



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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Attorney General

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The Honorable Judith C. Wells
Treasurer, Isle of Wight County
Post Office Box 79
Isle of Wight, Virginia 23397

Dear Treasurer Wells:

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 related to the appropriation of funds by a local governing body to the local school board. You first inquire whether funds "earmarked" for debt service may be reallocated and spent for other school needs when a refunding of the outstanding bonds results in a debt service savings thereby resulting in a surplus in the "earmarked" amount. You further ask for the interpretation of a local ordinance to determine whether the local governing body made a lump sum appropriation to the school board for fiscal year 2011-2012 or whether the local governing body intended that a portion of the local school board appropriation was designated specifically for debt service.

Response

It is my opinion that if the local governing body made a lump sum appropriation to the school board for fiscal year 2011-2012 and a surplus resulted from debt service savings, then the school board may reallocate and spend those savings for other school needs. It is further my opinion that the question of whether a lump sum appropriation was made to the local school board depends upon the interpretation of a local ordinance, a practice from which this Office has traditionally abstained.

Background

You relate that on May 12, 2011, the local governing body "formally adopted the school board budget, in designated line item form and ... appropriated said budget in a lump sum amount of \$57,861,769.00 ... of which ... a specifically designated line item of \$4,388,545 [was] set aside for debt service ..." on outstanding school bonds. You further indicate that on May 12, 2011, the local governing body approved a resolution authorizing the refunding of outstanding bonds to achieve debt savings and that a portion of those savings were directly attributable to debt service in the local school board budget.

By June 2012, it was clear that the actual debt service savings associated with the bonds issued for school purposes was approximately \$1,358,887. You indicate that the local school board's position

was that the savings already had been “appropriated” to the local school board in a lump sum and that, therefore, the board could reallocate the funds and spend them for other school purposes.¹

Applicable Law and Discussion

A local governing body and local school board are separate and distinct governmental agencies of the Commonwealth.² The local school board, nonetheless, does depend on the local governing body for a significant amount of its funding.³ Indeed, “[t]he statutory scheme prescribed by the General Assembly envisions a symbiotic relationship between the school board and the [local governing body], whereby the school board manages and maintains the school system and the [local governing body] provides the requisite local funding.”⁴

The local governing body has a budget and appropriations process by which funds are made available for the programs and operations the local governing body supports, including the local school board.⁵ The formal act of appropriation by the local governing body is how money is set aside for a specific use.⁶ Generally, “[o]nce the [governing body] has appropriated funds for educational purposes to the school board, the school board has the right to determine how such funds will be spent”⁷ Specifically, when the local governing body makes a lump sum appropriation to the school board, the school board has full discretion in determining how to spend the appropriated funds. Nevertheless, if a local governing body has divided its appropriation into classifications (e.g. debt service), the school board may not use funds designated for one classification for expenses belonging in another.⁸ Consequently, whether the school board in your scenario can allocate the debt savings surplus to another use depends on how the local governing body appropriated the school board’s funds.

You present an ordinance by which the local governing body appropriated funds to the local school board, and you request an opinion regarding whether the language of the ordinance creates a lump sum appropriation or establishes classifications whereby the school board is more limited in its spending discretion.⁹ The Attorney General traditionally limits responses to “interpretation of federal or state law, rule or regulation.”¹⁰ “In instances when a request requires interpretation of a local ordinance, the

¹ According to press reports, the school board did reallocate and spend the savings. Alison T. Williams, *Isle of Wight Supervisor's Leader Says No To School Board Meeting*, DAILY PRESS (Newport News, Va.), Sept. 14, 2012, at A2.

² *Bd. of Supvrs. v. Cnty. Sch. Bd.*, 182 Va. 266, 275, 28 S.E.2d 698, 702 (1944).

³ 2005 Op. Va. Att’y Gen. 44, 45.

⁴ *Harold v. Bd. of Supvrs.*, 38 Va. Cir. 467, 472 (1996).

⁵ The general budget and appropriation process for localities is set out at VA. CODE ANN. §§ 15.2-2500 through 15.2-2513 (2012). The budget and appropriation process for school boards specifically is set out at §§ 22.1-92 through 22.1-94 (2011 & Supp. 2012).

⁶ 1982-83 Op. Va. Att’y Gen. 16, 16 (citing *Almond v. Day*, 197 Va. 419, 426, 89 S.E.2d 851, 85-86 (1955)). See § 22.1-94 (2011).

⁷ 1981-82 Op. Va. Att’y Gen. 323, 323.

⁸ 2010 Op. Va. Att’y Gen. 120, 121-22.

⁹ Specifically at issue is whether a budget attached to the ordinance is incorporated or if the lump sum language in the ordinance stands alone.

¹⁰ 2010 Op. Va. Att’y Gen. 80, 81 (further citation omitted).

[Office] has declined to respond in order to avoid becoming involved in matters solely of local concern[.]”¹¹

Conclusion

Accordingly, it is my opinion that if the local governing body made a lump sum appropriation to the school board for fiscal year 2011-2012 and there was a surplus as a result of debt service savings then the school board could reallocate and spend those savings for other school needs. It is further my opinion the question of whether there was a lump sum appropriation was made to the local school board depends upon the interpretation of a local ordinance and this Office does not opine on local ordinances.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken C. II". The signature is stylized with a large "K" and "C" and a Roman numeral "II" at the end.

Kenneth T. Cuccinelli, II
Attorney General

¹¹ 2004 Op. Va. Att’y Gen. 72, 77.