

00-003

COUNTIES, CITIES AND TOWNS: LOCAL CONSTITUTIONAL OFFICERS, ETC.

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

Augusta County sheriff may not serve persons who reside in Staunton or Waynesboro with warrants for crimes committed in county. County deputy sheriffs may question individuals in Staunton or Waynesboro regarding criminal offenses committed in county; may not arrest for Class 1 misdemeanors committed in their presence within city limits.

The Honorable R. Steven Landes
Member, House of Delegates
March 16, 2000

You inquire regarding the authority of the Augusta County sheriff to investigate and arrest for criminal offenses committed in the county by individuals residing within the city limits of Staunton or Waynesboro.¹ You relate that the sheriff is concerned that the process of forwarding criminal warrants to authorities in Staunton or Waynesboro would delay the county's criminal justice system, by allowing additional time for the individuals to commit other offenses or evade arrest.

A sheriff is an independent constitutional officer whose duties "shall be prescribed by general law or special act."² A sheriff may appoint one or more deputy sheriffs to discharge the duties of his office.³ A 1980 opinion of the Attorney General notes that, in the absence of a statute providing otherwise, the authority of a sheriff is coextensive with his county.⁴ The Supreme Court of Virginia has commented that, as a general rule, the duties of a sheriff and his deputies are regulated and defined by statute.⁵ The Court has also stated:

The sheriff is an officer of the court subject to its orders and directions. He is also a conservator of the peace and charged with the enforcement of all criminal laws within his jurisdiction. It is his duty, as well as the duty of the other police officers of the county and city, to investigate all violations of law and to serve criminal warrants.^[6]

You first ask whether Augusta County deputy sheriffs may serve residents of Staunton or Waynesboro with warrants for crimes committed in the county.

In prior opinions interpreting former § 15.1-79 of the *Code of Virginia*, the Attorney General concludes that the sheriff and his deputies possess the required statutory authority to execute criminal process in a city included within the boundaries of the sheriff's county.⁷ In 1997, however, the General Assembly repealed Title 15.1 and

recodified the laws pertaining to counties, cities and towns within Title 15.2.⁸ Prior to its repeal, § 15.1-79 specified that "[e]very officer to whom any ... warrant ... may be lawfully directed, ... may execute the same in any" city that is contiguous to such officer's jurisdiction.⁹ The 1997 Session of the General Assembly, thus, has repealed the express authorization for county sheriffs to execute warrants in any city that is contiguous to the county¹⁰ and has not enacted within Title 15.2 any comparable provision authorizing such service.¹¹ A rule of statutory construction requires the presumption that, in amending or enacting statutes, the General Assembly has full knowledge of existing law and interpretations thereof.¹² It is presumed further that the legislature acted purposefully with the intent to change existing law.¹³

Consequently, I must conclude that, under current law, the Augusta County sheriff may not serve persons who reside in Staunton or Waynesboro with warrants for crimes committed in the county.

You next ask whether Augusta County deputy sheriffs may conduct investigations in Staunton or Waynesboro pertaining to criminal offenses committed in Augusta County. Your inquiry does not detail specific facts upon which a precise conclusion may be drawn. For the purposes of this opinion, therefore, I shall assume that your inquiry relates exclusively to the questioning by Augusta County deputy sheriffs of private citizens residing in Staunton or Waynesboro regarding criminal offenses committed in the county.

The principal responsibility for investigating and prosecuting violations of criminal law is vested in the local Commonwealth's attorney and local law enforcement officials.¹⁴ Law enforcement officials, therefore, typically perform all of the activities that comprise an investigation of criminal violations, for the specific purpose of bringing criminal prosecutions. The courts of the Commonwealth recognize that the role of an investigating officer acting as an "arm of the prosecution" is to impute knowledge of all facts regarding a criminal case to the prosecutor for purposes of the discovery requirements in criminal prosecutions.¹⁵ "[C]onstrutive knowledge is attributed to the prosecutor where information is in the possession of the [local law enforcement officer], so long as the officer is not a law enforcement official of a different jurisdiction."¹⁶ Therefore, "information known to the police is information within the Commonwealth's knowledge."¹⁷ Additionally, "[t]he Commonwealth is charged with the responsibility to interview all government personnel involved in a case in order to comply with its discovery obligations."¹⁸

