



COMMONWEALTH of VIRGINIA

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The Honorable James E. Brown III
Sheriff, City of Charlottesville
315 East High Street
Charlottesville, Virginia 22902-5194

Dear Sheriff Brown:

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 governing body of a locality has authority to determine the provider of courthouse security within the locality.¹

Response

It is my opinion that a governing body of a locality does not have the authority to determine the provider of courthouse security within the locality.

Applicable Law and Discussion

In Virginia, the powers of local governing bodies are governed by the Dillon Rule.² Under the Dillon Rule, local governing bodies “have only those powers that are (1) expressly granted by the General Assembly, (2) necessarily or fairly implied from those express powers, and (3) essential to the declared objects and purposes” of the locality.³ When “there is a reasonable doubt whether legislative power exists, the doubt must be resolved against the local governing body.”⁴

¹ You advise that a dispute has arisen regarding the provision of security for a future combined general-district courthouse serving both the City of Charlottesville and Albemarle County.

² *Dumfries-Triangle Rescue Squad, Inc. v. Bd. of Cnty. Supvrs.*, 299 Va. 226, 233 (2020).

³ *Id.* (internal quotation marks omitted) (quoting *Bragg Hill Corp. v. City of Fredericksburg*, 297 Va. 566, 578 (2019)) (noting how the Dillon Rule applies to municipal corporations); *Arlington Cnty. v. White*, 259 Va. 708, 719 (2000) (noting that the scope of power possessed by a county board of supervisors is governed by a rule that is a corollary to the Dillon Rule).

⁴ *Marble Techs., Inc. v. City of Hampton*, 279 Va. 409, 417 (2010) (quoting *Bd. of Supvrs. v. Reed’s Landing Corp.*, 250 Va. 397, 400 (1995)).

The first step in applying the Dillon Rule is to “examine the plain terms of the legislative enactment to determine whether the General Assembly expressly granted a particular power[.]”⁵ In the absence of an express grant, the next step is to “determine whether the power . . . is necessarily or fairly implied from the powers expressly granted by the statute.”⁶ To conclude that an expressly granted power also granted an implied power, “it must be found that the legislature intended that the grant of the express also would confer the implied.”⁷ Additionally, localities cannot exercise power in a manner that is inconsistent with state law.⁸

No statute expressly empowers local governing bodies to determine the provider of courthouse security.⁹ Nonetheless, the Code directs localities to “provide courthouses . . . serving the county or city,”¹⁰ and grants local governments the general authority to provide for the protection of its property and to preserve peace.¹¹ Without looking beyond these provisions, an authority to provide courthouse security could be inferred from these express powers when considered together. I am unable to conclude that the General Assembly intended to grant such an implied power here, however, because such an interpretation would conflict with the clear intention of the General Assembly as expressed elsewhere in the Code.¹²

As frequently recognized by this Office, the General Assembly has specifically tasked sheriffs with the provision of courthouse security.¹³ Indeed, § 53.1-120 expressly provides that “[e]ach sheriff shall ensure that the courthouses and courtrooms within his jurisdiction are secure from violence and disruption and shall designate deputies for this purpose.”¹⁴ This statutory language evinces that the General Assembly gave the sheriff not only the power to secure the courthouse but also the obligation to do so.¹⁵

⁵ *Dumfries-Triangle Rescue Squad, Inc.*, 299 Va. at 233 (quoting *Marble Techs., Inc.*, 279 Va. at 418).

⁶ *Id.* (ellipsis in original) (quoting *Marble Techs., Inc.*, 279 Va. at 418).

⁷ *Marble Techs., Inc.*, 279 Va. at 418 (quoting *Commonwealth v. Bd. of Arlington Cnty.*, 217 Va. 558, 577 (1977)).

⁸ See VA. CODE ANN. § 1-248 (2022); *Bragg Hill Corp.*, 297 Va. at 578 (citing *City of Chesapeake v. Gardner Enters.*, 253 Va. 243, 246 (1997); *W. Lewinsville Heights Citizens Ass’n v. Bd. of Supvrs.*, 270 Va. 259, 266 (2005)).

⁹ Additionally, no provision of Charlottesville’s City Charter confers the City Council an express power to determine the provider of courthouse security.

¹⁰ VA. CODE ANN. § 15.2-1638 (Supp. 2023).

¹¹ Section 15.2-1700 (2018).

¹² *Thorsen v. Richmond SPCA*, 292 Va. 257, 266 (2016) (stating that statutes are not to be viewed “as isolated fragments of law, but as a whole, or as parts of a great connected, homogenous system, or a single and complete statutory arrangement” (quoting *Prillaman v. Commonwealth*, 199 Va. 401, 405 (1957))); *Viking Enter., Inc. v. Cnty. of Chesterfield*, 277 Va. 104, 110 (2009) (noting that when there are conflicting statutes, and one statute deals with the subject generally and another deals with the subject specifically, the latter prevails).

¹³ See, e.g., 2013 Op. Va. Att’y Gen. 136, 136; 2004 Op. Va. Att’y Gen. 170, 171; 1998 Op. Va. Att’y Gen. 33, 34; 1987-88 Op. Va. Att’y Gen. 259, 260; 1976-77 Op. Va. Att’y Gen. 260, 260.

¹⁴ VA. CODE ANN. § 53.1-120(A) (2020). Absent a statute providing otherwise, the authority and powers of a sheriff are coextensive with the boundaries of the locality the sheriff serves. 2001 Op. Va. Att’y Gen. 77, 78.

