

Contact Information

* Name
Carter Cassidy

* Home Address*
106 Bell Creek Dr.

*You must be registered to vote in the City of Staunton. You can determine this by checking your voter card or by calling the Voter Registration Office at 540.332.3840.

Phone
SKIPPED

Mobile Phone
[REDACTED]

* Email
[REDACTED]

Qualifications

* **How long have you resided in the Commonwealth of Virginia?**
From 1992 to 2003 then 2008 (for a year) and now since 2018 to Present

* **How long have you resided in the City of Staunton?**
Since 2018

Have you ever been elected or appointed as an Officer or Commissioner for the City of Staunton?
No

* **Please indicate why you are interested in serving on City Council:**

I want to serve the citizens of Staunton by promoting business and economic development while also keeping the cherished hometown community spirit of our great city. There are opportunities to be realized in our city that, with the right guidance, can also ensure that our community thrives while the essence of Staunton remains. There is a reason people want to move here and there is equally a reason people want to stay here. I will seek opportunities to allow all stakeholders to succeed.

* **Please indicate areas of your experience and knowledge that you see as important for consideration of your application for appointment:**

I am registered as an active attorney by the State Bar of California and am currently a Supervisory Contract Specialist at the Department of Defense. During my previous positions, I have researched, written, and filed legal documents as well as successfully advocated for my clients. I am a self-starter accustomed to solving complicated issues and I am ready to put in the time, commitment, and hard work to succeed at this opportunity. I also assisted in drafting the amended charter for the Shenandoah Valley Regional Airport in 2014 prior to moving to the region. I've attached a writing sample to demonstrate to the council of my legal and writing abilities.

* **Please list any relevant leadership skills or educational training:**

During law school, I helped to prepare cases for trial and assisted with matters that already began proceedings in the federal circuit. Additionally, I currently manage a team of contract specialists that require my expertise on reviewing federal and state laws applicable to my contract team. As a current supervisor, I am aware of the needs of my team while also demanding top performance to get our job done to serve the United States. This involves coaching my team to achieve the highest metrics in our region, which was successful in our prior fiscal year as well as being aware of personal challenges from one of my team members that I can help improve.

Indicate if you are attaching additional information pertinent to this application.
Attachments are provided

Attachment
Cassidy Writing Sample Airport.pdf

* **Digital Signature**
Carter Cassidy

* **Date and Time**
01/21/2023 12:00 AM

Be advised that upon submission, this application and supporting documents become a public document and will be published by the City of Staunton.

Review of Proposed Amended Charter Summary:

The majority of the language in the initial draft of the amended charter is proper and correlates to other successful amended airport commission charters passed in the Virginia legislature. However, in order to ensure the proper power of eminent domain, police powers, and bond language is applied, some changes are in order. I have based my research of the proposed changes to the charter on the language of past successful bills as well as Virginia Supreme Court case holdings. With such changes applied to the draft, there should be a high likelihood of passage in the legislature with minimal revision. Since this is only an amendment to §3 of the original charter, sections such as the §1 Short Title, §2 Creation for a Public Purpose, and other sections normally included in many Airport Commission bills have been excluded.

RECOMMENDATIONS FOR THE AMENDED CHARTER

I. THE CHARTER SHOULD BE REFORMED SO THE POWER OF EMINENT DOMAIN IS INTACT AND CANNOT BE CONSTRUED AS UNCONSTITUTIONAL.

The Virginia Supreme Court has affirmed that an Airport Commission has the power to exercise the power of eminent domain on the behalf of its supporting cities, towns or counties. *Evans v. SmythWythe Airport Com'n*, 495 SE 2d 825 (Va. S. Ct.) (1998). As such, an Airport Commission is cannot “relinquish its power or right of eminent domain because such power or right is an inherent and inseparable incident of the sovereignty of this Commonwealth.” *Id.*

The power of eminent domain is likely to be the most litigated power of the Commission, should it take action and use the powers to take land for development. Therefore, this section should be bolstered to ensure no challenges against this power would be successful.

The eminent domain powers included in the § 3 amendments should be taken out and reformed into their own section for the amended charter. Currently, it has been reformed to be § 3.1.

