

**EDUCATION: POWERS AND DUTIES OF SCHOOL BOARDS - SCHOOL BOARDS;
SELECTION, ETC.**

CONSTITUTION OF VIRGINIA: EDUCATION (SCHOOL BOARDS).

Authority for school board to provide insurance coverage for school division is silent as to manner and mode by which such policies may be purchased and serviced. "Reasonable selection of method" rule allows school board discretionary authority to issue agent-of-record letter to insurance company requesting that specific insurance agent be designated agent of record on its policies of insurance.

The Honorable S. Vance Wilkins Jr.
Member, House of Delegates
July 7, 1999

You ask whether a county school board may issue an agent-of-record letter to an insurance company requesting that the company designate a specific local insurance agent to service all policies of insurance issued by the company to the school board.

You relate that an insurance company has advised that if the county school board will issue a letter stating its desire that the company offer a renewal bid¹ for the board's insurance coverage exclusively through the local insurance agent, the company will honor the request. The purpose of an agent-of-record letter is to notify the incumbent agent of the transfer of contractual rights to an existing insurance policy to another agent as of a certain date.² In addition, such notification assists the insurance company in avoiding any involvement in disputes between agents. Agents of record receive commission on the insurance policies they service and have a right to renew those policies. You believe that an insured has the absolute right to select an insurance agent under an existing policy of insurance.

You also advise that the local insurance agent is a former member of the county school board and, in such capacity, did not participate in the board's bidding process. The county school board has been insured by the insurance company, and its policies of insurance have been serviced through another insurance agent. No longer a school board member, the local insurance agent desires that the board, through an agent-of-record letter issued to the insurance company, designate him as the agent to service the board's existing insurance policies.

Prior opinions of the Attorney General conclude that the State and Local Government Conflict of Interests Act³ does not apply to officers and employees who leave state and local government employment, and, further, that counties have no statutory authority to adopt ordinances restricting the postemployment activities of its officers and employees.⁴ Furthermore, a 1996 opinion notes that the Virginia Public Procurement Act prohibits former public employees having responsibility for a procurement transaction from accepting employment with a "bidder, offeror or contractor" for a period of one year following cessation of public employment.⁵ The facts you provide, however, do not suggest that the local insurance agent is affected by this restriction.

You also advise that it has been suggested that the county school board may violate the Dillon Rule should the board issue an agent-of-record letter designating the local insurance agent to service its insurance policies in the event the insurance company is awarded a renewal contract for the provision of insurance.

For many years, Virginia has followed the Dillon Rule of strict construction concerning the powers of local governing bodies, limiting such powers to those conferred expressly by law or by necessary implication from such conferred powers.⁶ In the facts you present, the Dillon Rule is applicable to determine, in the first instance, from express words or by implication, whether a

school board has authority to purchase insurance coverage. This initial determination, however, does not end the inquiry. If the authority to purchase insurance coverage does exist, a determination must then be made whether that particular authority is being exercised properly—i.e., the "reasonable selection of method" rule may be applied to decide "whether there may be implied the authority to execute the power in the particular manner chosen."⁷ The "reasonable selection of method" rule "permits local public bodies to exercise discretionary authority where a grant of power is silent upon its mode or manner of execution" "before the rule comes into play."⁸ Under the "reasonable selection of method" rule, the school board would be entitled to some deference should the board exercise its discretionary authority to issue an agent-of-record letter, because Virginia law is silent on the manner and mode by which school boards may purchase insurance and have their insurance policies serviced by an agent.

Article VIII, § 7 of the Constitution of Virginia (1971) vests "[t]he supervision of schools in each school division ... in a school board, to be composed of members selected in the manner, for the term, possessing the qualifications, and to the number provided by law."⁹ Section 22.1-79 of the *Code of Virginia* details the powers and duties of a school board. Section 22.1-71 confers upon the school board "all the powers and ... duties, obligations and responsibilities imposed upon school boards by law." Furthermore, § 22.1-84 permits school boards to "provide for insurance on school properties against loss by fire and against such other losses as it deems necessary." Since the board is authorized to obtain insurance coverage for the school division, and is vested with all the powers, duties, obligations and responsibilities imposed by law, a logical and necessary implied power flowing from these specific grants of authority is to do all things reasonably associated with the exercise of such powers. The issuance of an agent-of-record letter to an insurance company for the purposes of designating an agent to service specific policies of insurance is clearly associated with and, by implication, contained within the authority of the school board to obtain insurance.

It is well-settled that "[i]f the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it."¹⁰ Consequently, I must conclude that the county school board has authority to issue an agent-of-record letter to an insurance company requesting that a local insurance agent be designated the agent of record on its policies of insurance.

¹For the purposes of this opinion, I shall assume that such bid is submitted as a result of an invitation to bid or request for proposals in compliance with the Virginia Public Procurement Act. See Va. Code Ann. §§ 11-35 to 11-80.

²The insurance company specifies the language to be included in an agent-of-record letter.

³Tit. 2.1, ch. 40.1, §§ 2.1-639.1 to 2.1-639.24.

⁴Op. Va. Att'y Gen.: 1996 at 10, 11; *id.* at 4, 5; 1989 at 67.

⁵1996 Op. Va. Att'y Gen., *supra*, at 12 (citing § 11-76 of "Ethics in Public Contracting" portion of Act).

⁶*Stallings v. Wall*, 235 Va. 313, 315, 367 S.E.2d 496, 497 (1988); *County Board v. Brown*, 229 Va. 341, 344, 329 S.E.2d 468, 470 (1985); *Winchester v. Redmond*, 93 Va. 711, 714, 25 S.E. 1001, 1002 (1896); Op. Va. Att'y Gen.: 1998 at 33, 34; 1986-1987 at 315, 316.

⁷*Commonwealth v. Arlington County Bd.*, 217 Va. 558, 575, 232 S.E.2d 30, 41 (1977).

⁸*Id.* at 574, 232 S.E.2d at 40-41.

⁹See *also* § 22.1-28 (parallel statute to Article VIII, § 7).

¹⁰*Temple v. City of Petersburg*, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944).