01-068

PROPERTY AND CONVEYANCES: LANDLORD AND TENANT — RESIDENTIAL LANDLORD AND TENANT ACT.

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

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

Propriety of actions of sheriff's office with regard to storage of personal property removed from residential premises pursuant to unlawful detainer or ejectment.

The Honorable John R. Newhart
Sheriff for the City of Chesapeake
April 2, 2002

Issue Presented

You request clarification regarding disposal of specific personal property belonging to a tenant who is removed by the sheriff from a residential premises pursuant to an action of unlawful detainer or ejectment.

Response

The actions of your office, as described below, with regard to the storage of personal property removed from a residential premises pursuant to unlawful detainer or ejectment are consistent with §§ 55-237.1 and 55-248.38:2.

Facts

You advise that some sheriffs seize firearms found during the eviction process in the case of tenants whose property is to be stored. You explain that these sheriffs seize such weapons for the general welfare of the public. Your office, however, does not plan to seize any weapons that are to be stored. You advise that your office will inspect all weapons prior to transporting them to storage to ensure that such weapons are not loaded. Your office will empty any loaded weapons prior to transport.

You further advise that any open alcohol containers found during the eviction process will not be allowed to be stored, and that you will supervise the disposal of open containers. Unopened alcoholic containers, however, will be stored. You state that, following the twenty-four-hour eviction period, it becomes the right and duty of the landlord to dispose of the tenant's personal property.

In both instances, you ask whether the actions of your office are consistent with §§ 55-237.1 and 55-248.38:2 of the *Code of Virginia*.

Applicable Authorities and Discussion

Sections 55-237.1 and 55-248.38:2 are nearly identical statutory provisions, which provide, in part:

> At the landlord's request, the sheriff shall cause [the tenant's] personal property to be placed into a storage area designated by the landlord, which may be the dwelling unit. The tenant shall have the right to remove his personal property from the landlord's designated storage area at reasonable times during the twenty-four hours after eviction from the premises or at such other reasonable times until the landlord has disposed of the property as provided herein. During that twenty-four hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord and the sheriff shall not have any liability for the loss of such personal property.[1]

In the case of *Huffman v. Kite*, the Supreme Court of Virginia considered the meaning of a state statute using the word "shall" in connection with circuit court appointments of school trustee electoral board members within thirty days after July 1.[2] The Court reasoned that the time limit imposed on the circuit courts by the statute was not mandatory:

> If it appears from the nature, context, and purpose of the act that the legislature intended that "shall" be treated as advisory or directory, then it should be accorded that meaning.[3]

Therefore, "the use of 'shall,' in a statute requiring action by a public official, is directory and not mandatory unless the statute manifests a contrary intent."[4]

Sections 55-237.1 and 55-248.38:2 do not discriminate as to the classification of personal property subject to storage and are advisory in nature. A sheriff is an independent constitutional officer whose duties "shall be prescribed by general law or special act."[5] 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.[6] A 1985 opinion of the Attorney General, however, notes that, although a sheriff's powers and duties are limited to those prescribed by statute, he is free to discharge those powers and duties in a manner he deems appropriate.[7]

Conclusion

Therefore, it is my opinion that the actions of your office with regard to the storage of personal property removed from a residential premises pursuant to unlawful detainer or ejectment are consistent with §§ 55-237.1 and 55-248.38:2.

Va. Code Ann. § 55-237.1 (Michie Supp. 2001).

[2]198 Va. 196, 93 S.E.2d 328 (1956).

[3]*Id*. at 202, 93 S.E.2d at 332.

[4]Jamborsky v. Baskins, 247 Va. 506, 511, 442 S.E.2d 636, 638 (1994), *quoted in* Commonwealth v. Wilks, 260 Va. 194, 199, 530 S.E.2d 665, 667 (2000).

[5]Va. Const. art. VII, § 4; *see* Va. Code Ann. § 15.2-1600(A) (Michie Repl. Vol. 1997) (parallel statute requiring counties and cities to elect sheriffs).

[6]*See* 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).

[7]1984-1985 Op. Va. Att'y Gen. 73, 73.

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