The language of the eminent domain powers formerly read as:

To acquire under the power of eminent domain in the manner prescribed for railroad corporations by Title 25 of the Code of Virginia, property, real or personal, or any interest therein, including easements in structures, objects, natural growth, or use of lands which obstructs the air space required for the flight of aircraft in landing or taking off at an airport or are otherwise hazardous to such landing or taking off of aircraft, as are necessary for the establishment, use, operation, maintenance or enlargement of an airport; provided, however, such power of eminent domain shall not extend to the taking of any radio or television towers or installation in existence on the effective date of this Act. Leases or contracts entered into pursuant to this section may be for terms of five years or less, notwithstanding any local ordinance to the contrary. (1956, c. 628; 1958, c. 396; 1994, c. 773).

The language of the eminent domain powers have been reformed and expanded below:

§ 3.1 Eminent Domain and Acquisition of Property - A. The General Assembly, through Code §§ 5.1-34 and 5.1-36 enables the creation of the Commission that may exercise the power of eminent domain on behalf of the participating political subdivision. The Commission is hereby authorized and empowered to acquire by purchase solely from funds provided under the provisions of this act, such lands, structures, property, rights, rights-of-way, franchises, easements and other interests in lands as it may deem necessary or convenient for the construction and operation of the project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof. The Commission established hereunder is hereby granted full power to exercise within its area the right of eminent domain in the acquisition of any lands, easements and privileges that are necessary for airport and landing field purposes, including, but not limited to, the right to acquire, by eminent domain, aviation easements over lands or water outside the boundaries of its airport or landing fields where necessary or desirable in the interests of safety for aircraft to provide unobstructed air space for the landing and taking off of aircraft utilizing its airport and landing fields even though such aviation easement may be inconsistent with the continued use of such land for the same purposes for which it had been used prior to such acquisition, or inconsistent with the maintenance, preservation, and renewal of any structure or any tree or other vegetation standing or growing on the land at the time of acquisition; provided, however, that the power of eminent domain shall not extend to the taking of any radio or television towers or installation in existence on the effective date of this act. Leases or contracts entered into pursuant to this section may be for terms of five years or less, notwithstanding any local ordinance to the contrary. (1956, c. 628; 1958, c. 396; 1994, c. 773).

B. Proceedings for the acquisition of land, easements, and privileges by condemnation may be instituted and conducted in the name of the Commission, and the procedure shall be the same as in the acquisition of land by condemnation proceedings instituted by councils of towns; provided, that the provisions of § 25.1-102 of the Code of Virginia, shall apply to any property owned by a corporation possessing the power of eminent domain that may be sought to be taken by condemnation.

C. The title to any property acquired by the Commission shall be taken in the name of the Commission.

D. In an eminent domain proceedings the court having jurisdiction of the suit, action or proceeding may make such orders as may be just to the Commission and to the owners of the property to be condemned and may require an undertaking or other security to secure such owners against any loss or damage by reason of the failure of the Commission to accept and pay for the property, or by reason of the taking of property occupied by such owners, but neither such undertaking or security nor any act or obligation of the Commission shall impose any liability upon the Commonwealth or upon any county, or other political subdivision of the Commonwealth.

E. If the owner, lessee or occupier of any property to be condemned or otherwise acquired shall refuse to remove his property therefrom or give up possession thereof, the Authority may proceed to obtain possession in any manner provided by law.

The expansion of the eminent domain power detailed above allows for lands to be taken for general eminent domain purposes as well as for specific purposes of easements and ensuring that the airport is able to have any necessary unobstructed airspace. The expanded section is constitutional because it correctly allows a government agency to take private land for public use while ensuring that the owner of the proper is paid a reasonable price for the land being taken under the Charter. The expanded section also ensures that the Commission does not go beyond its powers because the Commission must that the title to property in its name only and therefore it cannot impose any liability to the Commonwealth or any other political subdivision.

In conclusion, the eminent domain section has been expanded to the point that the Commission would be able to use its inherent power of eminent domain while being safeguarded from lawsuits involving the proper taking of land.

II. LANGUAGE OF POLICE POWERS SHOULD BE EXPANDED AND REFORMED

The police powers proposed in the amended Charter should be crafted so that the Commission acts in line with the Code of Virginia as well as the Virginia Department of Justice. It is important to note that when the Roanoke Regional Airport Commission Act (“Roanoke Act”) was amended any language referring to “police officers” was struck out and replaced with “conservators of the peace.” This was likely changed to comply with the language in Code § 19.2-12 and also is a more general term than a specific “police officer.”

