



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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Attorney General

July 19, 2013

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The Honorable Michael W. Taylor
Sheriff, Pittsylvania County
Post Office Box 407
Chatham, Virginia 24531

Dear Sheriff Taylor:

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 the local board of supervisors has the legal authority to provide school resource officers funded at county expense to the county's private schools as well as to the county's public schools.

Response

It is my opinion that the local board of supervisors may provide school resource officers for the county's private schools as well as the county's public schools.

Background

You relate that your office has recommended to the Pittsylvania County Board of Supervisors the hiring of additional deputies to serve as school resource officers¹ to accomplish the goals of a safe school initiative in that county. You indicate that local leaders have asked whether the county has the legal authority to spend funds to hire, train, and equip deputies who would serve at the county's private schools as well as the county's public schools.

Applicable Law and Discussion

In determining the powers of a local government, Virginia follows the Dillon Rule of strict construction, whereby power of a local governing body is limited to "those powers which are

¹ Although the *Code of Virginia* provides a definition of "school resource officer" that is limited to include only officers serving in public schools, VA. CODE ANN. § 9.1-101 (2012), such definition does not serve to preclude a local government from also installing officers to perform that function at private schools. The local government cannot, however, apply for grants pursuant to § 9.1-110 from the Criminal Justice Services Board for the additional law enforcement positions installed at private schools.

expressly granted by the state legislature, those powers fairly or necessarily implied from expressly granted powers, and those powers which are essential and indispensable.”² The General Assembly has provided local governments general authority to “make appropriations for the purposes for which it is empowered to levy taxes and make assessments, for the support of the locality, for the performance of its functions, and the accomplishment of all other lawful purposes and objectives....”³

One of the most important functions of local government is public safety and the exercise of police powers to achieve that safety. Section 15.2-1200 provides that “[a]ny county may adopt such measures as it deems expedient to secure and promote the health, safety and general welfare of its inhabitants which are not inconsistent with the general laws of the Commonwealth.”⁴ The Supreme Court of Virginia has construed broadly this general grant of police powers to localities when public safety and morals are involved.⁵ Accordingly, it is reasonable to anticipate that local governments may provide funding for law-enforcement positions to be assigned the duties of school resource officers in private as well as public schools located within their jurisdiction, so as to provide for the safety of all children attending school within their jurisdiction.

Although your inquiry does not distinguish between types of private schools, I note that many jurisdictions contain private schools with religious affiliations. Thus, it is appropriate to address whether a locality may provide for school resource officers to be present in private schools with religious affiliations, pursuant to the goal of ensuring the safety and security of the attending children. Providing such resource officers constitutes a predominantly secular act; it does not appear to advance or inhibit any religion or create an excessive entanglement with religion in violation of the Establishment Clause of the United States Constitution.⁶ For those reasons, it is my opinion that the resource officers could be made available to all private schools within the local government’s jurisdiction, notwithstanding that one or more of them may have a religious affiliation.

² *Arlington Cnty. v. White*, 259 Va. 708, 712, 528 S.E.2d 706, 708 (2000) (quoting *City of Va. Beach v. Hay*, 258 Va. 217, 221, 518 S.E.2d 314, 316 (1999)).

³ VA. CODE ANN. § 15.2-950 (2012).

⁴ There are instances where the General Assembly makes evident that they do not intend a locality to be able to pass a measure. *See* 2005 Op. Va. Att’y Gen. 84, 85. I find nothing, however, to so indicate with respect to the question you present.

⁵ *See, e.g. Stallings v. Wall*, 235 Va. 313, 318, 367 S.E.2d 496, 499 (1988) (holding that general delegation of authority was broad enough to permit localities to restrict sales of firearms); *King v. Cnty. of Arlington*, 195 Va. 1084, 1087, 81 S.E.2d 587, 590 (1954) (holding that county ordinance prohibiting keeping of vicious dogs was valid); *Assaid v. City of Roanoke*, 179 Va. 47, 50, 18 S.E.2d 287, 289 (1942) (concluding that city had power to regulate operation of pool rooms); *see also* 1994 Op. Va. Att’y Gen. 29, 31-32 (noting that state court decisions and prior opinions of the Attorney General have concluded that a locality’s general police powers are broad enough to sustain local regulation of a wide range of activities and subjects).

⁶ U.S. CONST. amend. I. *See Everson v. Bd. of Educ.*, 330 U.S. 1, 17-18 (noting that it is not a violation of the First Amendment for the state to provide ordinary police protection to religious schools). *See also* 2006 Op. Va. Att’y Gen. 164, 168 (“The mere fact that the programs being implemented have a religious component does not render them unconstitutional on their face.”).

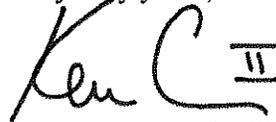
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Conclusion

Accordingly, it is my opinion that a local board of supervisors may provide school resource officers for the county's private schools as well as the county's public schools.

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, sweeping "K" and "C", and the Roman numeral "II" is written in a smaller, more formal font to the right of the "C".

Kenneth T. Cuccinelli, II
Attorney General