



COMMONWEALTH of VIRGINIA

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The Honorable Lucy E. Phillips
Washington County Attorney
County Administrative Offices
1 Government Center Place, Suite A
Abingdon, Virginia 24210

Dear Ms. Phillips:

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 a sheriff may dedicate several deputies to serve as full-time security at a privately owned hospital in exchange for the hospital's agreement to donate funding to the county sufficient to cover the cost of employing the deputies.

Background

You relate that the private owner of a local, not-for-profit hospital has asked the sheriff to dedicate several deputies to serve as full-time security. The deputies would serve in newly created positions, not through a reassignment of existing positions. The new positions are not presently authorized by the State Compensation Board. The new deputies would remain under the supervision of the sheriff, with all the legal authority and employment benefits otherwise available to his employees, but the only service they would perform would be providing security for the hospital. The hospital would donate funds to the county sufficient to cover the cost of the deputies.

Applicable Law and Discussion

The number of deputies of a sheriff is normally determined by the State Compensation Board.¹ The only exception is that the governing body of a county or city may "employ a greater number of law-enforcement deputies than fixed by the Compensation Board, provided . . . the county or city shall pay the total compensation and all employer costs for such additional deputies."² Accordingly, the new deputies

¹ See VA. CODE ANN. § 15.2-1609.1 (2012) ("[T]he respective number of full-time deputies appointed by the sheriff of a county or city shall be fixed by the Compensation Board after receiving [the] recommendation of the board of supervisors of the county or the council of the city, as the case may be, as the board of supervisors or city council may desire to make.").

² *Id.*

could not be hired unless the county, in its sole discretion, agreed to pay their total compensation.³ However, even if the county were willing to pay this cost, it could not fund the new positions unless they would be providing services the sheriff is legally authorized to provide.⁴ Thus, the essential question is whether a sheriff is authorized to dedicate deputies to provide full-time security services at a private hospital.

A sheriff possesses “exclusive control over the day-to-day operations of his office” and is therefore authorized to assign specific duties and responsibilities to the deputies under his command.⁵ He is free “to discharge his prescribed powers and duties in a manner he deems appropriate.”⁶ However, his duties and powers are limited to those conferred expressly or by necessary implication by statute.⁷ Thus, despite a sheriff’s discretion in assigning duties, he may not assign duties that do not fall within the scope of his authority.⁸

There is no statutory provision that would permit a sheriff to dedicate deputies to provide full-time security services at a private hospital in the manner you describe. A 1991 Opinion of this Office concludes that individuals appointed as full-time deputies cannot serve as correctional officers for a private corporation because such service “is beyond the scope of those duties imposed on a sheriff.”⁹ The same reasoning applies to the scenario you present. Under existing statutes, a sheriff is generally charged with providing public law-enforcement services within his jurisdiction for the benefit of the population at large.¹⁰ Although conducting routine patrols of business premises at the request of a private owner is

³ Cf. 1985-86 Op. Va. Att’y Gen. 56 (a sheriff cannot compel board of supervisors to fund certain expenses not approved by the Compensation Board).

⁴ See § 15.2-1609.1 (indicating that additional deputies employed by the county board of supervisors must provide “law-enforcement” services); *Bd. of Supvrs. v. Horne*, 216 Va. 113, 117 (1975) (“In Virginia the powers of boards of supervisors are fixed by statute and are limited to those conferred expressly or by necessary implication. This rule is a corollary to Dillon’s Rule that municipal corporations have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable.”) (internal citations omitted); see also *State ex rel. City of Charleston v. Bosely*, 268 S.E.2d 590, 594 (W. Va. 1980) (citing the “fundamental rule that any power conferred upon a municipality must be exercised for a public use or purpose as distinguished from a private purpose”); cf. § 15.2-1609 (2012) (providing that a local governing body cannot request that a sheriff perform a duty that is “inconsistent with his office”).

⁵ 1997 Op. Va. Att’y Gen. 60, 61; 1987-88 Op. Va. Att’y Gen. 221, 222; 1995 Op. Va. Att’y Gen. 48, 48 (“[C]onstitutional officers are independent of their respective localities’ management and control.”).

⁶ 2002 Op. Va. Att’y Gen. 151, 153.

⁷ VA. CONST. art. VII, § 4; *Hilton v. Amburgey*, 198 Va. 727, 729 (1957) (citing *Narrows Grocery Co. v. Bailey*, 161 Va. 278 (1933)) (“[A] sheriff is a constitutional officer and his duties are regulated and defined by . . . statute.”); 2012 Op. Va. Att’y Gen. 110, 111 (stating that the Dillon Rule of strict construction applies to constitutional officers); 2002 Op. Va. Att’y Gen. 151, 153.

