of Article 7, 10(B).

5 In summary, let me say that, based on
6 this record, the entire record, including the
7 authority cited and arguments of capable
8 counsel, it's the ruling of this Court as
9 follows:

10 The Northern Virginia Transportation
11 Authority is a political subdivision established
12 by an act of the General Assembly with limited
13 powers. Article 7, Section 2 of the
14 Constitution does not apply. The Northern
15 Virginia Transportation Act authorizes the
16 Authority to issue bonds, and the procedural
17 requirements imposed on Northern Virginia
18 Transportation Authority have been satisfied.

19 The General Assembly's enactment of
20 Chapter 896 was within the legislative power set
21 forth in Article 4 in the regional taxes and
22 fees, which it authorized, do not violate any

1 provision of the Virginia Constitution.

2 Chapter 896 complies with the one-object
3 rule, and the Constitution does not prohibit
4 establishment of any regional taxes and fees
5 authorized under Chapter 896.

6 The requirement of approval by the
7 locally-elected body under Article 7, Chapter 7
8 -- Section 7, excuse me, does not apply. The
9 requirement of approval of the debt by voters
10 under Article 7, Section 10 does not apply.

11 The bonds, when issued, shall be payable
12 only from the revenues and receipts of Northern
13 Virginia Transportation Authority pledged for
14 such purpose and shall not be any debt,
15 liability, or general obligation of the
16 Commonwealth or any other political subdivision
17 thereof other than the Northern Virginia
18 Transportation Authority. Accordingly, the
19 relief sought by the plaintiff is granted. The
20 Marshall and Loudoun County counterclaims are
21 denied or otherwise dismissed.

22 Mr. McSweeney and Mr. Roberts, we had a

1 court reporter; all of your exceptions have been
2 noted for the record. I would urge you to note

3 your exceptions, though, in the final order that
4 will be prepared.

5 Mr. Broaddus, it is your responsibility
6 to prepare the final order in accordance with
7 the Court's rulings, circulate it to counsel for
8 its signature and to the Court for entry.

9 MR. BROADDUS: We will do so, sir.

10 THE COURT: Is there any other business
11 to come before this Court at this time?

12 MR. BROADDUS: No, sir.

13 MR. McSWEENEY: No, sir.

14 MR. ROBERTS: No, sir.

15 THE COURT: Let me say to all counsel,
16 Mr. Broaddus, Mr. Ferguson, Mr. McSweeney, Mr.
17 Roberts, Mr. Dolan, thank you for your
18 preparation and presentation of these issues to
19 this Court and especially for your attempts and
20 the help to facilitate to get this case on the
21 fast track. I appreciate the work you have
22 done, and the best to you.

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1 MR. BROADDUS: Thank you, sir.

2 MR. McSWEENEY: I appreciate your
3 courtesy, Your Honor.

1 C E R T I F I C A T E

2 COMMONWEALTH OF VIRGINIA AT LARGE:

3 I, Bobbi Spencer, a stenographic reporter

4 and notary public in and for the Commonwealth of

5 Virginia at Large do hereby certify that the

6 foregoing was reported by stenographic means by

7 me, which matter was held on the date and at the

8 time and place set forth on the title page

9 hereof, and that the foregoing constitute a true

10 and accurate transcript of same to the best of

11 my ability.

12 I further certify that I am not related to

13 any of the parties, nor am I an employee of or

14 related to any of the attorneys representing the

15 parties, and I have no financial interest in the

16 outcome of this matter.

17 Given under my hand and seal this

18 28th day of August, 2007.

19 _____

 Bobbi Spencer, CCR

20 No. 0415285