



# COMMONWEALTH of VIRGINIA

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The Honorable Gordon F. Erby  
Clerk of Court  
Lunenburg Circuit Court  
Lunenburg, Virginia 23952

Dear Mr. Erby:

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

## Issues Presented

You inquire regarding the audit of the office of Clerk of Court. Specifically, you ask whether § 15.2-2511 requires the governing body to provide for the audit of such offices and whether § 15.2-2511 authorizes the Auditor of Public Accounts to perform such audits of constitutional officers in instances other than those listed in § 15.2-2511(B).

## Response

It is my opinion that, although § 15.2-2511 requires a locality to provide for the annual audit of its constitutional officers, an audit performed by the Auditor of Public Accounts can satisfy that requirement. It is further my opinion that the authority of the APA to perform an audit of constitutional officers is not limited to those instances provided in § 15.2-2511(B).

## Applicable Law and Discussion

While your inquiry focuses on the application of § 15.2-2511, I note that a variety of statutes address audits for local government officials, including clerks of court. Statutes are not to be read in isolation; rather the principles of statutory construction require that statutes related to a similar subject be construed together in order to achieve a harmonious result.<sup>1</sup>

Section 15.2-2511(A) provides, in relevant part:

Localities shall have all their accounts and records, including all accounts and records of their constitutional officers, audited annually as of June 30 by an independent certified

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<sup>1</sup> 2010 Op. Va. Att'y Gen. 173, 176 (citing *Prillaman v. Commonwealth*, 199 Va. 401, 405, 100 S.E.2d 4, 7 (1957) ("statutes are not to be considered as isolated fragments of law, but as a whole, or as parts of . . . a single and complete statutory arrangement"))).

public accountant in accordance with the specifications furnished by the Auditor of Public Accounts. . . . Every locality shall contract for the performance of the annual audit not later than April 1 of each fiscal year[.] . . . The accounts and records of any county or city officer listed in Article VII, Section 4 of the Constitution of Virginia, hereinafter referred to “constitutional officers,” shall be subject to the provisions of this section.

When a statute is unambiguous, it is to be interpreted according to its plain language.<sup>2</sup> The use of word “shall” “should be given its ordinary and usually accepted meaning of a command and should be construed as mandatory unless a different intention is fairly manifest.”<sup>3</sup> Furthermore, the text explicitly includes “constitutional officers.” Accordingly, I conclude § 15.2-2511 requires localities to provide for the annual auditing of constitutional offices.<sup>4</sup>

This duty is reiterated in §§ 15.2-417, 15.2-538, 15.2-636 and 15.2-844,<sup>5</sup> which provide that county boards “shall require an annual audit of the books of every county officer who handles public funds[.]” These sections further provide, however, that “[a]n audit made by the Auditor of Public Accounts . . . may be considered as having satisfied [this requirement.]”

Section 15.2-2511(B) provides that

The Auditor of Public Accounts shall audit the accounts of local governments and constitutional officers only when (i) special circumstances require an audit, or (ii) there is suspected fraud or inappropriate handling of funds which may affect the financial interests of the Commonwealth. In all instances, such audits shall be carried out with the approval of the Joint Legislative Audit and Review Commission.

This statute could be read to mean that the APA’s ability to audit local officers is limited to the instances the subsection specifically mentions. Notwithstanding the duty imposed on localities in Title 15.2, however, the General Assembly also has provided that “[a]t least once in every two years, and at other times as the Governor directs, the Auditor of Public Accounts . . . shall audit all accounts and records of every city and county official and agency in the Commonwealth handling state funds . . . .”<sup>6</sup> The legislature’s use of the term “official” in this context includes constitutional officers.<sup>7</sup> Additionally, § 15.2-2511(A) expressly provides that “[i]n the event a locality fails to obtain the annual audit prescribed in this subsection, the Auditor of Accounts may undertake the audit[.]” Clearly, the Code contemplates that the APA would be conducting audits of constitutional officers, including clerks of court.

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<sup>2</sup> See, e.g., *Signal Corp. v. Keane Fed. Sys., Inc.*, 265 Va. 38, 46-47, 574 S.E.2d 253, 257 (2003).

<sup>3</sup> *Andrews v. Shepard*, 201 Va. 412, 414, 111 S.E.2d 279, 281 (1959).

<sup>4</sup> See also 1993 Op. Va. Att’y Gen. 59, 67 (noting that predecessor statute empowered county to conduct a financial audit of the records of the commissioner of the revenue); 1997 Op. Va. Att’y Gen. 46, 47 (noting that 1993 amendments to predecessor statute make clear that the local government audit is to include the accounts of constitutional officers).

<sup>5</sup> These provisions apply to the various optional forms of county government.

<sup>6</sup> VA. CODE ANN. § 30-134 (2009) (emphasis added).

<sup>7</sup> Local constitutional officers occupy a unique place in state government. Cases and statutes use the term “official” and “officer” interchangeably to refer to government officials who work for the locality as well as constitutional officers. Indeed, § 30-134 is captioned “[a]udit of accounts of city and county *officers* handling state funds” but the statutory text employs the word “*official*.” See, e.g., *Bd. of Supvrs. v. Marshall*, 215 Va. 756, 760, 214 S.E.2d 146, 149 (1975) (referring to the clerk of court as a “county officer.”).

The effect of these statutes, when read together, is that under § 15.2-2511, the APA is not charged with performing an *annual* audit of local government officers, including clerks of court, who receive funds from state government, but that under § 30-134, the APA must perform an audit at least every other year. When the APA does perform an audit, the locality need not engage the services of an accountant to perform a redundant audit. When the locality fails to have an annual audit performed, § 15.2-2511(A) permits, but does not require, the APA to conduct the audit. Under § 15.2-2511(B), however, the APA is *required* to perform an audit when special circumstances are present or there is suspected fraud or inappropriate handling of funds.

#### Conclusion

Accordingly, it is my opinion that, although § 15.2-2511 requires a locality to provide for the annual audit of its constitutional officers, an audit performed by the Auditor of Public Accounts can satisfy that requirement. It is further my opinion that the authority of the APA to perform an audit of constitutional officers is not limited to those instances provided in § 15.2-2511(B).

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II  
Attorney General