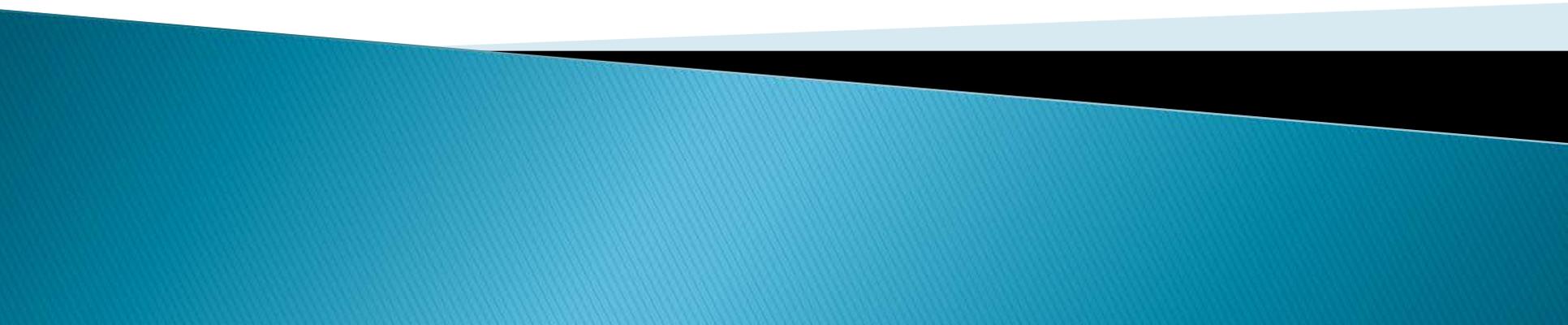


If There Is No Appropriation Act on July 1, 2014 – Constitutional and Statutory Implications

Division of Legislative Services

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What the Virginia Constitution Tells Us – Deposit of Revenues

- If no appropriation act is in place July 1, the Commonwealth will be in uncharted territory.
- On July 1, all taxes and other revenues of the Commonwealth will continue to be deposited into the State Treasury.
 - ▷ This is required by Article X, § 7.
 - ▷ Neither general nor nongeneral fund revenues may be deposited elsewhere.

What the Virginia Constitution Tells Us – Separation of Powers

- The legislative, executive, and judicial branches are separate and distinct. Article III, § 1.
 - ▷ No branch may exercise the power of the others.
 - ▷ Each branch is of equal importance, but with different, exclusive powers.

What the Virginia Constitution Tells Us – Separation of Powers

- Law making is the province of the General Assembly.
 - ▷ Only the General Assembly can enact laws and only by the passage of a bill. Article IV, § 11.
- Article V, § 6 confines the Governor's role in law making to:
 - ▷ signing bills into law;
 - ▷ recommending amendments to bills for consideration by the General Assembly; and
 - ▷ vetoing bills (item veto power for appropriations bills only).
- Article VI, § 1 confers judicial power in the Supreme Court and court system. Other than interpreting Virginia law, the judicial branch has no law-making function.

What the Virginia Constitution Tells Us – Appropriation of Revenue

- Moneys shall not “be paid out of the State Treasury except in pursuance of appropriations made by law.” Article X, § 7.
 - ▷ Revenues may not leave the State Treasury unless appropriated by a law enacted by the General Assembly.
 - ▷ No appropriation may be paid beyond two years and six months of enactment of the appropriations law.
- Similarly, the U.S. Constitution provides that “[n]o money shall be drawn from the treasury, but in consequence of appropriations made by law.” Article 1, § 9.
 - ▷ “Any exercise of a power granted by the Constitution to one of the other branches of Government is limited by a valid reservation of congressional control over funds in the Treasury.” Office of Pers. Mgmt. v. Richmond (496 U.S. 414 (1990)).
- In administering appropriations laws that have been enacted, the Governor, subject to criteria adopted by the General Assembly, is charged with ensuring that no expense be incurred that cannot be paid from expected revenues. Article X, § 7.

What the Virginia Constitution Tells Us – Appropriation of Revenue

- The power of the purse is one of the General Assembly's most significant law-making powers.
 - ▷ Appropriations laws require an affirmative vote of a majority of the members elected to each house. Article IV, § 11.
 - ▷ Debt bills and bills that raise taxes have the same vote requirement under the Constitution. See Article IV, § 11.

