



COMMONWEALTH of VIRGINIA

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July 12, 2013

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The Honorable William O. Watson
Sheriff, City of Portsmouth
701 Crawford Street
Portsmouth, Virginia 23704-3888

Dear Sheriff Watson:

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 present two questions regarding the legal authority to make rules relating to courthouse security. First, regarding the physical security of the courthouse, and specifically, the granting of physical access to certain areas of the courthouse, you inquire whether the chief judge, acting independently, or, the judges of a circuit court, acting collectively, possess the authority to mandate that a circuit court administrator make such decisions. Second, you inquire whether the chief judge or the judges of a circuit possess the authority to mandate that the sheriff allow all types of cellular phones into the courthouse.¹

Response

It is my opinion that, while the chief judge and, collectively, the judges of a judicial circuit, do possess legal authority to establish rules regarding courthouse security, such power may not be delegated to a circuit court administrator. In addition, it is my opinion that the chief judge and, collectively, the circuit judges, possess the legal authority to establish a general rule that cellular telephones are permitted in the courthouse. Nonetheless, it is further my opinion that the sheriff possesses the legal authority to take action in any specific instance in which a cellular telephone causes a disturbance, or otherwise endangers public safety within the courthouse.

¹ With respect to your second inquiry, you note the existence of “dissenting opinions of Judges from other jurisdictional courts in the same courthouse.” This opinion necessarily must focus only on the legal authority of circuit judges in relation to that of the sheriff. *See* VA. CODE ANN. § 2.2-505(B) (2011) (providing that, with the exception of opinion requests from the Governor or a General Assembly member, “the Attorney General shall have no authority to render an official opinion unless the question dealt with is directly related to the discharge of the duties of the official requesting the opinion.”). Therefore, this opinion does not discuss the authority of circuit judges in relation to judges of courts not of record that share the same courthouse.

Applicable Law and Discussion

Your questions involve both the construction of statutes and recognition of the inherent authority of courts to conduct the functions of the judicial branch.² Issues related to courthouse security and decorum are dealt with in multiple sections within the *Code of Virginia*. For example, § 53.1-120 provides that:

(A) Each sheriff shall ensure that the courthouses and courtrooms within his jurisdiction are secure from violence and disruption and shall designate deputies for this purpose. . . .

(B) The chief circuit court judge, the chief general district court judge and the chief juvenile and domestic relations district court judge shall be responsible by agreement with the sheriff of the jurisdiction for the designation of courtroom security deputies for the respective courts. If the respective chief judges and sheriff are unable to agree on the number, type and working schedules of the courtroom security deputies for the court, the matter shall be referred to the Compensation Board for resolution

Thus sheriffs are afforded certain powers and responsibilities related to courthouse security.³

The legal authority of sheriffs is, nonetheless, not exclusive. As set forth in § 53.1-120 above, the *Code of Virginia* expressly contemplates that at least one issue of courthouse security will be resolved “by agreement” between the sheriff and the chief judges of the respective local courts.⁴ Additionally, § 8.01-4 provides that the district and circuit courts may prescribe rules “necessary to promote proper order and decorum and the efficient and safe use of courthouse facilities and clerks’ offices.” Finally, the courts of Virginia have found that they possess certain inherent powers related to courthouse security.⁵

Reading § 53.1-120 together with § 8.01-4 and the relevant case law dictates the conclusion that the chief judge of a circuit court, acting pursuant to § 17.1-501(B) of the *Code of Virginia*, or the

² There has been substantial public debate over the existence of, and the limits upon inherent authority of Virginia courts respecting various issues, including the disposition of cases. *See, e.g.*, *Hernandez v. Commonwealth*, 281 Va. 222, 226, 707 S.E.2d 273, 275 (2011). While General Assembly members have taken issue with the judiciary’s assertion of inherent authority in certain instances, one primary function of the opinion process under § 2.2-505 is to provide guidance as to what the courts of Virginia are likely to decide on a given issue. Accordingly, it is appropriate to herein address the judiciary’s historically recognized inherent legal authority respecting courthouse security.

³ *See also* 2004 Op. Va. Att’y Gen. 170, 171; 2002 Op. Va. Att’y Gen. 242, 243; 1998 Op. Va. Att’y Gen. 33, 34-35; 1987-88 Op. Va. Att’y Gen. 467, 468-69.

⁴ VA. CODE ANN. § 53.1-120(B) (2009).