¹⁵ “A principal rule of statutory interpretation is that courts will give statutory language its plain meaning.” *Davenport v. Little-Bowser*, 269 Va. 546, 555 (2005) (citing *Jackson v. Fidelity & Deposit Co.*, 269 Va. 303, 313 (2005)). Significantly, the word “shall” is “generally used in an imperative or mandatory sense.” *Lewis v. City of Alexandria*, 287 Va. 474, 486 (2014) (quoting *Schmidt v. City of Richmond*, 206 Va. 211, 218 (1965)). The Charlottesville City Charter affirms that “[t]he city sheriff shall attend the terms of the circuit court of the city and shall act as the officer thereof,” and “shall also have all power and authority and perform all duties imposed by general law upon sheriffs of cities.” CHARTER FOR THE CITY OF CHARLOTTESVILLE, VA., § 29.

Although § 53.1-120 thus entrusts sheriffs with ensuring courthouse security within their jurisdiction, the statute further provides that the chief judges of the trial courts, in conjunction with the local sheriff, are responsible for the “designation of courtroom security deputies.”¹⁶ A sheriff thus does not have an exclusive role in overseeing courthouse security.¹⁷ Notably however, in addressing such security, § 53.1-120 does not mention local governing bodies. “It is an accepted principle of statutory construction that a statute stating the manner in which something may be done, or the entity that may do it, also evinces the legislative intent that it not be done otherwise.”¹⁸ By including the chief judges and the sheriff while omitting local governing bodies, the General Assembly demonstrated an intent to exclude the local government from making decisions governing courthouse security.¹⁹

Moreover, in performing their duties, sheriffs are independent from the local governing body.²⁰ The local governing body may request that the sheriff perform additional duties that are “not inconsistent with his office,”²¹ but sheriffs, as constitutional officers, are not subordinate to the local government, and their duties are subject only to legislative control by state statute.²² A sheriff, therefore, “except as abrogated by statute, retains complete discretion in the day-to-day operations of the office, personnel matters, and the manner in which the duties of the office are performed.”²³ Because “constitutional officers are independent of their respective localities’ management and control[.]” a locality has “no authority to supervise or intervene in the management and control of [a sheriff’s] duties[.]”²⁴ including the provision of courthouse security. Accordingly, in the absence of a statute expressly providing otherwise, a local governing body is without authority to determine the provider of courthouse security or regulate the sheriff’s provision of it.²⁵

This conclusion comports with a previous Opinion of this office. In response to a similar inquiry, that Opinion specifically addressed whether a local governing body had the authority to hire private security personnel to secure the courthouse.²⁶ Essentially applying the rationale set forth above, the Opinion

¹⁶ Section 53.1-120(B).

¹⁷ 2013 Op. Va. Att’y Gen. at 137. *See* Epps v. Commonwealth, 46 Va. App. 161, 175-76 (2005) (noting that courts have inherent authority to ensure courtroom security and that it would “be folly to claim that the circuit court judge has the power to ensure courtroom security, but not courthouse security”). For a discussion regarding the court’s role, *see* 2013 Op. Va. Att’y Gen. 133.

¹⁸ 2012 Op. Va. Att’y Gen. 93, 95 (citing, *inter alia*, Grigg v. Commonwealth, 224 Va. 356 (1982)).

¹⁹ The maxim *expressio unius est exclusio alterius* applies here; it “provides that mention of a specific item in a statute implies that omitted items were not intended to be included within the scope of the statute.” *GEICO v. Hall*, 260 Va. 349, 355 (2000) (quoting *Turner v. Wexler*, 244 Va. 124, 127 (1992)). Although the local government does not have any authority over the designation of courtroom deputies, it could condition supplemental appropriations to the sheriff on the “sheriff’s acceptance of certain restriction on the use of the appropriated funds.” *Roop v. Whitt*, 289 Va. 274, 279 n.1 (2015).

²⁰ *Roop*, 289 Va. at 280 (“[Sheriffs’] offices and powers exist independent from the local government and they do not derive their existence or their power from it.”); *McClary v. Jenkins*, 299 Va. 216, 222 n.2 (2020).

²¹ Section 15.2-1609 (2018).

²² *Roop*, 289 Va. at 280.

²³ 2008 Op. Va. Att’y Gen. 44, 46.

²⁴ *Id.*

²⁵ Consequently, a local governing body also lacks the authority to agree to contract provisions that operate to determine who provides courthouse security.

²⁶ 1998 Op. Va. Att’y Gen. at 34.

concluded that governing bodies do not possess such authority.²⁷ The applicable law has not changed since that Opinion was issued so as to warrant a different conclusion here. Moreover, “[t]he legislature is presumed to have had knowledge of the Attorney General’s interpretation of the statutes, and its failure to make corrective amendments evinces legislative acquiescence in the Attorney General’s view.”²⁸ Accordingly, in responding to your inquiry, I find no reason to depart from the conclusion and reasoning previously expressed by this Office.

Ultimately, had the General Assembly intended to authorize a local governing body to designate the provider of courthouse security, it could have done so.²⁹ Because the legislature has declined to do so, I conclude that local governing bodies have no authority to designate who provides courthouse security.³⁰

Conclusion

Accordingly, it is my opinion that a governing body of a locality does not have the authority to determine the provider of courthouse security in the locality.

With kindest regards, I am,

Very truly yours,



Jason S. Miyares
Attorney General

²⁷ *Id.* at 34-35.

²⁸ *Beck v. Shelton*, 267 Va. 482, 492 (2004) (quoting *Browning-Ferris, Inc. v. Commonwealth*, 225 Va. 157, 161-62 (1983)).

²⁹ *See* 2014 Op. Va. Att’y Gen. 95, 97 (noting that the General Assembly “knows how to express its intent”).

³⁰ This Opinion is expressly limited to addressing only the authority of a local governing body to act in this area.