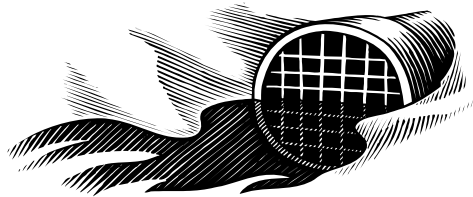


Current Status of the Public Trust Doctrine in Virginia

Carl Josephson
Senior Assistant Attorney General
Commonwealth of Virginia

COMMONWEALTH OF VIRGINIA
v
CITY OF NEWPORT NEWS
158 Va. 521, 164 S.E. 689 (1932)



It is questionable whether the interposition of the conception of a trust in these cases serves any useful purpose or tends to clarity of thinking or correctness of decision. The *statement* that the State or the State legislature holds its tidal waters and their bottoms upon a trust establishes nothing that remained to be established before the statement was made.

158 Va. 539

Constitution of Virginia, Article XI, Section 1.

Natural resources and historical sites of the Commonwealth.

To the end that the people have clean air, pure water, and the use and enjoyment for recreation of adequate public lands, waters, and other natural resources, it shall be the policy of the Commonwealth to conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings. Further, it shall be the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth.

Virginia Code § 28.2-1205

When determining whether to grant or deny any permit for the use of state-owned bottomlands, the Commission shall be guided in its deliberations by the provisions of Article XI, Section 1 of the Constitution of Virginia.

1999 Amendment to Marine Resources Commission Statute

...the Commission...shall exercise its authority under this section consistent with the public trust doctrine as defined by the common law of the Commonwealth adopted pursuant to § [1-200] in order to protect and safeguard the public right to the use and enjoyment of the subaqueous lands of the Commonwealth held in trust by it for the benefit of the people as conferred by the public trust doctrine and the Constitution of Virginia.



Virginia Code § 1-200

The common law

The common law of England, insofar as it is not repugnant to the principles of the Bill of Rights and Constitution of this Commonwealth, shall continue in full force within the same, and be the rule of decision, except as altered by the General Assembly.

Judicial Review

Code of Virginia § 28.2-1205.F

Any person aggrieved by a decision of the Commission under this section is entitled to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq).

However, any decision made by the Commission hereunder consistent with the public trust doctrine as defined by the common law of the Commonwealth adopted pursuant to § [1-200]

shall not be deemed to have been made pursuant to the police power.

Scope of public trust and impact on judicial review not decided

Evelyn v. Commonwealth of Virginia Marine Resources Commission,
46 Va. App. 618, 621 S.E.2d 130 (2005)

roof/patio on top of private pier

Palmer v. Commonwealth of Virginia Marine Resources Commission,
46 Va. App. 78, 628 S.E.2d 84 (2006)

large storage shed on private pier

Ocean View Fishing Pier



Circuit Court determined that VMRC's grant of an after-the-fact permit for a small structure, to serve as a bar [upper right in picture] on the rooftop of this public fishing pier's restaurant and bar, was redundant and violated the public trust doctrine.

Scope of Public Trust Doctrine in Virginia

VMRC submerged lands decision purposes.

Code of Virginia Sections 28.2-1205 and 1-200. Remains to be determined.

Other purposes.

????