



# COMMONWEALTH of VIRGINIA

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September 9, 2016

The Honorable David J. Toscano  
Member, House of Delegates  
211 East High Street  
Charlottesville, Virginia 22902

Dear Delegate Toscano:

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 generally whether the General Assembly may delegate law-enforcement authority to persons who meet the qualification and certification requirements for law-enforcement officers, but are employees of a private corporation.

More specifically, you ask whether Chapter 195 of the 2015 Acts of Assembly, which changed the definition of “law-enforcement officer” under § 9.1-101 of the *Code of Virginia* and added a definition of “private police department,” was sufficient to delegate law-enforcement authority to private police departments and their employees, or if the General Assembly must expressly delegate that authority by a separate statute.

Finally, you ask whether construing Chapter 195 as both defining and delegating law-enforcement authority to private police departments would mean that the act improperly embraces more than one object, in violation of Article IV, § 12 of the Virginia Constitution.

## Applicable Law and Discussion

In response to your general question about whether the General Assembly may delegate law-enforcement authority to employees of private corporations, long-standing precedent of the Supreme Court of Virginia confirms that the General Assembly has the authority to delegate specific law-enforcement authority to employees of private businesses.<sup>1</sup>

A response to your specific question whether the 2015 amendment to § 9.1-101 effectively granted law-enforcement authority to private police departments and their employees requires

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<sup>1</sup> See, e.g., *City of Alexandria v. J-W Enters.*, 279 Va. 711, 717 (2010) (“For many years, private employers have employed special officers pursuant to special officer statutes . . . .”) (citing VA. CODE ANN. § 56-353; *Norfolk & W. Ry. Co. v. Haun*, 167 Va. 157, 160-62 (1936) (citing former VA. CODE ANN. § 3944 (1930))).

consideration of the process leading up to enactment of the amendment, as “[c]ourts look to a statute’s contemporary history and historical background as aids to interpretation.”<sup>2</sup>

For decades, the Virginia Department of Criminal Justice Services (DCJS) has recognized nine “private police departments” in Virginia.<sup>3</sup> The established practice for granting law-enforcement powers to the officers of those police forces has been for the officers to be designated “special conservators of the peace” (“SCOPs”) by order of a circuit court.<sup>4</sup> The General Assembly has empowered circuit courts to appoint SCOPs with “all the powers, functions, duties, responsibilities and authority of any other conservator of the peace”<sup>5</sup> within their jurisdictions, including the power to arrest.<sup>6</sup> Nevertheless, SCOPs are not “law-enforcement officers” who, until recently, were defined solely as officers of certain specified governmental offices, agencies, and political subdivisions.<sup>7</sup>

Some key differences between SCOPs and “law-enforcement officers” are that the minimum training requirements for law-enforcement officers are higher, and only law-enforcement officers (through their agencies) may be parties to mutual aid agreements with local law-enforcement agencies, contribute to the funding of regional criminal justice training academies, and have access to the Virginia State Police Criminal Information Network.

In a 2013 informal opinion, this Office concluded that DCJS could not legally recognize the nine private police departments as law-enforcement agencies without express legislative authority. The opinion raised concern in the law-enforcement community, where the nine departments had previously enjoyed much the same status as governmental law-enforcement agencies.

In the following 2014 legislative session, amid questions raised by the opinion and other persons regarding the scope of authority and jurisdiction of SCOPs employed by the private entities, the House of Delegates Militia and Police Committee requested that the Secretary of Public Safety and Homeland Security convene a task force to examine these issues. Later in 2014, the Virginia State Crime Commission endorsed draft legislation regarding private police departments following review of the findings and recommendations of the Secretary’s Task Force and presentations by the Virginia Association of Chiefs of Police, which sought to maintain the historically recognized status of the private departments as operational police departments.

Against that background, and as recommended by the Crime Commission, the 2015 General Assembly enacted Chapter 195, now codified as an amendment to § 9.1-101 of the *Code of Virginia*. The

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<sup>2</sup> 2A NORMAN J. SINGER & SHAMBIE SINGER, SUTHERLAND STATUTORY CONSTRUCTION (STATUTES & STATUTORY CONSTRUCTION) § 48:3 (p. 561-63) (7th ed. 2014) (citing *Doherty v. U.S.*, 404 U.S. 28 (1971) (Douglas, J., concurring) as well as numerous other state and federal cases).

