




COMMONWEALTH of VIRGINIA
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MEMORANDUM

TO: Christopher L. Beschler
Director
Department of General Services

FROM: Stephen A. Cobb 
Deputy Attorney General
Transportation, Real Estate and Construction

DATE: November 16, 2017

Re: Department of General Services ("DGS") - Emergency Regulations to Implement
Executive Orders 67 & 68 (McAuliffe 2017) to govern any public use of the Lee
Monument

We have reviewed the regulations made available to our office in the Virginia Regulatory Town Hall (<http://townhall.virginia.gov/>) concerning the public use of Lee Monument as required by Executive Orders 67 and 68 (McAuliffe 2017). Based on the review, we believe that the DGS, may adopt the regulations pursuant to Va. Code § 2.2 -1100 (B), which provides "The Director of the Department shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor." Further, DGS has the ability to prescribe regulations in order to perform those duties¹ and DGS's Division of Engineering and Buildings has charge of all public buildings and grounds of the Commonwealth.² The Department of General Services, through the director, has the statutory authority to adopt these emergency regulations under Va. Code § 2.2-4011 (A).

The authority for the emergency action³ provides that emergency regulations are "[r]egulations that an agency finds are necessitated by an emergency situation" and pursuant to Va. Code §2.2- 4011(A), the agency must state in writing the nature of and necessity for such an emergency action. In addition, the regulations are to be effective for no more than eighteen months from the emergency regulatory action.

¹ Va. Code §2.2-1102 (A)(1)

² Va. Code §2.2-1129 (B)

³ Va. Code §2.2-4011

As DGS has stated in its “Notice of Intended Regulatory Action,” the intent of these regulations is promulgated in response to the events of August 2017, where civil unrest in Charlottesville, Virginia, resulted in the loss of lives and destruction of property. The regulation provides a framework for the use of the Robert E. Lee Monument in a way that serves to protect public safety while also protecting constitutional rights. The monument is located in a traffic rotary with no crosswalk for entry, on a major thoroughfare and residential area in downtown Richmond. While not a traditional public forum, the Department of General Services has allowed and permitted events at the Monument in the past and will continue to do so under this regulation. The Regulations are necessary to govern the safe use of the Monument and permitting for public gatherings in a space with such unique challenges

If you have any questions, please give me a call at 804.786.1800.