What the Virginia Constitution Tells Us – Appropriation of Revenue

- The General Assembly's power to raise taxes is a quintessential legislative power that may not be delegated. Marshall et al. v. Northern Virginia Transportation Authority et al. (275 Va. 419 (2008)).
- Likewise, the power of the purse is also a quintessential legislative power explicitly set forth in the Constitution.
 - ▷ It may not be delegated.
 - ▷ It may not be seized by any other branch of government, whether or not the General Assembly has enacted an appropriation act effective July 1.

What the Virginia Constitution Tells Us – Required Appropriations

- If no appropriations law is in effect, the Constitution prohibits the withdrawal or spending of funds from the State Treasury with only one explicit exception:
 - ▷ servicing Commonwealth voter-approved debt (Article X, § 9 (b)).
- It is unknown whether a Virginia court would find that such things as salaries of statewide elected officials and justices and judges are constitutionally required to be paid. See Article V, § 4 (Gov.); Article V, § 14 (Lt. Gov.); Article V, § 15 (Att’y Gen.); and Article VI, § 9 (Justices and judges).
 - ▷ Fletcher et al. v. Commonwealth of Kentucky (163 S.W. 3d 852 (2008)) required payment of services mandated in Kentucky Constitution.

What the Virginia Constitution Tells Us – Carrying Out Laws

- Article V, § 7 requires that the Governor “take care that the laws be faithfully executed.”
 - ▷ This is not a grant of power to the Governor to spend funds out of the State Treasury when no appropriation act is in effect.
 - ▷ “The Governor has no constitutional authority to exercise legislative powers even when the General Assembly has failed to do so.” Fletcher et al. v. Commonwealth of Kentucky (163 S.W. 3d 852 (2008)).

Governor's Emergency Powers

- The Governor can declare a state of emergency under the Emergency Services and Disaster Law if a disaster or emergency has occurred. See Chapter 3.2 of Title 44.
 - ▷ This is not a constitutionally derived power.
 - ▷ Disasters are man-made or natural, such as terrorist attacks, industrial or nuclear accidents, earthquakes, hurricanes, etc.
 - ▷ Emergencies are any occurrence that may result in substantial injury or harm to citizens or substantial damage to or loss of property.
- An emergency might include the conditions existing in the Commonwealth on July 1 if no appropriation act is in effect (e.g., police on duty, hospitals open).
 - ▷ It is a factual determination for the Governor to make whether the health, safety, and welfare of Virginia's citizens are imperiled by the consequences of no budget. (Opinion issued by Attorney General Robert McDonnell on June 8, 2006).

Governor's Emergency Powers

- The Governor may proclaim and publish rules and regulations and issue orders to address an emergency. § 44-146.17 (1).
 - ▷ This statutory authority does not empower the Governor to spend or appropriate money out of the State Treasury when no appropriations law is in effect.
- Section 44-146.28 authorizes the Governor to spend a sum sufficient during an emergency.
 - ▷ However, this appropriation authorization expired on August 28, 2013, which is two years and six months after the end of the 2011 Session when § 44-146.28 was last amended and reenacted.

No appropriation may be paid beyond two years and six months of the end of the Session at which the appropriations law was enacted. Article X, § 7.

Governor's Emergency Powers

- If the Governor were to require executive branch employees to report to work on July 1 to address the emergency, there would be no means to pay them.
 - ▷ Without a budget no payments can be made for employee salaries, purchases from vendors, or services performed by third parties.
 - ▷ IOUs might become the normal course of business. The eventual appropriation act would determine to what extent IOUs would be paid.
- It is unknown who or what will be encompassed by any executive order declaring an emergency.

Key Take Aways

- If there is no budget on July 1, the Commonwealth will be navigating new waters.
- Absent an appropriations law, neither the executive, legislative, nor judicial branch may appropriate or spend funds in the State Treasury.
- In the absence of an appropriations law, the Governor could declare an emergency but moneys will not be available to address the emergency conditions.
 - ▷ IOUs could be a substitute for payment.
 - ▷ The scope of any executive order declaring such an emergency is unknown.

QUESTIONS?