



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

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Attorney General

January 21, 2011

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The Honorable T. Scott Garrett, M.D.  
Member, House of Delegates  
Post Office Box 10889  
Burke, Virginia 22009

Dear Delegate Garrett:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issue Presented

You ask whether a plan to consolidate certain functions between the school system and a city would result in the school board abrogating its duty and authority with respect to the schools. You further inquire whether certain functions can be “outsourced.”

## Response

It is my opinion that a school board can consolidate certain functions with a city or a county, but in doing so the school board may not abrogate its duties or compromise its independence with respect to its core responsibilities. I lack sufficient information, however, to determine whether the plan at issue would impermissibly result in the abrogation of the school board’s duties and authority. Finally, outsourcing certain functions is permissible so long as school boards and localities comply with statutory and constitutional restrictions.

## Background

You relate that the City of Lynchburg and the City of Lynchburg School Board are considering a plan to consolidate certain functions. The information you provide indicates that the City and the School Board have contemplated merging health care plans or back office financial accounting services. One of the contemplated changes would result in the school board relying on the City’s Chief Financial Officer to craft the school board’s budget.

## Applicable Law and Discussion

Article VIII, § 7 of the Constitution of Virginia and § 22.1-28 of the *Code of Virginia* provide that “[t]he supervision of schools in each school division shall be vested in a school board.” In general, the

powers and duties of the school board are set forth in § 22.1-79 of the Code. A school board cannot forfeit its independence to another entity and must retain the ability to fulfill its responsibilities.<sup>1</sup>

School boards and cities or counties can agree to exercise certain functions jointly as a cost-saving measure. Prior opinions of this Office have concluded that localities could require all purchases of supplies and equipment for a school board to be performed by a central purchasing agent.<sup>2</sup> School boards, however, must retain the authority to decide what supplies, materials and commodities it may need and the costs for these items.<sup>3</sup> This Office also has concluded that a school board can create with the locality a joint legal entity responsible for certain aspects of personnel, finance, operations, maintenance and construction, facilities' design and engineering, and management information systems.<sup>4</sup> I see little danger to the school board's core responsibilities of overseeing school policy, spending funds for schools, and managing school personnel<sup>5</sup> should it decide to consolidate health plans or back office financial services.<sup>6</sup>

With respect to sharing a chief financial officer, such an arrangement presents a greater danger of restricting the independence of the school board in budgetary matters. Budgetary disputes between localities and school boards occur with regularity throughout the Commonwealth.<sup>7</sup> A shared chief financial officer will find it difficult to act independently with each body. Certainly, the appearance of independence would not be present. In the absence of specific details concerning the arrangement, however, I am unable to conclude absolutely that such an arrangement would be impermissible under Virginia law.

Finally, you inquire whether certain functions can be "outsourced." School boards and local governments can, and often do, contract with outside parties to provide certain services, including maintenance and repair services for vehicles and equipment, and legal services. Such contracts are permissible so long as they abide by statutory and constitutional restrictions.

### Conclusion

Accordingly, it is my opinion that a school board can consolidate certain functions with a city or a county, but in so doing may not abrogate its duties or compromise its independence with respect to its core responsibilities. I lack sufficient information, however, to determine whether the plan at issue would

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<sup>1</sup> See *Evans v. Smyth-Wythe Airport Comm'n*, 255 Va. 69, 72-73, 495 S.E.2d 825, 827 (1998) ("In so far as the sovereignty and governmental powers of the State are concerned[,] the object of the ordination of the Constitution is to provide for the exercise thereof and not the abdication thereof.") (quoting *Commonwealth v. Newport News*, 158 Va. 521, 545-46, 164 S.E.2d 689, 696 (1932)).

<sup>2</sup> 1978-79 Op. Va. Att'y Gen. 234, 234 (citing prior opinions).

<sup>3</sup> *Id.*

<sup>4</sup> 1995 Op. Va. Att'y Gen. 72.

<sup>5</sup> See 2010 Op. Va. Att'y Gen. (10-049) (school board is responsible for allocating funds budgeted by locality); 1989 Op. Va. Att'y Gen. 204, 204 ("school boards have considerable authority over the supervision of schools and the discipline of students"). VA. CODE ANN. § 22.1-313(A) (Supp. 2010) (school board has exclusive final authority over matters concerning employment of personnel).

<sup>6</sup> See 1985-86 Op. Va. Att'y Gen. 79 (county and school board employees of three counties can be combined in one group health insurance policy).

<sup>7</sup> See, e.g., 2010 Op. Va. Att'y Gen. (10-118); 2010 Op. Va. Att'y Gen. (10-049); *Bd. of Supvrs. v. Sch. Bd.*, 182 Va. 266, 28 S.E.2d 698 (1944).

Honorable T. Scott Garrett, M.D.  
January 21, 2011  
Page 3

impermissibly result in the abrogation of the school board's duty and authority. Finally, outsourcing certain functions is permissible so long school boards and localities comply with statutory and constitutional restrictions.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink that reads "Ken C II". The signature is stylized, with "Ken" written in a cursive-like font and "C II" in a more blocky, capital style.

Kenneth R. Cuccinelli, II  
Attorney General