Generally, in the absence of a statute providing otherwise, the authority of a sheriff is coextensive with his county.¹⁹ In a 1978 opinion, the Attorney General concludes that, "as a general rule a county law enforcement officer has no authority to make an arrest outside his jurisdiction, except in his status as a private citizen to arrest for a felony, affray or breach of the peace."²⁰ I can find no statute that directly addresses your inquiry. It is, however, the duty of the sheriff "to investigate all violations of law."²¹ Such an investigation necessarily includes the systematic inquiry of individuals to determine the identity of potential witnesses.²² Private citizens may also similarly question individuals regarding potential violations of the law.²³

Consequently, I must conclude that Augusta County deputy sheriffs may question individuals in Staunton or Waynesboro regarding criminal offenses committed in the county.²⁴

Your final question is whether Augusta County deputy sheriffs may arrest for Class 1 misdemeanors committed in their presence within the city limits of Staunton or Waynesboro.

Prior opinions of the Attorney General conclude that a county deputy sheriff has no statutory authority to arrest for a misdemeanor committed in his presence within the boundaries of a city.²⁵ Further, a county law enforcement officer has no authority to make an arrest outside his jurisdiction.²⁶ The General Assembly has enacted no statute that alters the conclusions of these opinions. Since the authority of a sheriff is coextensive with his county, and the General Assembly has enacted no statute providing otherwise, an Augusta County deputy sheriff has no law enforcement authority in Staunton or Waynesboro. With the exception of certain specific situations, which are not provided in your request, the status of the county deputy sheriffs in these cities is that of a private citizen.²⁷ A 1978 opinion concludes that, as a general proposition, a private citizen may only effect an arrest for felonies, affrays or breaches of the peace committed in his presence.²⁸

Consequently, under the facts presented in your request, I conclude that Augusta County deputy sheriffs may not arrest for Class 1 misdemeanors committed in their presence within the city limits of Staunton or Waynesboro.

¹Staunton and Waynesboro are independent cities located within Augusta County.

²Va. Const. art. VII, § 4 (1971); see also Va. Code Ann. § 15.2-1600 (requiring counties and cities to elect sheriffs).

³See § 15.2-1603.

⁴1980-1981 Op. Va. Att'y Gen. 322, 322.

⁵See *Hilton v. Amburgey*, 198 Va. 727, 729, 96 S.E.2d 151, 152 (1957); *Narrows Grocery Co. v. Bailey*, 161 Va. 278, 284, 170 S.E. 730, 732 (1933).

⁶*Commonwealth v. Malbon*, 195 Va. 368, 371, 78 S.E.2d 683, 686 (1953). A county sheriff, generally speaking, also has the following duties within his county: (a) enforcement of county ordinances and state laws (see *id.* at 368, 78 S.E.2d at 683); (b) service of process for the courts within his county (see, e.g., §§ 16.1-79, 16.1-99); (c) maintenance of order in the courtroom and assistance of the court generally (see, e.g., § 53.1-120; *Near v Commonwealth*, 202 Va. 20, 30, 116 S.E.2d 85, 92 (1960)); and (d) operation of the jail (see, e.g., *Watts's Case*, 99 Va. 872, 877, 39 S.E. 706, 707 (1901)).

⁷Op. Va. Att'y Gen.: 1991 at 126; 1987-1988 at 166; 1983-84 at 116, 117; 1980-1981 at 322; 1975-1976 at 87, 88; *id.* at 325, 326; 1972-1973 at 361, 362; 1970-1971 at 298, 299.

⁸See 1997 Va. Acts ch. 587, at 976, 1400-01.

⁹1995 Va. Acts ch. 17, at 38.

¹⁰See 1997 Va. Acts, *supra* note 8.