However, in the Roanoke Act, the power to appoint the “conservators of the peace” is bestowed upon a county circuit court in order to comply with the Virginia Code. Therefore, it may not be best to use this language for the Commission’s amended charter since, even though it has proven to be successful, the Commission’s power to hire officers would be dependent on the participating political subdivision’s circuit courts and not under the sole discretion of the Commission. Therefore, parts of the expanded language are also adapted from the Capital Region Airport Commission, which was submitted on January 9, 2014 mainly to expand its own police powers and does not include the “conservator of the peace” language. House Bill 1088 should be watched closely to determine whether the general police language is successful when the legislature votes on the bill.

Therefore, the police powers included in the § 3 amendments should be taken out and reformed into their own section for the amended charter. Currently, it has been reformed to be § 3.2.

The language of the police powers formerly read as:

To establish and maintain a regular police force and to confer police powers to be exercised with respect to offenses occurring on the Commission Facilities upon its employees meeting the minimum requirements of the Department of Criminal Justice Services, whereby the Commonwealth hereby grants, accepts and agrees to concurrent police power authority over the Shenandoah Valley Regional Airport, whereby such police officers employed by the Commission shall have all powers vested in police officers under Chapter 17 of Title 15.2, Chapter 11 of Title 16.1, Title 18.2, Title 19.2,

and Title 46.2 of the Code of Virginia as those titles may be amended from time to time and shall be responsible upon the Commission Facilities and within 300 yards of the Facilities for enforcing the laws of the Commonwealth, the Commission's rules and regulations and all other applicable ordinances, rules, and regulations. Such police officers may issue summons to appear, or arrest on view or on information without warrant as permitted by law, and conduct before any judicial officer of competent jurisdiction any person violating, upon Commission Facilities, any rule or regulation of the Commission, any ordinance or regulation of any local political subdivision, or any other law of the Commonwealth. The Department of State Police shall exercise the same powers upon Commission Facilities as elsewhere in the Commonwealth. The Commission may enter into reciprocal or mutual aid agreements with the local political subdivisions and municipalities in the Commonwealth as defined in § 2674(f)(2) of title 10 of the United States Code, those counties with a border abutting that area, and any municipalities therein; any agency of the Commonwealth, the federal government; or any combination of the foregoing for cooperation in the furnishing of services during a public service event, an emergency, or planned training, including law-enforcement, fire, rescue, emergency health, and medical services, transportation, communications, public works and engineering, mass care, and resource support. When responding to a request under such an agreement, Commission employees may go outside Commission facilities, and the Commission and its employees shall enjoy the same immunities from liability as localities and their employees do in responding under similar circumstances.

The language of the police powers have been reformed and expanded below, changes noted in **bold**:

§ 3.2 Police powers. - A. The Commission may exercise full law-enforcement powers upon all property owned, operated, managed, leased, or maintained by or under the control of the Commission.

B. The Commission may establish and maintain a regular police force and to confer police powers to be exercised with respect to offenses occurring on the Commission Facilities upon its employees meeting the minimum requirements of the Department of Criminal Justice Services, whereby the Commonwealth hereby grants, accepts and agrees to concurrent police power authority over the Shenandoah Valley Regional Airport, whereby such police officers employed by the Commission shall have all powers vested in police officers under Chapter 17 of Title 15.2, Chapter 11 of Title 16.1, Title 18.2, Title 19.2, and Title 46.2 of the Code of Virginia as those titles may be amended from time to time and shall be responsible upon the Commission Facilities and within 300 yards of the Facilities for enforcing the laws of the Commonwealth, the Commission's rules and regulations and all other applicable ordinances, rules, and regulations. **Any person appointed and employed as a Commission police officer pursuant to this section must meet the training requirements established by the Department of Criminal Justice Services under § 9.1-102 and the requirements of § 9.1-114.**

C. Such police officers may issue summons to appear, or arrest on view or on information without warrant as permitted by law, and conduct before any judicial officer of competent jurisdiction any person violating, upon Commission Facilities, any rule or

regulation of the Commission, any ordinance or regulation of any local political subdivision, or any other law of the Commonwealth, **or other applicable statute, ordinance, rule or regulation. For the purpose of enforcing such statutes, ordinances, rules, and regulations, the court or courts having jurisdiction for the trial of criminal offenses of the participating political subdivision wherein the offense was committed shall have jurisdiction to try a person charged with the violating of any such statutes, ordinances, rules, and regulations.**

D. The Department of State Police shall exercise the same powers upon Commission Facilities as elsewhere in the Commonwealth. The Commission may enter into reciprocal or mutual aid agreements with the local political subdivisions and municipalities in the Commonwealth as defined in § 2674(f)(2) of title 10 of the United States Code, those counties with a border abutting that area, and any municipalities therein; any agency of the Commonwealth, the federal government; or any combination of the foregoing for cooperation in the furnishing of services during a public service event, an emergency, or planned training, including law-enforcement, fire, rescue, emergency health, and medical services, transportation, communications, public works and engineering, mass care, and resource support. When responding to a request under such an agreement, Commission employees may go outside Commission facilities, and the Commission and its employees shall enjoy the same immunities from liability as localities and their employees do in responding under similar circumstances.

