



COMMONWEALTH of VIRGINIA

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The Honorable Gayl Branum Carr
Juvenile and Domestic Relations District Court
19th Judicial District
4110 Chain Bridge Road, Third Floor
Fairfax, Virginia 22030-4043

Dear Judge Carr:

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 certain statutes in Title 16.1 of the *Code of Virginia* require the court to issue a subpoena to the local department of social services when the court is considering placing a child in the custody of that local department and the local department is not a party to the proceedings.¹

Response

It is my opinion that §§ 16.1-278.2, 16.1-278.3, 16.2-278.4, 16.1-278.5, 16.1-278.6 and 16.1-278.8 do not require the issuance of a subpoena to a local department of social services, because the department, as a non-party, is not required to attend any proceeding under those statutes. It is further my opinion that, should a court want the local department to be present for such proceedings, then a subpoena or other court order can be issued to compel the local department to appear.

Applicable Law and Discussion

As you note in your letter, there are a various types of cases before the juvenile and domestic relations district courts where one of the dispositional alternatives is transferring the custody of the child to the local board of social services.² These statutes require the local board to “accept the juvenile for care and

¹ Each of the code sections you cite in your letter authorizes the court to make certain dispositions in proceedings involving juveniles. Those dispositions include transferring custody to “[t]he local board of social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the child has residence if other than the county or city in which the court has jurisdiction.” VA. CODE ANN. §§ 16.1-278.2(A)(4)(c), 16.2-278.4(6)(c), 16.1-278.6 and 16.1-278.8(A)(13)(c) (2010). Three other disposition statutes incorporate the dispositions set out in these statutes by reference: § 16.1-278.3 authorizes the court to make orders of disposition pursuant to §§ 16.1-278.2 and 16.1-278.3(C), and §§ 16.1-278.5 and 16.1-278.6 authorize the court to “[e]nter any order of disposition authorized by 16.1-278.4.”

² The local board of social services is the legal entity authorized to accept the custody of children and make foster care placements. VA. CODE ANN. § 63.2-900 (Supp. 2011). Local departments of social services in essence are the

custody, provided that it has been given reasonable notice of the pendency of the case and an opportunity to be heard.”³

Although the statutes require that the local board be given notice and an opportunity to be heard, the manner in which that is done is not prescribed in the statutes. Notice is not equivalent to a summons or subpoena.⁴ Although a subpoena could provide notice to the local board, one is not required to comply with the statutory notice requirement. Regardless of form, the notice must be timely and provide a description of the nature of the proceeding and the date and time it will take place.

Further, the opportunity to be heard is not the same as a requirement to attend. Nowhere in these statutes is there a provision requiring the local board to appear at the proceedings. As a non-party to the proceeding, the local board, absent a command of the court, is not obligated to attend and may choose not to appear. Thus, there is no requirement that a subpoena or other court order be issued to ensure the local department appear at the proceeding. Rather, provided proper notice has been given, the local department’s opportunity to be heard obviates the need for the subpoena by entitling the local department to be present at the proceeding and offer testimony on the matter before the court. Nonetheless, if the court wishes to have the local department present for these type of proceedings, then a subpoena or other court order can be issued to compel the local department to appear.⁵

Conclusion

Accordingly, it is my opinion that the specified statutes do not require the issuance of a subpoena to a local department of social services because the department is not required to attend any proceeding under those statutes. It is further my opinion that, should a court want the local department to be present for such proceedings, then a subpoena or other court order can be issued to compel the local department to appear.

With kindest regards, I am

Very truly yours,


Kenneth T. Cuccinelli, II
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staff for the local boards and carry out the administration of various programs in Title 63.2. Sections 63.2-324, 63.2-325, and 63.2-332 (2007). This opinion recognizes the common practice of referring to these two entities as one and the same.

³ Sections 16.1-278.2(A)(4)(c), 16.2-278.4(6)(c), 16.1-278.6, and 16.1-278.8(A)(13)(c).

⁴ *See, e.g.*, § 16.1-283 (2010).

⁵ VA. CODE ANN. § 8.01-407 (Supp. 2011). I note that failing to subpoena the local board does not prevent the court from exercising its authority to place the child in the custody of the local board. Although the subpoena may be the means by which the local board is compelled to appear at the hearing, courts still may transfer custody to the local board in the board’s absence, provided notice and an opportunity to be heard were given. Failing to appear at a hearing for which it received proper notice cannot be used by a local board as an attempt to avoid receiving custody of a child. Furthermore, the various dispositional statutes clearly allow for emergency placements that are made without notice and an opportunity to be heard: “in an emergency in the county or city in which the court has jurisdiction, the local board may be required to accept a child for a period not to exceed fourteen days without prior notice or an opportunity to be heard if the judge entering the placement order describes the emergency and the need for such temporary placement in the order.” Sections 16.1-278.2(A)(4)(c), 16.2-278.4(6)(c), 16.1-278.6, and 16.1-278.8(A)(13)(c).