

**PRISONS AND OTHER METHODS OF CORRECTION: LOCAL CORRECTIONAL FACILITIES
- REGIONAL JAILS AND JAIL FARMS.**

COUNTIES, CITIES AND TOWNS: TRANSITION OF TOWNS TO CITIES.

CONSTITUTION OF VIRGINIA: LOCAL GOVERNMENT (COUNTY AND CITY OFFICERS).

Political subdivisions constituting Southside Regional Jail Authority are City of Emporia and Greensville County. Sheriff of each participating political subdivision must be member of Authority.

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County Attorney for Greensville County
July 27, 1999

You ask whether the sheriff for the City of Emporia must be appointed to the Southside Regional Jail Authority.

Section 53.1-105 of the *Code of Virginia* authorizes any two or more political subdivisions to establish, maintain and operate a regional jail facility. Section 53.1-106(A) vests supervision and management of regional jails in a board or authority composed of representatives from each political subdivision. The board or authority is "to consist of at least the sheriff from each participating political subdivision, and one representative from each political subdivision participating therein."¹

The Southside Regional Jail Authority consists of the City of Emporia and the County of Greensville. You state that the qualified voters of both the county and the city elect a county sheriff and that the qualified voters of the city elect a city sheriff. It is your opinion, however, that the sheriff of the County of Greensville is the sole sheriff for the two political subdivisions and that the sheriff of the City of Emporia need not be appointed to the authority.²

You explain that § (51) of the charter for the City of Emporia requires the qualified voters of the city to elect a city sergeant,³ and that § (59) of the charter requires the qualified voters of the city and county to elect a sheriff conjointly for the city and the county.⁴ Section (54a) of the charter provides that the city sergeant is to have such powers as are granted to other city sergeants by the general laws of the Commonwealth and by the city's ordinances.⁵ Section (60) provides that the sheriff is to have the same duties in the city as he has in the county.⁶

You point out that, in 1971, the General Assembly enacted § 15.1-796.1 abolishing the office of city sergeant.⁷ Section 15.1-796.1 provided that, "[n]otwithstanding any charter provision or special act, on and after July one, nineteen hundred seventy-one, the office of city sergeant is abolished."⁸ The section further provided that any person holding the office of city sergeant on July 1, 1971, was to continue in office as city sheriff until the expiration of his term and until his successor was elected and qualified.⁹ The statute contained an exception, however, for cities that on July 1, 1971, had both a city sergeant and a city sheriff. In such instances, the city sheriff was to continue in office as city sheriff until the expiration of his term and until his successor was elected and qualified, while the city sergeant was to continue in office as city sergeant only until the expiration of his term.¹⁰

You conclude that, on July 1, 1971, the sheriff of Greensville County was also the sheriff of the City of Emporia pursuant to § (59) of the city charter and that, therefore, the Emporia city sergeant did not by operation of § 15.1-796.1 become the city sheriff on July 1, 1971. It is your view that the city sergeant continued in office as city sergeant until the expiration of his term and that thereafter the position of city sergeant was abolished. Based on the language of the city

charter and § 15.1-796.1, it is your opinion that the sheriff of Greensville County is the sole sheriff for both the county and the city. You also state that you are uncertain as to what office the present sheriff of the City of Emporia actually has been elected to fill.

I cannot agree with your conclusion that on the effective date of § 15.1-796.1, the City of Emporia had both a city sergeant and a city sheriff under the provisions of the city charter and that, therefore, the office of city sergeant was abolished. It is my opinion that, on July 1, 1971, the City of Emporia had a city sergeant and that the sheriff elected conjointly by the qualified voters of the city and the county was the sheriff for the County of Greensville. I base my opinion on a review both of the statutes in effect when the Town of Emporia became the City of Emporia and of the legislative changes enacted by the General Assembly upon adoption of the 1971 Constitution of Virginia.

The present charter for the City of Emporia was enacted in 1968 when the Town of Emporia became a city of the second class.¹¹ The charter provisions reflect the statutes then in effect regarding city and county officers upon the transition of towns to cities.¹² The statutes provided that, when the town became a city, certain town officers were to continue in office as city officers,¹³ with § 15.1-989 specifically providing that the town sergeant was to continue as the sergeant of the city.¹⁴ The city was to continue to elect these city officers, including the city sergeant, at the regularly scheduled elections for such city officers.¹⁵ The statutes also provided that, in addition to the city officers elected by the city voters, certain county officers, including the Commonwealth's attorney, clerk of the circuit court and sheriff of the county, were to have jurisdiction in the city and that the voters residing in the city were entitled to vote for the county officers at the county elections.¹⁶ These statutes contemplate the election of two different officers: a city sergeant, who will be a city officer; and a county sheriff, who will be a county officer.

It is my opinion that the only change created in this structure by the enactment of § 15.1-796.1 was that, beginning on July 1, 1971, the city sergeant would have the title of city sheriff.¹⁷ The General Assembly adopted § 15.1-796.1 at its 1971 Special Session as a transition statute to effect the changes in the titles of local officers brought about by adoption of the 1971 Constitution. Under the 1902 Constitution, each city was to elect a city sergeant,¹⁸ and each county was to elect a county sheriff.¹⁹ The 1971 Constitution eliminated this distinction between cities and counties. Article VII, § 4 of the 1971 Constitution requires each county and city to elect a sheriff. Accordingly, the General Assembly amended a number of statutes throughout the Code,²⁰ including the sections relating to the transition of towns to cities,²¹ to substitute the term "city sheriff" for the term "city sergeant."