As shown above, the added language of the police powers expands the scope of the charter to ensure no applicable language has been left out that would hinder the Commission's ability to operate a police force on its properties. Additionally, unlike the Roanoke Commission, it affirmatively vests the power of appointing the police officers in the hands of the Commission while also defining the powers of such officers as limited to Virginia law and ensuring the minimum requirements of training the officers will comply with all necessary state regulations. Furthermore, the added language makes clear that the jurisdiction try criminals apprehended by a Commission's officer remains in the participating political subdivision where the offense was committed. Therefore, this allays any jurisdictional confusion between the joint participating political subdivisions operating the Commission.

As previously noted, the language of "peace conservator" was left out because it necessarily leaves the power of appointment to the district courts instead of the Commission. However, this language appeared to be successful when amending the charter for the Roanoke Commission. Therefore, it is important to note how House Bill 1088 fares because the Capital Region Airport Commission also chose to forgo the use of "peace conservator" in order to keep the power of appointing its own police force.

In conclusion, the added language acts as a safeguard to challenges that the Commission does not have a right to operate a police force or that such police force does not comply with Virginia's applicable rules and regulations. Additionally, it ensures the jurisdiction of those apprehended by the Commission's police force remains in the court of the participating political subdivision where the offense occurred.

III. THE POWER TO ISSUE BONDS SHOULD CLOSELY MIRROR THAT OF AN INDUSTRIAL DEVELOPMENT AUTHORITY SO THE COMMONWEALTH DOES NOT INCUR DEBTS.

The power of the Commission should be more narrowly tailored than the current general paragraph to ensure compliance with the Code of Virginia and the Virginia Constitution. However, the expansion of language reforms the section so that closely resembles the same powers of an Industrial Development Authority's ("IDA") ability to issue bonds. This should not impede the Commission's ability to issue bonds nor does it impede the creation of an IDA in the future. If the Commission wants to save the power to issue bonds solely for an IDA it can take out this expanded section. However, doing so may hinder the Commission's ability to issue bonds due to the general nature of the current language if a challenge arises. This is mainly due to the current language failing to address whether any indebtedness incurred by the Commission also risks indebtedness for the participating political subdivision or to the Commonwealth.

The powers to issue included in the § 3 amendments should be taken out and reformed into their own section for the amended charter. Currently, it has been reformed to be § 3.3. The language for the reformed section has been adapted from the recent Capital Region Airport Commission Bill offered on January 9, 2014. If the Commission has concerns about the expanded language, it should again track how successful House Bill 1088 in its efforts to expand the bond issuing powers of the Capital Region Airport Commission. Some of this language can be cut on subsequent drafts if needed and the expansive power to issue bonds can be reserved for a future IDA. Therefore, the initial broad paragraph that allowed the Commission "borrow money, issue notes, bonds. . ." has been left intact so its powers to borrow money, enter into contracts or become indebted is not diminished. Rather, the authority of the Commission to enter bonds has been greatly expanded in order to comply with Constitutional requirements and therefore, the expanded language closely mirrors that of an IDA. This is to ensure that the Commission is not limited in its bond issuing powers because it risks indebting the participating political subdivision or the Commonwealth and instead reaffirms that any indebtedness is only the obligation of the Commission, unless the Commonwealth or the participating political subdivision pledges additional security for the bond.

The language of the police powers formerly read as:

To borrow money, issue notes, bonds and other evidences of indebtedness or obligations of the Commission, accept grants from and enter into contracts, leases or other transactions with any federal or state agency, any municipality, school district, corporation or authority.

The language of the police powers have been reformed and expanded below:

§ 3.3. Authority to issue bonds. – A. The Commission may borrow money, issue notes, bonds and other evidences of indebtedness or obligations of the Commission, accept grants from and enter into contracts, leases or other transactions with any federal or state agency, any municipality, school district, corporation or authority.

B. The Commission shall have power and is hereby authorized to issue bonds from time to time in its discretion for any of its purposes, including the payment of all or

any part of the cost of any of its facilities and the refunding of any bonds previously issued by it.