⁵ *See Payne v. Commonwealth*, 233 Va. 460, 466, 357 S.E.2d 500, 504 (1987) (“The trial judge has overall supervision of courtroom security.”); *Epps v. Commonwealth*, 47 Va. App. 687, 701, 626 S.E.2d 912, 918 (2006) (“Courts have the inherent authority to ensure the security of their courtrooms.”) *Bond v. Commonwealth*, 32 Va. App. 610, 615, 529 S.E.2d 827, 829 (2000) (upholding the trial judge’s decision to exercise responsibility for courtroom security by disallowing accused’s twin brother, a prisoner, to sit among the audience in the courtroom) In *Epps*, the Court of Appeals, sitting *en banc* noted the interplay between a sheriff’s duties and a court’s authority, stating that “[a]lthough Code § 53.1-120 mandates the sheriff to provide courthouse security, the statute does not bar the court from ensuring the sheriff properly discharges that duty.” *Epps*, 47 Va. App. at 701, 626 S.E. 2d at 918.

judges of such circuit, acting collectively, possess supervisory rule-making authority over courthouse security.⁶ The sheriff, however, by law, retains the authority to act as the enforcer of such court-promulgated rules, or, programmatically, in the absence of such rules, and, situationally, as necessary to ensure courthouse security. Thus, both Virginia law and the practicalities of emergent situations require that circuit judges and the sheriff work collaboratively to establish and maintain courthouse security.⁷

If, as in your first inquiry, a question or dispute arises as to what persons will be given access to courthouse spaces, the chief judge, or, alternatively, the collective circuit judges, possess the legal authority to make the determination of “who is granted physical access to . . . areas of a courthouse.”⁸ Such authority, however, derived from both statute and the inherent authority of the court, belongs to the judges and thus may not be delegated.⁹ To the extent that a circuit court exercises its authority to establish rules regarding access to areas of a courthouse, it must do so itself, in accordance with § 8.01-4. While a circuit court may use an administrator to communicate and implement such rules, it may not delegate to such person an ability to, “make decisions in regards to the physical security of the courthouse by . . . deciding who is granted physical access to...areas of [it.]”

Similarly, and with respect to your second inquiry, if the chief judge or, alternatively, the collective circuit judges, determine by rule that “all cellular phones, including those with video and still cameras, must be allowed into the courthouse,” they possess the legal authority to do so. While such a rule may allow persons to enter into the courthouse with such devices, it would not thereby enable anyone to use camera features in a disruptive manner, or, more generally, in a way that would endanger public safety inside that structure. As noted above, Virginia law charges the sheriff with the duty to intervene into any such courthouse situation.

Conclusion

Accordingly, it is my opinion that, while the chief judge and, collectively, the judges of a judicial circuit, do possess legal authority to establish rules regarding courthouse security, such power may not be delegated to a circuit court administrator. In addition, it is my opinion that the chief judge

⁶ In discussing the legal authority of circuit judges and sheriffs respecting courthouse security, this opinion does not purport to address the resolution of any situation wherein differences may arise between the chief judge and the other judges of the circuit on a particular aspect thereof. I note that the General Assembly places upon chief judges the overarching responsibility to “ensure that the system of justice in his circuit operates smoothly and efficiently.” VA. CODE ANN. § 17.1-501(B) (2010).

⁷ As noted above, in at least one instance, regarding the allocation of courtroom deputies, a disagreement between the judges and the sheriff must be resolved under a procedure established by § 53.1-120(B). That provision states, “If the respective chief judges and sheriff are unable to agree on the number, type and working schedules of courtroom security deputies for the court, the matter shall be referred to the Compensation Board for resolution in accordance with existing budgeted funds and personnel.”

⁸ Consistent with the proviso of footnote 1, *supra*, this opinion does not address the resolution of any disagreements regarding access to courthouse areas that may arise between the circuit judges and the judges of courts not of record respecting those courthouse spaces occupied by the latter courts and their support personnel and facilities.

⁹ The authority to create courthouse security rules is limited to “district courts and circuit courts.” VA. CODE ANN. § 8.01-4 (2007). The statute makes no mention of court administrators. *Id.* “When a statute creates a specific grant of authority, the authority is deemed to exist only to the extent granted in the statute.” 2009 Op. Va. Att’y Gen. 5, 6 (further citation omitted) (applying the legal maxim “Expressio unius est exclusio alterius.”)

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and, collectively, the circuit judges, possess the legal authority to establish a general rule that cellular telephones are permitted in the courthouse. Nonetheless, it is further my opinion that the sheriff possesses the legal authority to take action in any specific instance in which a cellular telephone causes a disturbance, or otherwise endangers public safety within the courthouse.

In closing, I reiterate that both sheriffs and circuit court judges share not only legal authority regarding courthouse security, but also share responsibility in that critical public safety arena. The public will be best served if issues of courthouse security are resolved with input from and the consensus agreement of both sheriffs and the judges of the court.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken C II". The signature is stylized and written in a cursive-like font.

Kenneth T. Cuccinelli, II
Attorney General