



# COMMONWEALTH of VIRGINIA

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July 24, 2015

The Honorable Ken Stolle  
Sheriff, City of Virginia Beach  
Post Office Box 6098  
Virginia Beach, Virginia 23456

Dear Sheriff Stolle:

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 two questions regarding local funding of sheriffs' offices: whether several statutes<sup>1</sup> require localities to pay certain expenses of sheriffs, and whether a locality may use funds collected pursuant to § 15.2-1613.1 (prisoner processing fees) or § 53.1-120 (courthouse security fees) to offset other amounts it is required to pay a sheriff pursuant to other statutes.

## Applicable Law and Discussion

Each county and city in the Commonwealth elects a sheriff unless otherwise provided by law.<sup>2</sup> The sheriff is generally responsible for providing law enforcement services, overseeing the local jail, securing the courthouse, serving civil papers, and otherwise assisting in the judicial process.<sup>3</sup> Consistent with the wide range of duties that sheriffs perform, funding for sheriffs' offices is derived from a variety of state and local sources of revenue.

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<sup>1</sup> Specifically, VA. CODE ANN. §§ 15.2-1517 (2012) (localities may provide insurance for certain employees and retirees); 15.2-1605.1 (2012) (locality may supplement salaries of sheriffs and their deputies); 15.2-1615.1 (2012) (sheriff's purchase of office equipment and supplies within budgetary limits to be paid by locality, reimbursable by state); 15.2-1613 (2012) (localities may provide uniforms and other personal equipment to sheriffs' offices); 15.2-1613.1 (2012) (locality may enact processing fee for inmates, to be allocated to sheriff for processing costs); VA. CODE ANN. §§ 53.1-120 (2013) (locality may collect courthouse security fees in criminal and traffic cases, to be appropriated to sheriff's office); 53.1-126 (2013) (sheriff to purchase food, clothing, and medical supplies for prisoners at lowest reasonable cost, to be submitted to locality for payment). This Opinion responds only to your inquiries about these particular statutes, and no attempt has been made to identify and analyze all statutes dealing with local funding for sheriffs' offices.

<sup>2</sup> VA. CONST. art. VII, § 4; § 15.2-1609 (2012).

<sup>3</sup> See, e.g., VA. CODE ANN. § 8.01-294 (2007); § 15.2-1609; § 53.1-120.

Several statutes address local funding for particular expenses of sheriffs. Each statute must be analyzed separately to determine whether the funding it identifies is mandatory or discretionary on the part of a locality. When interpreting statutes, the Supreme Court of Virginia has held that “words in a statute are to be construed according to their ordinary meaning, given the context in which they are used.”<sup>4</sup> Unless necessary to accomplish the manifest purpose of the legislature, the ordinary meaning of “may” denotes permission, not compulsion.<sup>5</sup> The word “shall” generally denotes an imperative or mandatory action.<sup>6</sup> Given this understanding, I will discuss each of the statutes about which you inquire.

### Local Insurance Programs

Section 15.2-1517 provides that:

Any locality *may* provide group life, accident, and health insurance programs for its officers and employees . . . . In the event a county or city elects to provide one or more of such programs for its officers and employees, it *shall* provide such programs to the constitutional officers and their employees on the same basis as provided to other officers and employees, unless the constitutional officers and employees are covered under a state program, and the cost of such local program shall be borne entirely by the locality or shared with the employee.<sup>[7]</sup>

The phrase “[a]ny locality *may* . . .” clearly gives localities the choice to provide insurance programs for its employees. If a locality does choose to provide insurance programs to its employees, it must also provide coverage on the same basis to sheriffs and their employees unless a state program does so.

### Additional Compensation for Sheriff and/or Sheriff’s Deputies and Employees

Section 15.2-1605.1 states that any county or city “in its discretion, *may* supplement the compensation of the sheriff” or his deputies or employees “in such amounts as it may deem expedient.”<sup>8</sup> “Such additional compensation *shall* be wholly payable from the funds of any such county or city.”<sup>9</sup> This statute clearly provides a locality with discretion to determine whether to provide additional compensation to supplement the compensation fixed by the Compensation Board. Any additional compensation provided by the locality must come from the locality’s own funds.

### Office Equipment and Supplies

In relevant part, § 15.2-1615.1 provides that:

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<sup>4</sup> City of Va. Beach v. Bd. of Supvrs., 246 Va. 233, 236 (1993) (quoting Grant v. Commonwealth, 223 Va. 680, 684 (1982)) (internal quotation marks omitted).

<sup>5</sup> Bd. of Supvrs. v. Weems, 194 Va. 10, 15 (1952) (citing Masters v. Hart, 189 Va. 969, 979 (1949)).

<sup>6</sup> Schmidt v. City of Richmond, 206 Va. 211, 218 (1965); *but see* Caccioppo v. Commonwealth, 20 Va. App. 534, 537 (1995) (noting an exception whereby the word “shall” is deemed “directory and not mandatory” when used in certain statutes to describe procedural actions taken by public officials).

<sup>7</sup> Section 15.2-1517 (emphasis added).

<sup>8</sup> Section 15.2-1605.1 (emphasis added).

<sup>9</sup> *Id.* (emphasis added).

Whenever a sheriff purchases office furniture, office equipment, stationery, office supplies, telephone or telegraph service, postage, or repairs to office furniture and equipment in conformity and within the limits of allowances duly made and contained in the then current budget of any such sheriff under the provisions of this chapter, the invoices therefor, after examination as to their correctness, *shall* be paid by the county or city directly to the vendors, and the Commonwealth shall monthly reimburse the county or city the cost of such items . . . .<sup>[10]</sup>

Under this statute, invoices for office equipment, supplies, telephone service, and certain repairs purchased by a sheriff within the limits of his budget are to be paid by the locality, with the locality then being reimbursed by the state. This statute is not discretionary. It requires that the locality pay those expenses, provided they are within budgetary limits.