C. The Commission shall not issue bonds unless and until the maximum amount of such issue and the general purposes thereof have been approved by the governing body of each participating political subdivision. Subject to the foregoing, Bonds may be issued under this act notwithstanding any debt or other limitation prescribed in any statute and without obtaining the consent of any city, town, or county government or any commission, board, bureau, or agency of the Commonwealth or of any of the foregoing, and without any other proceedings or the happening of other conditions or things than those proceedings, conditions or things which are specifically required by this act.

D. The Commission may issue such types of bonds as it may determine, including, without limiting the generality of the foregoing, bonds payable as to principal and interest: (i) from its revenues generally; (ii) exclusively from the income and revenues of a particular project; or (iii) exclusively from the income and revenues of certain designated projects, whether or not they are financed in whole or in part from the proceeds of such bonds. Such bonds must state that they are issued solely by the Commission and do not constitute a debt or credit of the Commonwealth or of the participating political subdivision, unless an allowable additional pledge of security for the bond occurs.

E. Any such bonds may be additionally secured by a pledge of any grant or contribution from a participating political subdivision, the Commonwealth or any political subdivision, agency or instrumentality thereof, any federal agency or any unit, private corporation, copartnership, association, or individual, as such participating political subdivision, or other entities may be authorized to make under general law or by a pledge of any income or revenues of the Commission, or where such mortgage has been approved by the participating political subdivisions, a mortgage of any facilities of the Commission. Such a pledge must be in accordance with §§ 127(b) and 185 of the Virginia Constitution.

F. Bonds of the Commission shall be authorized by resolution and may be issued in one or more series, may be dated, may mature at such time or times not exceeding forty years from their date or dates, may be subject to redemption or repurchase at such price or prices and under such terms and conditions, and may contain such other provisions, all as determined by the Commission before their issuance or in such manner as the Commission may provide. The bonds may bear interest at such rate or rates as may be determined by the Commission or in such manner as the Commission may provide, including the determination by reference to indices or formulas or by agents designated by the Commission under guidelines established by it. The Commission shall determine the form of the bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this act or any recitals in any bonds issued under the provisions of this act, all such bonds shall be

deemed to be negotiable instruments under the laws of the Commonwealth. The bonds may be issued in coupon or registered form or both, as the Commission may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the conversion and reconversion into coupon bonds of any bonds registered as to both principal and interest and vice versa. The Commission may sell such bonds in such manner, either at public or private sale, and for such price, as it may determine to be for the best interests of the Commission.

G. Prior to the preparation of definitive bonds, the Commission may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery.

The expanded language above allows for no confusion as to the bond issuing powers of the Commission and how it will repay such bonds. However, Sections F and G can be reduced as the Commission sees fit if it does not want to include language of coupons or temporary bonds.

Section C acts as a safeguard for the Commission's bond issuing power because it requires the governing body of the participating political subdivision to approve the issuance of bonds. This is constitutional because Sections D and E state that the debt incurred by the Commission is solely the debt of the Commission unless there is a pledge for additional security under the bond. This pledge is allowable because the language in Section E requires that such a pledge is made in accordance with § 127(b) and § 185 of the Virginia Constitution, which prohibits a municipality from becoming in debt beyond its debt limitation without voter approval. This is inline with Virginia Supreme Court decisions detailing the bond issuing powers of IDAs and their subsequent indebtedness. *See generally Chesapeake Devel. Authority v. Suthers*, 155 SE 2d 326 (S. Ct. App. Va) (1967); *Development Authority v. Coyner*, 207 Va. 351 (Va. S. Ct.) (1966).

In conclusion, the expansion of the Commission's bond issuing powers helps avoid potential lawsuits because it clearly defines the make up of the bonds, how the bonds are issued, who is affected by the debts of the bonds, and who ultimately has the obligation to repay the bond. This language can similarly be applied to the bond issuing power of a future IDA and can also be reduced or change if the Commission sees fit. Again, it will be important to note what, if any, changes occurs to House Bill 1088, which expands the bond issuing power of the Capital Region Airport Commission, because the language is substantially similar, although with better constitutional safeguards.

CONCLUSION

The expanded language for the three sections noted above will safeguard the Commission for many potential lawsuits as well as acting as an affirmation of its powers should such a lawsuit arise. The language not recommended for alteration or expansion is well suited for inclusion in the bill and is substantially similar to language in other successful amended charters.

*This review and recommended language for the proposed bill was prepared by: Carter Cassidy
Attorney at Law*