<sup>3</sup> VIRGINIA STATE CRIME COMMISSION, “Special Conservators of the Peace and Private Police Departments,” at 3 (2014), <http://vscc.virginia.gov/SCOP.pdf> (last viewed Sept. 9, 2016) (naming Aquia Harbor Police Department, Babcock & Wilcox Police Department, Bridgewater Airpark Police Department, Carillion Clinic Police and Security Services Department, Kings Dominion Park Police Department, Kingsmill Police Department, Lake Monticello Police Department, Massanutten Police Department, and Wintergreen Police Department). These nine private police departments were officially recognized by the General Assembly in an enactment clause of Chapter 224 of the 2015 Acts of Assembly (clause 3).

<sup>4</sup> See VA. CODE ANN. § 19.2-13 (Supp. 2016) (setting forth the process for becoming a special conservator of the peace and the powers of such officials).

<sup>5</sup> VA. CODE ANN. § 19.2-13(A).

<sup>6</sup> VA. CODE ANN. § 19.2-18 (2015).

<sup>7</sup> See VA. CODE ANN. § 9.1-101 (2014) (former version of statute).

2015 amendment broadened the definition of “law-enforcement officer” so that it now includes certain employees of private police departments:

“Law-enforcement officer” means any full-time or part-time employee of a police department or sheriff’s office which is a part of or administered by the Commonwealth or any political subdivision thereof, *or any full-time or part-time employee of a private police department*, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth[. . . .]<sup>[8]</sup>

The 2015 amendment also added a definition of the term “private police department”:

“Private police department” means any police department, other than a department that employs police agents under the provisions of § 56-353, that employs private police officers operated by an entity authorized by statute or an act of assembly to establish a private police department. No entity is authorized to operate a private police department or represent that it is a private police department unless such entity has been authorized by statute or an act of assembly. . . . Any person employed as a private police officer pursuant to this section shall meet all requirements, including the minimum compulsory training requirements, for law-enforcement officers pursuant to this chapter. . . . Any private police department in existence on January 1, 2013, that was not otherwise established by statute or an act of assembly and whose status as a private police department was recognized by the Department at that time is hereby validated and may continue to operate as a private police department, provided it complies with the requirements set forth herein.<sup>[9]</sup>

Enactment Clause 3 of the 2015 amendment specifically identifies the nine private police departments that were in existence on January 1, 2013, and recognized by the Department.

The enactment clause and the definitions quoted above—and the context in which they were enacted—are critical to a legal analysis of the questions you have asked.<sup>10</sup>

Here, the Crime Commission noted a study by the 2014 Task Force disclosing that employees of the nine private police departments in question received training that was “practically identical” to the training of government law-enforcement officers, even though their only source of law-enforcement authority was their status as SCOPs, for whom lesser training and qualification standards applied. In addition, this Office advised that those officers could not qualify as “law-enforcement officers” without legislation authorizing that status. The Crime Commission proposed the 2015 amendment to address that lack of authorizing legislation.

It was the intent of the General Assembly in enacting the 2015 amendment to give law-enforcement authority to qualified officers of authorized private police departments, thus filling a void noted by the 2014 Task Force and the Crime Commission. The justification and need for doing so were set forth in the report of the Crime Commission.<sup>11</sup> The principal remaining question is whether the

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<sup>8</sup> 2015 Va. Acts ch. 195.

<sup>9</sup> *Id.*; see also 2016 Va. Acts ch. 618 (further amending the definition to include a “successor in interest” to an authorized private police department).

<sup>10</sup> There are a number of other requirements and limitations set for private police departments. They are not relevant to the questions you have asked. In the interest of brevity, they will not be discussed here.

<sup>11</sup> “Recognizing the nine private police departments as a distinct category would ensure that they remain distinguishable from private security businesses and corporations that employ SCOPs. It was requested that the VACP [Virginia Association of Chiefs of Police] provide possible legislation for the Crime Commission to consider at its December meeting. . . . The Crime Commission voted unanimously to endorse the VACP proposed legislation.” VIRGINIA STATE CRIME COMMISSION, *supra* note 3, at 5-6.

language of the 2015 amendment fulfilled this legislative intent. “When construing a statute, our primary objective is to ascertain and give effect to legislative intent, as expressed by the language used in the statute.”<sup>12</sup>

Prior to the 2015 amendment, § 9.1-101 defined “law-enforcement officer” as a qualified person with a local police department or sheriff’s office, or with any of several different governmental entities. For each of those governmental entities, there was a separate statute granting law-enforcement powers.<sup>13</sup> However, when the 2015 amendment added certain employees of private police departments to the definition of “law-enforcement officer,” it did not enact a separate statute comparable to those provided for the governmental entities. Instead, there is language in the 2015 amendment itself (i) describing the responsibilities of certain employees of a private police department who are deemed law-enforcement officers: specifically “any full-time or part-time employee of a private police department . . . *who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth*,”<sup>14</sup> and (ii) expressly authorizing the nine private police departments to “continue to operate as . . . private police department[s].”<sup>15</sup>