¹¹Section 8.01-295 authorizes the sheriff to "execute *such* process throughout the political subdivision in which he serves and in any contiguous county or city." (Emphasis added.) The process to which § 8.01-295 refers, however, is process received by the sheriff from the clerk's office, along with "other papers to be served by him." Section 8.01-294; see 1983-1984 Op. Va. Att'y Gen. 116, 117 (term "process" contemplates procedures by which legal action or suit in equity commences, and through which courts acquire lawful jurisdiction over parties); see also 1996 Op. Va. Att'y Gen. 113, 113 (§ 19.2-76 clearly places geographical limitation on officer's authority to execute warrant by providing that officer may execute warrant only "within his jurisdiction").

¹²See *Richmond v. Sutherland*, 114 Va. 688, 77 S.E. 470 (1913); 1995 Op. Va. Att'y Gen. 130, 131 (General Assembly, in amending statute, had full knowledge of existing law and construction placed upon it by courts, and intended to change existing law); see also 1996 Op. Va. Att'y Gen. 51, 52 (General Assembly, in repealing one statute and enacting another, had full knowledge of existing law and construction placed upon it by Attorney General, and intended to change existing law).

¹³*Cape Henry v. Natl. Gypsum*, 229 Va. 596, 331 S.E.2d 476 (1985); *Wisniewski v. Johnson*, 223 Va. 141, 144, 286 S.E.2d 223, 224-25 (1982).

¹⁴See § 15.2-1627(B) (Commonwealth's attorney and assistants are empowered to prosecute felonies and certain misdemeanors); § 15.2-1704 (local police force is empowered to enforce criminal laws of Commonwealth).

¹⁵See, e.g., *United States v. Jackson*, 780 F.2d 1305, 1308 n.2 (7th Cir. 1986); *Wedra v. Thomas*, 671 F.2d 713, 717 n.1 (2d Cir. 1982) (prosecutor had constructive knowledge of information in hands of police).

¹⁶*Conway v. Commonwealth*, 12 Va. App. 711, 715, 407 S.E.2d 310, 312 (1991) (en banc).

¹⁷*Moreno v. Commonwealth*, 10 Va. App. 408, 418, 392 S.E.2d 836, 842 (1990).

¹⁸*Knight v. Commonwealth*, 18 Va. App. 207, 214, 443 S.E.2d 165, 169 (1994) (quoting *Harrison v. Commonwealth*, 12 Va. App. 581, 585, 405 S.E.2d 854, 857 (1991)); see *Fitzgerald v. Bass*, 6 Va. App. 38, 52, 366 S.E.2d 615, 623 (1988) (en banc) (prosecutor's office cannot escape duty to disclose exculpatory evidence to criminal defendant by remaining ignorant of investigation).

¹⁹1980-1981 Op. Va. Att'y Gen. *supra* note 4, at 322.

²⁰1978-1979 Op. Va. Att'y Gen. 15, 15; see also 1976-1977 Op. Va. Att'y Gen. 202, 203.

²¹*Commonwealth v. Malbon*, 195 Va. at 371, 78 S.E.2d at 686.

²²The term "investigate" means "to inquire into (a matter) systematically." Black's Law Dictionary 830 (7th ed. 1999).

²³See, e.g., 1976-1977 Op. Va. Att'y Gen., *supra* note 20, at 203, 204 (county deputy sheriff may, acting as private citizen, arrest for felony committed in his presence; fact that deputy possesses badge and uniform is irrelevant).

²⁴I note, however, that when questioning individuals in Staunton and Waynesboro, Augusta County deputy sheriffs do not possess statutory law enforcement authority.

²⁵Op. Va. Att'y Gen.: 1978-1979, *supra* note 20, at 15; 1973-1974 at 273, 274.

²⁶Op. Va. Att'y Gen.: 1978-1979, *supra*; 1976-1977 at 202.

²⁷See, e.g., Op. Va. Att'y Gen.: 1996 at 113 (when court issues *capias* on indictment, county deputy sheriff may enter city to execute *capias*, without requiring assistance of law enforcement officer from city); 1978-1979 at 15 (§ 8.01-295 implies that sheriff remains clothed with powers of his office incidental to perfecting service of process outside his usual jurisdiction).

²⁸See 1978-1979 Op. Va. Att'y Gen. 13, 14.