The statutes were amended without substantive change and continued the requirement that, when a town becomes a city, the city is to elect a city sheriff every four years at the city elections and the qualified voters in the city are entitled to vote for the county sheriff at the county elections. Opinions of the Attorney General issued after these legislative and constitutional changes confirm this result. Thus, a 1975 opinion of the Attorney General concludes that the sheriff of Wise County would run for election every four years throughout the county, including in the City of Norton, and the city sheriff of the City of Norton would run for election every four years only in the city of Norton.²² Another opinion recognizes that the City of Falls Church is served by both the city sheriff and, because the city is a part of the county, by the sheriff of Fairfax County.²³ Like the City of Emporia, both the City of Norton and the City of Falls Church were organized as cities of the second class. A 1973 opinion also confirms that the purpose of the "except" clause in § 15.1-796.1 was to accommodate any city, such as the City of Richmond, in which the office of city sheriff and city sergeant existed simultaneously at the time the 1971 Constitution became effective.²⁴

Because the City of Emporia did not simultaneously have an elected city sheriff and city sergeant in office on July 1, 1971, the city sergeant became the city sheriff by operation of the provisions of § 15.1-796.1. The city has continued to elect a city sheriff. Greensville County also has a county

sheriff. The city and the county constitute the members of the Southside Regional Jail Authority. By the clear language of § 53.1-106(A), the sheriff of each political subdivision comprising a regional jail authority must be a member of the authority.²⁵ The statute makes no exception for sheriffs who perform no jail management duties in their locality.²⁶

¹Section 53.1-106(A). Prior to its amendment in 1998, § 53.1-106(A) required the appointment of the sheriff of a political subdivision to a jail authority only if the political subdivision appointed more than one representative to the authority. See 1998 Va. Acts ch. 541, at 1289, 1289.

²Section 2.1-118 requires that any request by a county attorney for an opinion from the Attorney General "shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions."

³1968 Va. Acts ch. 78, at 120, 129.

⁴*Id.* at 130.

⁵*Id.* at 129.

⁶*Id.* at 130. You further explain that the sheriff for Greensville County presently performs the duties imposed on sheriffs under § 15.2-1609 and that the sheriff for the City of Emporia has no jail duties or experience in jail management.

⁷See 1971 Va. Acts ch. 155, at 263, 279. Section 15.1-796.1 was repealed in 1997 when Title 15.1 was recodified as Title 15.2. See 1997 Va. Acts ch. 587, at 976, 1401.

⁸1971 Va. Acts ch. 155, *supra*, at 279.

⁹See *id.*

¹⁰See *id.*

¹¹See 1968 Va. Acts ch. 78, *supra* note 3, at 120, 131 (enacting clause 2). For purposes of court structure, the 1902 Constitution of Virginia distinguished between cities of the first class, those with a population of more than 10,000, and cities of the second class, those with a population of less than 10,000. See Va. Const. art. VI, § 98 (1902). The 1971 Constitution neither requires nor prohibits this distinction. See 2 A.E. Dick Howard, Commentaries on the Constitution of Virginia, at 797 (1974).

¹²See 1962 Va. Acts ch. 623, at 960, 1166-71 (adding in lieu of repealed Title 15, Title 15.1, including §§ 15.1-978 to 15.1-1010, entitled "Transition of Towns to Cities"). While the statutes have been amended extensively since 1968, the provisions regarding the relationship between city and county officers when a town acquires city status continue to operate in substantially the same manner. The current statutes controlling the transition of a town to a city are set out in §§ 15.2-3800 to 15.2-3834.

¹³These officers include the town mayor and council, the treasurer and commissioner of revenue for the town, and the town sergeant. See 1962 Va. Acts ch. 623, *supra*, at 1167-68 (§§ 15.1-985 to 15.1-989).

¹⁴ See *id.* at 1168.

¹⁵ Section 15.1-991 stated that, at the time "when similar officers are elected for other cities, there shall be elected in such city a city treasurer, commissioner of the revenue, ... a justice of the peace for each ward, a city sergeant and other officers elective by the qualified voters." 1962 Va. Acts ch. 623, *supra* note 12, at 1168.

¹⁶ See *id.* at 1169 (§ 15.1-994).

¹⁷ See 1971 Va. Acts ch. 155, *supra* note 7, at 279.

¹⁸ Art. VIII, § 120.

¹⁹ Art. VII, § 110.

²⁰ See 1971 Va. Acts ch. 155, *supra* note 7, at 263-294; see *id.* ch. 68, at 82.

²¹ *Id.* at 280, 82, (amending §§ 15.1-989, 15.1-991); *id.* ch. 158, at 308, 312 (amending § 15.1-998).

²² See 1974-1975 Op. Va. Att'y Gen. 168, 169-70.

²³ See 1975-1976 Op. Va. Att'y Gen. 323, 324.

²⁴ See 1972-1973 Op. Va. Att'y Gen. 363, 364.

²⁵ I assume that the Southside Regional Jail Authority was created pursuant to the enabling legislation set out in Title 53.1 rather than through a special act of the General Assembly. The Attorney General has previously opined that special legislation addressing the membership of a particular jail authority overrides the requirements of § 53.1-106. See 1998 Op. Va. Att'y Gen. 107, 109.

²⁶ You ask several additional questions related to the effect of a judicially mandated appointment of the city sheriff to the authority. Because you have not provided your legal conclusions on these issues as required by § 2.1-118, I am unable to consider the additional questions at this time. See *supra* note 2. Moreover, I assume that the question you present has not been presented to a judicial body for resolution. For policy reasons, Attorneys General consistently have declined to render opinions on matters currently being litigated. See 1996 Op. Va. Att'y Gen. 152, 153.