#### Uniforms and Personal Equipment

Section 15.2-1613 provides that:

[C]ounties and cities *shall* provide at their expense . . . a reasonable number of uniforms and items of personal equipment required by the sheriff to carry out his official duties.<sup>[11]</sup>

This statute requires localities to appropriate funds reasonably needed by sheriffs for uniforms and other personal equipment to perform official duties. It is not discretionary, so long as the funds are reasonably needed for the covered items for official duties.

#### Foodstuffs and Other Provisions for Prisoners

Section 53.1-126 provides that:

The sheriff . . . *shall* purchase at prices as low as reasonably possible all foodstuffs and other provisions used in the feeding of jail prisoners and such clothing and medicine as may be necessary. . . . Invoices or itemized statements of account from each vendor of such foodstuffs, provisions, clothing and medicines [for jail prisoners] shall be obtained by the sheriff . . . and presented for payment to the governing body of the city or county . . . , which *shall* be responsible for the payment thereof.<sup>[12]</sup>

This statute requires the city or county to directly pay vendors of foodstuffs and other provisions purchased by the sheriff and used by jail prisoners. It is mandatory and not discretionary.

#### Prisoner Processing Fee

Section 15.2-1613.1 provides, in relevant part, that:

Any county or city *may* by ordinance authorize a processing fee not to exceed \$25 on any individual admitted to a county, city, or regional jail following conviction. The fee shall be ordered as a part of court costs collected by the clerk, deposited into the

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<sup>10</sup> Section 15.2-1615.1 (emphasis added).

<sup>11</sup> Section 15.2-1613 (emphasis added).

<sup>12</sup> Section 53.1-126 (emphasis added).

account of the treasurer of the county or city and *shall* be used by the local sheriff's office to defray the costs of processing arrested persons into local or regional jails.<sup>[13]</sup>

This statute allows, but does not require, a county or city to assess a prisoner processing fee. If the locality assesses this fee, the proceeds must be used by the sheriff's office to support the costs of prisoner processing. The statute does not authorize a locality to take funds collected as prisoner processing fees and credit them against any amounts it is required to pay the sheriff for other purposes.

#### Courthouse Security Fees

Section 53.1-120(D) provides that:

Any county or city . . . *may* assess a sum not in excess of \$10 as part of the costs in each criminal or traffic case in its district or circuit court . . . . The assessment shall be collected by the clerk of the court in which the case is heard, remitted to the treasurer of the appropriate county or city and held by such treasurer to be appropriated by the governing body to the sheriff's office. The assessment *shall* be used solely for the funding of courthouse security personnel, and, if requested by the sheriff, equipment and other personal property used in connection with courthouse security.<sup>[14]</sup>

Like the prisoner processing fee in § 15.2-1613.1, this statute allows, but does not require, a county or city to assess a fee for funding courthouse security. If a locality assesses this fee, the proceeds must be appropriated to the sheriff for use in supporting courthouse security. As with the processing fee statute, this statute does not authorize revenue from the fee to be used to "credit" or offset funds a locality is required to pay a sheriff for other purposes.

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Your second question, which is partially addressed above, is whether a locality may use funds collected as prisoner processing fees (§ 15.2-1613.1) or courthouse security fees (§ 53.1-120) to offset other amounts it is required to pay a sheriff. As noted above, neither statute authorizes an offset, and funds raised under each statute may be expended only for the purposes identified in that statute.

The Dillon rule of construction dictates that "[local governing bodies] have only those powers which are expressly granted by the state legislature, those powers fairly or necessarily implied from expressly granted powers, and those powers which are essential and indispensable."<sup>15</sup> I find no statutory authority under which a locality may make an offset against funds otherwise due to a sheriff's office, such as funds related to food and provisions pursuant to § 53.1-126, or uniforms and personal equipment pursuant to § 15.2-1613. Thus, in conformance with the Dillon Rule, I must conclude that a city or county may not use funds collected as prisoner processing fees or courthouse security fees to offset amounts otherwise payable to a sheriff's office under some other statute.

#### **Conclusion**

For the reasons stated above, it is my opinion that each statute regarding funding for a sheriff's office must be individually examined in order to determine whether the statute establishes a mandatory financial obligation on the part of a locality. No Virginia statute authorizes a locality to use funds

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<sup>13</sup> Section 15.2-1613 (emphasis added).

<sup>14</sup> Section 53.1-120 (D) (emphasis added).

<sup>15</sup> *Arlington Cnty. v. White*, 259 Va. 708, 712 (2000) (quoting *City of Va. Beach v. Hay*, 258 Va. 217, 221 (1999)).

Honorable Ken Stolle

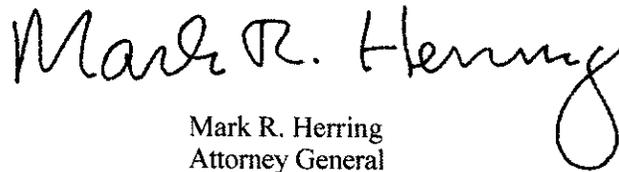
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dedicated under § 15.2-1613.1 (prisoner processing fees) or § 53.1-120 (courthouse security fees) to offset amounts it is required to pay a sheriff under other statutes. Accordingly, a locality may not offset a sheriff's funds in this manner.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink that reads "Mark R. Herring". The signature is written in a cursive style with a large, looping final flourish.

Mark R. Herring  
Attorney General