

01-089

**CRIMINAL PROCEDURE: CONSERVATORS OF THE PEACE
AND SPECIAL POLICEMEN.**

**COUNTIES, CITIES AND TOWNS: POLICE AND PUBLIC
ORDER – SPECIAL POLICE OFFICERS IN LOCALITIES.**

Law-enforcement officer conducting search as conservator of peace with special police powers acts in law-enforcement capacity seeking evidence of crime and must meet standard of probable cause of arrest to justify search. School searches conducted by school safety officer as school official must be reasonably based on individualized suspicion of wrongdoing; searches conducted by school safety officer as conservator of peace must be assessed in terms of probable cause.

The Honorable Kenneth W. Stolle
Member, Senate of Virginia
November 30, 2001

You inquire regarding the legal standard to be applied to searches conducted by school safety officers who have been appointed conservators of the peace with special police powers. You specifically ask whether such school officials may conduct limited searches on school premises under the reasonableness standard articulated by the Supreme Court of the United States in the case of *New Jersey v. T.L.O.*¹ If not, you ask whether such school officials must have probable cause to conduct searches or make arrests.

You advise that the 2001 Session of the General Assembly enacted House Joint Resolution 542, directing the Virginia State Crime Commission to conduct a study of school safety specialists and security officers.² You state that the Commission has been advised that the circuit courts in local school divisions are appointing school safety officers as conservators of the peace with special police powers. You note that the school safety officers appointed as conservators of the peace remain employees of the local school division.

You relate that the Crime Commission has been advised that the *T.L.O.* case holds that, while school officials cannot disregard the requirements of the Fourth Amendment to the United States Constitution, they may conduct limited searches using only a reasonableness standard. Furthermore, the Commission has been advised that this case did not address the appropriate standard to be used for searches when the school

official is also a law-enforcement officer. You relate that it is not clear to the Commission whether school safety officers appointed as conservators of the peace must meet the warrant requirements of the Fourth Amendment before conducting searches.

Section 15.2-1737(A) of the *Code of Virginia* authorizes the circuit court for any locality to appoint special police officers³ for a locality within the court's jurisdiction. Special police officers so appointed "have the general power, authority and duties of other peace officers."⁴ Section 19.2-13(A) also authorizes the circuit court to appoint one or more special conservators of the peace to serve a term designated by the court not to exceed four years under any one appointment. Conservators of the peace have general powers of arrest.⁵

The Fourth Amendment to the Constitution of the United States provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." "Searches and seizures carried out by school officials are governed by the same Fourth Amendment principles that apply in other contexts."⁶ "To be reasonable under the Fourth Amendment, a search ordinarily must be based on individualized suspicion of wrongdoing."⁷ The Supreme Court of the United States usually requires that a search be undertaken only pursuant to a warrant and supported by probable cause.⁸ The inappropriateness of the probable cause standard for reviewing anything other than the criminal investigatory function, however, has been made clear by the Court in a number of contexts. When the purpose of a Fourth Amendment search is not to discover evidence of crime, but is intended to serve some "special needs, beyond the normal need for law enforcement,"⁹ a reasonable, articulable suspicion may be all that is necessary to pass constitutional muster.¹⁰ The supervision and operation of schools present "'special needs' beyond normal law enforcement that may justify departures from the usual warrant and probable-cause requirements."¹¹

The Supreme Court of the United States established in the *T.L.O.* case a "reasonableness" standard for searches conducted in the school context. The standard is less restrictive than the general "probable cause" standard applied in most other search and seizure contexts. The Court envisioned a balancing process in which the need to search is weighed against the invasion which the search entails.¹² "On one side of the balance are arrayed the individual's legitimate expectations of privacy and personal security; on the other, the government's need for effective methods to deal with breaches of public order."¹³ The Court recognized that "maintaining security and order in the schools requires a certain degree of flexibility in school disciplinary procedures, and ... preserv[es] the informality of the student-teacher relationship."¹⁴ Consequently, an "accommodation of the

privacy interests of school children with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause."¹⁵

School officials, therefore, must have reasonable suspicion that a student is engaged in some illegal activity before they can search the student's personal belongings.¹⁶ The standard is met where the officials reasonably suspect a student has violated "either the law or the rules of the school" and the subsequent search is "reasonably related to the objectives of the search and not excessively intrusive."¹⁷ The "reasonableness" standard is designed, as the United States Supreme Court has stated, to "spare teachers and school administrators the necessity of schooling themselves in the niceties of probable cause and permit them to regulate their conduct according to the dictates of reason and common sense."¹⁸

In the context of investigating the violation of a school regulation by a teacher or school official and not the perpetration of a crime, the invasion of a suspected student's Fourth Amendment rights is assessed only in terms of general reasonableness, not probable cause. The *T.L.O.* case, however, considered "only searches carried out by school authorities acting alone and on their own authority."¹⁹ The case did not present the "question of the appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies."²⁰ Consequently, the Court expressed "no opinion on that question."²¹

Clearly, teachers and school officials have an interest in the provision of an education and the maintenance of school discipline. In conducting a search at school in furtherance of these interests, such officials should be concerned with locating and confiscating anything that may be disruptive to the provision of education and the maintenance of discipline. In the course of such a search, evidence may be acquired that ultimately may be considered to have been reasonably obtained and therefore usable in a criminal prosecution or in an adjudication of delinquency.

