

COUNTIES, CITIES AND TOWNS: POLICE AND PUBLIC ORDER.

**ADMINISTRATION OF GOVERNMENT GENERALLY: STATE AND LOCAL GOVERNMENT
CONFLICT OF INTERESTS ACT.**

CRIMINAL PROCEDURE: BAIL AND RECOGNIZANCES.

Off-duty employment of deputy sheriffs requiring use of their police powers must be authorized by, and consistent with, local ordinance and regulation.

The Honorable Steve M. Draper
Sheriff for the City of Martinsville
June 3, 1999

You ask whether a deputy sheriff may be employed in his off-duty hours by a professional bondsman to seek and arrest persons on a bondsman *capias* and to return the persons to the court for trial.¹

Section 15.2-1712 of the *Code of Virginia* provides that a locality may adopt an ordinance permitting law-enforcement officers and deputy sheriffs to engage in off-duty employment "which may occasionally require the use of their police powers in the performance of such employment." The ordinance may be adopted notwithstanding any provisions in the State and Local Government Conflict of Interests Act² that would otherwise prohibit the employment.³ The ordinance may include "reasonable rules" applicable to the employment or may delegate the promulgation of such rules to the local chief of police or local sheriff.⁴

Under general principles of statutory construction, a statute specifying the method by which something shall be done indicates a legislative intent that it not be done otherwise.⁵ Section 15.2-1712 specifies that deputy sheriffs may engage in off-duty employment requiring the use of their police powers as authorized by local ordinance and regulations. Accordingly, it is my opinion that a deputy sheriff may not engage in such employment unless the locality has adopted an ordinance permitting the employment. Whether a particular employment is consistent with a local ordinance will require an analysis and interpretation of the ordinance and any regulations promulgated under the ordinance. This Office has a long-standing policy of not rendering opinions interpreting local ordinances or regulations.⁶

¹A surety in a recognizance may arrest his principal or obtain a *capias* which may be executed by the surety, his authorized agent or any sheriff, sergeant or police officer. Va. Code Ann. § 19.2-149.

²Sections 2.1-639.1 to 2.1-639.24.

³Section 2.1-639.4(1) generally prohibits an officer or employee of state or local government from accepting any remuneration for services performed within the scope of his official duties, except the compensation paid by his employer. Opinions regarding possible violations of the Act by a local government officer or employee are to be rendered by the Commonwealth's attorney. Section 2.1-639.23(B). Accordingly, you should direct any questions regarding the Conflict of Interests Act to the Commonwealth's attorney. An officer or employee may seek review by the Attorney General of an opinion rendered by the Commonwealth's attorney. *Id.*

⁴Section 15.2-1712.

⁵See *Grigg v. Commonwealth*, 224 Va. 356, 364, 297 S.E.2d 799, 803 (1982); Op. Va. Att'y Gen.: 1996 at 48, 48; 1991 at 202, 203.

⁶See Op. Va. Att'y Gen.: 1991 at 30, 31; 1986-1987 at 347, 348; 1976-1977 at 17.