



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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MEMORANDUM

To: Emily V. Webb, Director
Office of Board Relations
Virginia Department of Education

From: Susan B. Williams
Assistant Attorney General

A handwritten signature in black ink, appearing to read "Susan B. Williams".

Date: January 17, 2016

Re: Final Regulation 8 VAC 20-740-10 et seq. *Regulations Governing Nutritional Standards for Competitive Foods Available for Sale in the Public Schools* (Action 3377 /Stage 7782)

I have reviewed the final regulations identified above to determine whether the State Board of Education (Board) has the authority to promulgate the regulations and if the regulations comport with applicable state law. Pursuant to the *Code of Virginia* §22.1-16, the Board has authority to promulgate regulations to carry out its statutory powers and duties. Additionally, pursuant to §22.1-207.4 of the *Code of Virginia*, the Board is required to (1) promulgate regulations, in cooperation with the Department of Health, setting nutritional guidelines for all competitive foods and (2) promulgate regulations that “permit each public school to conduct on school grounds during regular school hours no more than 30 school-sponsored fundraisers per school year, during which food that does not meet the nutrition guidelines for competitive foods may be sold to students.”

It is this Office’s view that the Board has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Virginia Office of the Governor Executive Order 17 (2014), and that the Board has not exceeded that authority.

If you have any questions or concerns, please feel free to contact me at the address above, by telephone at (804) 371-8721 or by electronic mail at swilliams@oag.state.va.us. Thank you.

cc: Ronald C. Forehand, Sr. Assistant Attorney General and Section Chief
Mona H. Siddiqui, Assistant Attorney General