This descriptive language in the 2015 amendment broadened the definition of the term “law-enforcement officer” to include any employee of a private police department “who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth.” That language fairly describes law-enforcement authority. While the language could be interpreted as merely *describing* certain employees of private police departments (namely, those with law-enforcement powers), it could also be interpreted as *granting law-enforcement authority* to private police officers, especially when coupled with the express authorization of the nine private police departments to continue to operate as private police departments. I conclude that this language in the 2015 amendment does, in fact, grant law-enforcement powers to qualified employees of private police departments.

To conclude otherwise, *i.e.*, that the 2015 amendment merely *described* those employees without *empowering* them—where there is no other statute expressly empowering them—would mean that the 2015 amendment describes a class of persons that does not exist,<sup>16</sup> and that the express authorization of the nine private police departments to continue to operate as private police departments would be nonsensical. The rules of statutory interpretation argue against reading a legislative enactment in a manner that will make a portion of it useless or absurd.<sup>17</sup>

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<sup>12</sup> Cuccinelli v. Rector & Visitors of the Univ. of Va., 283 Va. 420, 425 (2012) (internal quotation marks and citation omitted).

<sup>13</sup> The nine entities, and their separate statutes granting law enforcement powers are as follows: special agents of the Department of Alcoholic Beverage and Control (VA. CODE ANN. § 4.1-105); railroad police agents (VA. CODE ANN. § 56-353); Virginia Marine Police officers (VA. CODE ANN. § 28.2-106); conservation police officers of the Department of Game and Inland Fisheries (VA. CODE ANN. § 29.1-205); Virginia State Lottery investigators (VA. CODE ANN. § 58.1-4006); commissioned conservation officers of the Department of Conservation and Recreation (VA. CODE ANN. § 10.1-117); certain Department of Motor Vehicles enforcement officers (VA. CODE ANN. § 46.2-217); certain animal protection police officers (VA. CODE ANN. § 15.2-632); and certain campus police officers (VA. CODE ANN. § 23-234).

<sup>14</sup> 2015 Va. Acts ch. 195 (emphasis added).

<sup>15</sup> *Id.*

<sup>16</sup> Such an interpretation would also bring the 2015 amendment into direct conflict with § 19.2-13(A), which states that SCOPs are not law-enforcement officers within the definition of a “law-enforcement officer” under § 9.1-101.

<sup>17</sup> Jones v. Conwell, 227 Va. 176, 181 (1984).

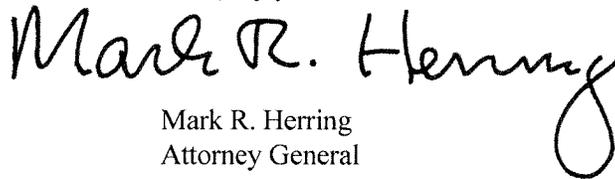
The final remaining issue you have raised is whether the 2015 amendment is unconstitutional because it embraces more than one object. The applicable provision in the Constitution of Virginia is Article IV, § 12, which states, in relevant part, “No law shall embrace more than one object, which shall be expressed in its title.” The Supreme Court of Virginia has long maintained that the single-object rule is “to be liberally construed and treated, so as to uphold the law, if practicable.”<sup>18</sup> “[M]atters germane to the object, made manifest by its title, may be included. Those things are germane which are allied, relative or appropriate. Its construction must be liberal . . . .”<sup>19</sup> Here, the 2015 amendment reasonably may be construed as embracing only one object, namely the law-enforcement powers of private police departments and their employees. For that reason, I conclude that it does not violate the constitutional ban on legislation embracing more than one object.

### Conclusion

For the foregoing reasons, it is my opinion that the 2015 amendment effectively confers law-enforcement authority to employees of authorized private police departments, but only if those employees comply with all applicable requirements of the Department of Criminal Justice Services. It is my further opinion that the 2015 amendment does not violate Article IV, § 12 of the Virginia Constitution.

With kindest regards, I am

Sincerely yours,

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

Mark R. Herring  
Attorney General

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<sup>18</sup> Commonwealth v. Brown, 91 Va. 762, 772 (1895).

<sup>19</sup> Commonwealth v. Dodson, 176 Va. 281, 305 (1940).