



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

August 2, 2013

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

The Honorable Tony O. Wilt
Member, House of Delegates
Post Office Box 1425
Harrisonburg, Virginia 22803

Dear Delegate Wilt:

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 ask whether employees of local school boards are local government employees for purposes of § 15.2-915 of the *Code of Virginia* and whether local school boards may restrict an employee from storing a lawfully possessed firearm and ammunition in a locked private motor vehicle.

Response

It is my opinion that local public school boards have authority over the care, management, and control of the property of the school division and as such are separate and apart from the local government and that the employees of the school board are not local government employees for purposes of § 15.2-915. Therefore, local school districts may prohibit an employee from storing a lawfully possessed firearm and ammunition in a locked private motor vehicle on school district property.

Applicable Law and Discussion

Section 15.2-915 provides that “no locality shall adopt any workplace rule . . . that prevents an employee of that locality from storing at that locality’s workplace a lawfully possessed firearm and ammunition in a locked private motor vehicle.” At issue is the relationship between the local governments and local school boards and whether employees of the school boards are considered “local government employees.”

School boards constitute a corporate body with corporate powers that include holding, leasing, owning, and conveying property.¹ “A school board shall . . . [c]are for, manage and control the property of the school division”² The supervisory authority of local school boards has been confirmed by the judiciary in several cases. “[A] school board’s power to discharge employees [is] a power which is rooted

¹ VA. CODE ANN. § 22.1-71(3) (2011).

² Section 22.1-79 (Supp. 2013).

in the Constitution of Virginia.”³ A prior opinion of this Office states that “[a] school board cannot forfeit its independence to another entity and must retain the ability to fulfill its responsibilities.”⁴

More specifically, prior opinions of this Office have concluded that school employees are not local government employees.⁵ The General Assembly is presumed to have knowledge of the Attorney General’s statutory interpretation.⁶ While the Attorney General has not previously opined on this particular statute, it is clear that opinions of the Office of the Attorney General distinguish local governments from local school boards and local government employees from school board employees.

Additionally, § 15.2-915 references “locality” and “employee of that locality” with no reference to local school boards or school board employees. Section 15.2-102 defines locality “to mean a county, city, or town as the context requires.” The Supreme Court of Virginia has noted that “when the General Assembly ‘has spoken plainly’ on a subject, we must not ‘change or amend its enactments under the guise of construing them.’”⁷ In enacting § 15.2-915, the legislature dealt only with localities as defined in § 15.2-102 and not school boards or the employees of school boards. Thus, a local school board may adopt an employee policy that forbids storing of an otherwise lawfully-possessed firearm or ammunition in a locked vehicle.

Conclusion

Accordingly, it is my opinion that local public school boards have authority over the care, management, and control of the property of the school division and as such are separate and apart from the local government and that the employees of the school board are not local government employees for purposes of §15.2-915. Therefore, local school districts may prohibit an employee from storing a lawfully possessed firearm and ammunition in a locked motor vehicle on school district property.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

³ Russell Cnty. Sch. Bd. v. Anderson, 238 Va. 372, 383, 384 S. E. 2d 598, 604 (1989). Cf. Howard v. Cnty. Sch. Bd., 203 Va. 55, 58-59, 122 S.E. 2d 891, 894 (1961) (finding it unconstitutional to divest school board of authority to decide when school property could be put up for sale); Harrison v. Day, 200 Va. 439, 452, 106 S.E. 2d 636, 646-47 (1959) (finding it unconstitutional to attempt, by statute, to divest local school authority to run schools).

⁴ 2011 Op. Va. Att’y Gen. 118, 118 (finding that a school board and local government could combine certain functions, but that school board could not abrogate or transfer its duty or responsibilities to the local government).

⁵ 2008 Op. Va. Att’y Gen. 43, 44 (finding that an individual employed as a school bus driver by a school board is not an employee of the county); 1985-86 Op. Va. Att’y Gen. 159 (finding that local school board employees are not local government employees because not under city supervision or control).

⁶ City of Winchester v. Am. Woodmark Corp., 250 Va. 451, 458, 464 S.E. 2d 148, 153 (1995).

⁷ *Id.* (quoting City of Martinsville v. Tultex Corp., 238 Va. 59, 63, 381 S.E. 2d 6, 8 (1989) (internal citations omitted)).