⁸ See, e.g., § 15.2-1603 (2012) (providing that sheriffs’ deputies serve as agents to exercise the authority of their principal); 2001 Op. Va. Att’y Gen. 77, 77 and citations therein (indicating that the authority of a sheriff and his deputy is coextensive); 1997 Op. Va. Att’y Gen. 203, 205 and citation therein (stating that it has long been the public policy in Virginia that “a sheriff and his deputies are considered as one person”).

⁹ 1991 Op. Va. Att’y Gen. 218, 220.

¹⁰ See generally § 15.2-1609 (providing that a sheriff “shall enforce the law or see that it is enforced in the locality from which he is elected”); 1987-88 Op. Va. Att’y Gen. 221 (“Among the general duties of sheriffs is the enforcement of all criminal laws in their jurisdiction and the preservation of peace and order.”); cf. 1984-85 Op. Va. Att’y Gen. 73, 73 (“[A] sheriff does not . . . have the authority to allow the use of publicly owned property solely for private purposes.”).

permissible in most circumstances,¹¹ guarding a private business on a full-time basis is a private - rather than public - function.¹² I therefore conclude that a sheriff is not authorized to dedicate deputies to provide ordinary, full-time security services for a private hospital.¹³

I also note that because a sheriff may not legally provide the services in question, the county could not accept funds offered by the hospital to cover the cost of the services. Although local governing bodies are not, as a general rule, barred from accepting donations on behalf of the sheriff,¹⁴ the funds in the scenario you present would not constitute a true "donation." Rather, they would in effect be compensation paid under a contract with the hospital to provide full-time security services, which I have concluded is not legally authorized.¹⁵ Because the underlying contract would not be legal, a local governing body cannot accept funds that would facilitate it.¹⁶

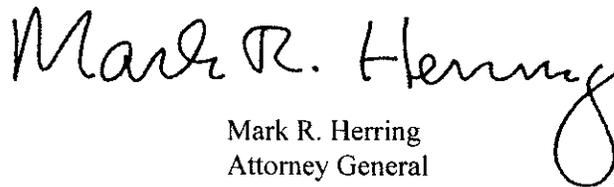
There are numerous occasional community services sheriffs may legally provide as part of their law enforcement responsibilities, such as crowd control, traffic control at accidents, funeral escorts, and services at other emergencies. These legal additional services could also include arrangements to provide limited "extra-duty" security to private businesses.¹⁷ The conclusion I reach in this opinion does not in any way affect or restrict the ability of sheriffs to provide those routine, occasional community services.

Conclusion

Accordingly, it is my opinion that a sheriff may not employ and dedicate deputies to provide full-time security services at a private hospital, and the local governing body may not accept funds from the hospital to cover the cost of doing so.

With kindest regards, I am

Very truly yours,



Mark R. Herring
Attorney General

¹¹ See generally § 15.2-1609 (establishing the general law-enforcement powers of a sheriff); 2002 Op. Va. Att'y Gen. 151, 153 (providing that a constitutional officer "is free to discharge his prescribed powers and duties in a manner he deems appropriate").

¹² Compare 1991 Op. Va. Att'y Gen. 218, 220 (indicating that the proposed service of full-time deputies as correctional officers for a private corporation is a "private" purpose) with 1987-88 Op. Va. Att'y Gen. 221 (indicating that the service of deputies at certain large, privately-operated music festivals is a "public" function carried out to preserve peace and order).

¹³ This Opinion is not intended to address situations of public emergency that might require a sheriff to devote full-time personnel to the hospital on a temporary basis. I also note that even if the locality funds the additional positions, it cannot legally require the sheriff to assign them to the hospital. A locality may not dictate how a sheriff, who is a constitutional officer, uses the resources of his office. 1973-74 Op. Va. Att'y Gen. 39.

¹⁴ See § 15.2-1613 (2012); 2005 Op. Va. Att'y Gen. 13, 15; 1984-85 Op. Va. Att'y Gen. 284, 284-85.

¹⁵ See 2005 Op. Va. Att'y Gen. 13, 14; 1984-85 Op. Va. Att'y Gen. 284, 285.

¹⁶ See *supra* note 4.

¹⁷ See, e.g., 1974-75 Op. Va. Att'y Gen. 397.