In conducting searches, law-enforcement officers seek to find evidence of crime. Given the responsibility of the police to find evidence of crime, the standard of probable cause of an actual arrest must be met to justify any search under the Fourth Amendment.²² In the case of *Brinegar v. United States*, the Supreme Court of the United States explained:

These long-prevailing standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime. They also

seek to give fair leeway for enforcing the law in the community's protection. Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice.^[23]

Consequently, when a school safety officer conducts a search as a conservator of the peace with special police powers, he is clearly acting in his law-enforcement capacity. Should such officer conduct a search seeking evidence of crime, it is my view that the standard of probable cause of an actual arrest must be met to justify the search. A court has not, however, considered the matter. Ultimately, therefore, the determination whether the situation you present is governed by a reasonable standard or a standard requiring probable cause depends on a complete and detailed set of facts. Indeed, the reasonableness of any Fourth Amendment search conducted in a school necessarily depends on the facts of each particular case.²⁴

Accordingly, while I am unable to render a definitive opinion due to a lack of knowledge of all the pertinent and particular facts in a particular case, it is my general opinion that all school searches conducted by a school safety officer as a school official must be assessed in terms of general reasonableness. When such searches are conducted by a school safety officer as a conservator of the peace with special police powers seeking evidence of crime, it must be assessed in terms of probable cause.

¹469 U.S. 325 (1985).

²2001 Va. Acts H.J. Res. 542, at 1654.

³Section 15.2-1737(A) provides that special police officers appointed by a local circuit court "shall be conservators of the peace under the supervision of the person or agency making application for the appointment."

⁴Williams v. Commonwealth, 142 Va. 667, 669, 128 S.E. 572, 573 (1925).

⁵See Va. Code Ann. § 15.2-1745 (Michie Repl. Vol. 1997); *Williams*, 142 Va. at 670, 128 S.E. at 573.

⁶*DesRoches by DesRoches v. Caprio*, 156 F.3d 571, 574 (4th Cir. 1998) (citing *New Jersey v. T.L.O.*, 469 U.S. at 337).

⁷*Chandler v. Miller*, 520 U.S. 305, 313 (1997).

⁸See *Griffin v. Wisconsin*, 483 U.S. 868, 873 (1987).

⁹*T.L.O.*, 469 U.S. at 351 (BLACKMUN, J., concurring).

¹⁰"While 'reasonable suspicion' is a less demanding standard than probable cause . . . , the Fourth Amendment requires at least a minimal level of objective justification." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000).

¹¹*Griffin*, 483 U.S. at 873-74 (upholding warrantless search of probationer's home by probation officer where founded upon "reasonable grounds" to believe that contraband was present).

¹²469 U.S. at 337.

¹³*Id.*

¹⁴*Id.* at 340.

¹⁵*Id.* at 341.

¹⁶See, e.g., *United States v. Place*, 462 U.S. 696, 703 (1983) (agreeing that, where authorities possess specific and articulable facts warranting reasonable belief that traveler's luggage contains narcotics, governmental interest in seizing luggage briefly to pursue further investigation is substantial).

¹⁷469 U.S. at 342; accord *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646 (1995) (upholding school district's decision to implement random urinalysis drug testing of student athletes); *DesRoches*, 156 F.3d at 571 (holding that school official's proposed search of student's backpack for missing tennis shoes belonging to another student was reasonable under Fourth Amendment).

¹⁸469 U.S. at 343.

¹⁹*Id.* at 341 n.7.

²⁰*Id.*

²¹*Id.*

²²"Probable cause exists where 'the facts and circumstances within [the arresting officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an

offense has been or is being committed." *Draper v. United States*, 358 U.S. 307, 313 (1959) (quoting *Carroll v. United States*, 267 U.S. 132, 162 (1925)).

²³338 U.S. 160, 176 (1949).

²⁴1989 Op. Va. Att'y Gen. 204, 206 (discussing reasonableness of school board's adoption of policy requiring drug testing before readmitting students expelled for drug offenses).

[Back to November Index](#)