



COMMONWEALTH of VIRGINIA

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Walter C. Erwin, III, Esquire
Lynchburg City Attorney
City Hall, 900 Church Street
Lynchburg, Virginia 24504

Dear Mr. Erwin:

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 unexpended local funds held by a joint or regional school at the end of a fiscal year must revert to the participating local school divisions, and thus ultimately to the local governing bodies that appropriated the funds.

Background

The School Boards of the City of Lynchburg and the Counties of Amherst, Appomattox, Bedford, and Campbell have established several regional schools (the "regional schools"). Each regional school has its own joint board consisting of members from the participating local school boards. Each joint board manages and controls programs in its school. All these schools are located within the City of Lynchburg, and by agreement the Lynchburg City Treasurer serves as the fiscal agent for each school.

The governing body for each participating school division appropriates local funds to that school division, and the school division distributes a portion of the funding to the regional schools. Each regional school adopts and implements an annual budget. If there are unencumbered surplus funds remaining at the end of a budget year (herein, simply "surplus funds"), there is no uniform program for disposition of the funds. Some regional schools carry the funds over to the next school year, while other regional schools credit the funds on a pro rata basis to each participating school division's tuition payment for the following year.

Applicable Law and Discussion

All regional schools, including those which are the subject of this Opinion, are organized in accordance with § 22.1-26 of the *Code of Virginia*. In relevant part, § 22.1-26 provides as follows:

A. Two or more school boards may, with the consent of the State Board [of Education], establish joint or regional schools . . . for the use of their respective school divisions and

may jointly purchase, take, hold, lease, convey and condemn both real and personal property for such joint, regional, or regional public charter schools. . . . [T]he schools shall be managed and controlled by the school boards jointly, in accordance with such regulations as are promulgated by the State Board.

A regional school is a separate legal entity, and it has authority to hold property in the name of its joint board.¹

Section 22.1-100 specifically addresses the disposition of surplus funds for local school divisions, but not for regional schools:

All sums of money derived from the Commonwealth which are unexpended in any year in any school division shall revert to the fund of the Commonwealth from which derived unless the Board of Education directs otherwise. All sums derived from local funds unexpended in any year shall remain a part of the funds of the governing body appropriating the funds for use the next year, but no local funds shall be subject to redivision outside of the locality in which they were raised.^[2]

There is no general statute making regional schools subject to all statutory requirements for local school divisions, nor is there a separate statute making § 22.1-100 applicable to regional schools. The absence of any reference to reversion of surplus funds held by regional schools in § 22.1-100 invokes the principle of statutory interpretation known as *expressio unius est exclusio alterius*, meaning “the express mention of one thing excludes all others.”³

The State Board of Education has adopted various regulations governing the operation of regional schools in Title 8 of the *Virginia Administrative Code*. One of these regulations allows the governing board of a regional school to adopt bylaws or rules of operation, which shall cover financial management and shall be consistent with state statutes and regulations:

The joint board shall adopt bylaws or rules of operation . . . [which] shall address the receipt, custody, and disbursement of funds . . . consistent with the state statutes and regulations of the Board of Education.^[4]

There is no regulation of the State Board addressing the disposition of surplus funds by regional schools.

In summary, § 22.1-100 sets forth the requirements for disposition of surplus funds for local school divisions, but not for joint or regional schools. There is a State Board of Education regulation authorizing the board of a joint or regional school to adopt bylaws or rules of operation for financial management that are consistent with statutes and regulations, but no regulation containing specific guidance on surplus funds held by a joint or regional school.

¹ VA. CODE ANN. § 22.1-26 (2011) states, in relevant part, “With the approval of the participating school boards and the respective local governing bodies, title to property acquired for a joint school shall be vested in the governing body of such school.”

² Section 22.1-100 (2011).

³ See, e.g., *Fisher v. Tails, Inc.*, 289 Va. 69, 75 (2015).

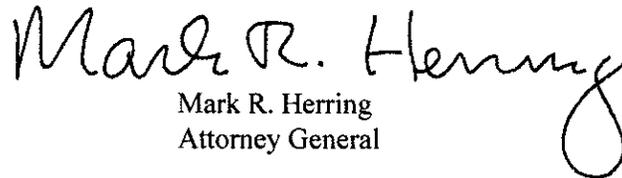
⁴ 8 VA. ADMIN. CODE § 20-281-20(1).

Conclusion

For the reasons stated, it is my opinion that there are at present no legal requirements concerning disposition of surplus funds by joint or regional schools. The governing board of each such school may adopt bylaws or rules of operation concerning such disposition, so long as the bylaws or rules are not inconsistent with applicable statutes or regulations. Having surplus funds revert pro rata to the participating local school divisions, and thence to the local governing bodies, would be consistent with law, but it is not legally required.

With kindest regards, I am

Very truly yours,


Mark R. Herring
Attorney General