COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable Raymond A. Hunley, MCR
Commissioner of the Revenue, Mathews County
10644 Buckley Hall Road, Liberty Square
Post Office Box 896
Mathews, Virginia 23109-0896

Dear Commissioner Hunley:

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 local Board of Supervisors may use the monies received by employees of constitutional officers for services provided to the Department of Motor Vehicles to supplant existing local funding or to reduce the local share of the Compensation Board-approved budget.

Response

It is my opinion, based on language in Item 441, subsection C of both the 2010 Appropriations Act and the 2011 Appropriations Act, that a county Board of Supervisors is required to appropriate to the office of a constitutional officer such as a Treasurer or Commissioner of the Revenue who is serving as a license agent for DMV, 80 percent of the funds remitted by DMV to the county for DMV transactions processed by the office of the constitutional officer, and that the monies so appropriated may not be used to supplant existing local funding for such office, nor to reduce the local share of the Compensation Board-approved budget for such office below the level established pursuant to general law.

Applicable Law and Discussion

Item 441, subsection C of both the 2010 Appropriations Act and the 2011 Appropriations Act[1] ("Appropriations Acts") provides:

> In order to provide citizens of the Commonwealth greater access to the Department of Motor Vehicles, the agency is authorized to enter into an agreement with any local constitutional officer or combination of officers to act as a license agent for the department, with the consent of the chief administrative officer of the constitutional officer's county or city, and to negotiate a separate compensation schedule for such office other than the schedule set out in § 46.2-205, Code of Virginia. *Notwithstanding any other provision of law, any compensation due to a constitutional officer serving as a*

[1] *See* 2010 Va. Acts, ch. 874; 2011 Va. Acts, ch. 890.

> *license agent shall be remitted by the department to the officer's county or city on a monthly basis, and not less than 80 percent of the sums so remitted shall be appropriated by such county or city to the office of the constitutional officer to compensate such officer for the additional work involved with processing transactions for the department. Funds appropriated to the constitutional office for such work shall not be used to supplant existing local funding for such office, nor to reduce the local share of the Compensation Board-approved budget for such office below the level established pursuant to general law.* (Emphasis added)

The positions of Commissioner of the Revenue and County Treasurer are constitutional offices created pursuant to Article VII, § 4 of the Constitution of Virginia.[2] The process for establishing the budget of a constitutional officer, including a County Commissioner of the Revenue or County Treasurer is provided by general law. Generally, the officer prepares the budget for his office and submits it to the Compensation Board for review, possible modification, and approval.[3] Such budget includes salaries, permitted expenses, and other allowances necessary for operating the office of the Commissioner of the Revenue or Treasurer.[4] A copy of the proposed budget is submitted concurrently to the governing body of the locality.[5] Once the budget is set, and subject to appropriated funds, the Commonwealth and locality participate in funding the approved budget, with certain exceptions.[6] In the event of disagreement, the constitutional officer, the locality, or the Commonwealth may appeal the decision of the Compensation Board.[7]

"In the event of any inconsistency between [a] statutory authorization and the appropriation, the Appropriations Act, which has the effect of law and which is the most recent expression of legislative intent, controls."[8] Section 4-12.00 of the appropriations acts provides:

> Notwithstanding any other provision of law, and until June 30, 2012, the provisions of this act shall prevail over any conflicting provision of any other law, without regard to whether such other law is enacted before or after this act; however, a conflicting provision of another law enacted after this act shall prevail over a conflicting provision of this act if the General Assembly has clearly evidenced its intent that the conflicting provision of such other law shall prevail, which intent shall be evident only if such other law (i) identifies the specific provision(s) of this act over which the conflicting provision of such other law is intended to prevail and (ii) specifically states that the terms of this section are not applicable with respect to the conflict between the provision(s) of this act and the provision of such other law.

The General Assembly does not define the term "supplant" as it is used in the Appropriations Acts. Consequently, the term must be given its ordinary meaning within the statutory context.[9]

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[2] *See* Ops. Va. Att'y Gen.: 2008 at 44, 45; 2002 at 58, 59; 1977-78 at 466, 467. *See also* VA. CODE ANN. § 15.2-102 (defining "constitutional officer") (2008).

[3] *See* VA. CODE ANN. §§ 15.2-1636.7, 15.2-1636.8 (2008).

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] Section 15.2-1636.9 (2008).

[8] *See* 1976-77 Op. Va. Att'y Gen. 301, 301-02.

[9] *See* Grant v. Commonwealth, 223 Va. 680, 684, 292 S.E.2d 348, 350 (1982) (citing Loyola Fed. Savings & Loan Ass'n v. Herndon Lumber & Millwork, Inc., 218 Va. 803, 805, 241 S.E.2d 752, 753 (1978)).

"Supplant" generally means "to supersede (another)"; "to take the place of and serve as a substitute for esp. by reason of superior excellence or power."[10] The term "supersede" generally means "to cause to be set aside"; "to take the place, room or position of."[11]

The intent of the Appropriations Act is clear. Based on the plain language of Item 441, subsection C, I conclude that any compensation due to a constitutional officer serving as a license agent for DMV shall be remitted by DMV to the officer's county or city on a monthly basis, and not less than 80 percent of the sums so remitted shall be appropriated by such county or city to the office of the constitutional officer to compensate the officer for the additional work performed in processing transactions for DMV. The language clearly provides that compensation from DMV is intended to serve as compensation for additional work performed for processing DMV transactions. This principle is further clarified and supported by the language of the 2010 and 2011 Appropriations Acts mandating that the funds appropriated to the constitutional office for such work shall not be used to supplant existing local funding for such office, nor to reduce the local share of the Compensation Board-approved budget for such office below the level established pursuant to general law.

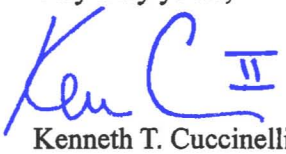
Adopting a resolution that provides for the use of DMV funds to offset the salaries of the employees of the offices of the Treasurer and Commissioner of the Revenue, as a result of the state budget cuts, is not only contrary to the principle that constitutional offices receive compensation for the additional work their employees have performed in processing transactions as DMV license agents, but is contrary to the clear dictates of the Appropriations Acts. Using DMV funds to offset salaries of employees of the Treasurer and Commissioner of the Revenue constitutes an action that uses the funds to supplant or replace the existing local funding for such offices, in direct contravention of the Appropriations Act. Furthermore, assuming the Board has not appealed pursuant to § 15.2-1636.9 the budget for the offices of the County Treasurer and Commissioner of the Revenue established by the Compensation Board, the use of DMV compensation to offset the salaries of employees of those offices results in a impermissible reduction of the local share of the Compensation Board-approved budget for such offices.

Conclusion

Accordingly, it is my opinion, Board of Supervisors is required to appropriate to the office of a constitutional officer such as a Treasurer or Commissioner of the Revenue, serving as a license agent for DMV, 80 percent of the funds remitted by DMV to the county for DMV transactions processed by the office of the constitutional officer, and that the monies so appropriated may not be used to supplant existing local funding for such office, nor to reduce the local share of the Compensation Board-approved budget for such office below the level established pursuant to general law.

With kindest regards, I am

Very truly yours,



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[10] WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 1185-86 (1990).

[11] *Id.* at 1185.