

98-086

**PRISONS AND OTHER METHODS OF CORRECTION: LOCAL CORRECTIONAL FACILITIES
– REGIONAL JAILS AND JAIL FARMS – PRISONER PROGRAMS AND TREATMENT.**

DOMESTIC RELATIONS: DESERTION AND NONSUPPORT.

Sheriff of jurisdiction in which jail is managed by regional jail authority has no authority to operate alternative incarceration program for individuals convicted of desertion or nonsupport.

The Honorable William D. Spence
Sheriff of Orange County
September 9, 1999

You ask whether your office may operate an alternative prisoner incarceration program in your jurisdiction for defendants convicted of failure to pay child support under § 20-61 of the *Code of Virginia*.

You state that your jurisdiction is one of five counties comprising a regional jail that operates various alternative incarceration programs. For the purposes of this opinion, I shall assume that the regional jail operates the jail in your jurisdiction. You inquire whether you have the authority to independently operate an alternative incarceration program.

"Section 20-61 'creates the crime of desertion and nonsupport' [which] may be punished by a fine not exceeding \$500, or jail confinement not exceeding twelve months, or both."¹ Article 7, Chapter 3 of Title 53.1² establishes alternative incarceration programs for local correctional facilities including work release and home/electronic incarceration programs for violators of § 20-61.³

Article 5, Chapter 3 of Title 53.1⁴ authorizes the establishment of regional jails and jail farms. Section 53.1-105 provides that any two or more political subdivisions may establish, maintain and operate a regional jail facility. Section 53.1-106(A) vests the supervision and management of regional jails in a board or authority composed of representatives from each participating political subdivision.⁵ Section 53.1-106(B)(4) authorizes the appointment of a superintendent of the regional jail,⁶ and § 53.1-109 expressly grants regional jail superintendents the power to "enforc[e] the provisions of alternative incarceration ... programs pursuant to ... §§ 53.1-131, and 53.1-131.2."

The relevant provisions of Articles 5 and 7 make clear that the administrator of the facility housing the inmates has the authority to operate alternative incarceration programs. "*Except* for regional jails and jail farms established pursuant to § 53.1-105 ..., the sheriff of a jurisdiction has authority over the jail in that jurisdiction."⁷ "The manifest intention of the legislature, clearly disclosed by its language, must be applied."⁸ Consequently, when the operation of a jail in a jurisdiction has been turned over to a regional jail, the sheriff of the jurisdiction no longer has the authority to operate such programs.

Accordingly, it is my opinion that your office does not have the authority to operate an alternative incarceration program for individuals convicted of desertion or nonsupport under § 20-61.⁹

¹1998 Op. Va. Att'y Gen. 66, 69-70 (quoting *Heflin v. Heflin*, 177 Va. 385, 397, 14 S.E.2d 317, 321 (1941)).

²Sections 53.1-128 to 53.1-133.03 (entitled "Prisoner Programs and Treatment").

³See §§ 53.1-131, 53.1-131.2.

⁴Sections 53.1-105 to 53.1-115.2 (entitled "Regional Jails and Jail Farms").

⁵See *a/so* tit. 53.1, ch. 3, art. 3.1, §§ 53.1-95.2 to 53.1-95.24 (authorizing two or more political subdivisions to create jail authority with power to construct and operate regional correctional facilities).

⁶See *a/so* §§ 53.1-95.6 to 53.1-95.8 (regarding regional jail facility managed by jail authority).

⁷1989 Op. Va. Att'y Gen. 274, 274 (emphasis added).

⁸*Barr v. Town & Country Properties*, 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990) (quoting *Anderson v. Commonwealth*, 182 Va. 560, 566, 29 S.E.2d 838, 841 (1944)).

⁹You also inquire whether you may receive certain per diem payments authorized for such a program. Because my answer to your first inquiry is in the negative, it is unnecessary to address this question.