Opinions of the Attorney General and Report to the Governor of Virginia 1999

Commonwealth of Virginia
Office of the Attorney General
at Richmond
THE 1999 REPORT OF THE ATTORNEY GENERAL

WAS PREPARED BY

BARBARA H. SCOTT

WITH EDITORIAL ASSISTANCE BY

JANE A. PERKINS

AND

MATTHEW J. WHITE
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>LETTER OF TRANSMITTAL</td>
<td>v</td>
</tr>
<tr>
<td>PERSONNEL OF THE OFFICE</td>
<td>xi</td>
</tr>
<tr>
<td>ATTORNEYS GENERAL OF VIRGINIA</td>
<td>xxi</td>
</tr>
<tr>
<td>CASES</td>
<td>xxiii</td>
</tr>
<tr>
<td>DECIDED IN THE SUPREME COURT OF VIRGINIA</td>
<td>xxv</td>
</tr>
<tr>
<td>PENDING IN THE SUPREME COURT OF VIRGINIA</td>
<td>xxviii</td>
</tr>
<tr>
<td>PENDING AND DECIDED IN THE SUPREME COURT OF THE UNITED STATES</td>
<td>xxx</td>
</tr>
<tr>
<td>OPINIONS</td>
<td>1</td>
</tr>
<tr>
<td>NAME INDEX</td>
<td>223</td>
</tr>
<tr>
<td>SUBJECT INDEX</td>
<td>229</td>
</tr>
<tr>
<td>STATUTORY AND CONSTITUTIONAL PROVISIONS AND RULES OF COURT</td>
<td>305</td>
</tr>
<tr>
<td>ACTS OF ASSEMBLY</td>
<td>307</td>
</tr>
<tr>
<td>CODE OF VIRGINIA</td>
<td>308</td>
</tr>
<tr>
<td>CONSTITUTION OF VIRGINIA</td>
<td>326</td>
</tr>
<tr>
<td>VIRGINIA RULES ANNOTATED</td>
<td>327</td>
</tr>
</tbody>
</table>
May 1, 2000

The Honorable James S. Gilmore, III
Governor of Virginia
My dear Governor Gilmore:

I have the honor to present to you the Report of the Attorney General for 1999, containing 90 opinions. During the period covered by this report, the Office of the Attorney General represented the Commonwealth of Virginia in more than 12,000 legal disputes in the courts of both the Commonwealth and the United States, including criminal appeals, habeas corpus actions, and civil suits involving numerous facets of state government.

Technology

The final year of the 20th century turned the thoughts of many citizens to the trials and triumphs of the past and the challenges and opportunities of the future. Nowhere is that opportunity more exciting—and more challenging—than in Virginia’s growing high-technology information age economy. It was my honor in the past year to work with you in implementing an Internet and high-technology policy to secure Virginia’s position as the nation’s technology leader in the 21st century. As a member of your Commission on Information Technology, I have attempted to advance policies to protect the free flow of commerce and information, bolster Virginia’s high-tech industries, and strengthen law enforcement capabilities to crack down on unsolicited “spam” junk mail. We also formed the nation’s first Computer Crimes Strike Force to investigate and prosecute illegal activities conducted over the Internet. The goal of the Strike Force is to protect children, consumers, and e-commerce.

Public Safety

One of this Office’s greatest responsibilities is to help provide for the safety of the citizens of the Commonwealth. In addition to securing passage of anti-gang legislation and supporting the efforts of police officers for better benefits, we supported Project Exile to ensure that criminals who commit gun crimes face immediate prosecution and stiff mandatory prison sentences. The success of such an approach can be seen in Richmond where Project Exile has resulted in a 50% drop in the homicide rate in the City of Richmond since 1997. Our commitment to this program is evidenced by the fact that we continue to supply a full-time prosecutor from our Office to the United States Attorney’s Office in Richmond to prosecute Project Exile cases. For criminals carrying guns, the consequences have been swift and certain.

Our Office appeared in the highest courts in Virginia and the United States to protect the public safety and administration of justice in Virginia. Our Criminal Litigation Section successfully defended a capital murder conviction and death sentence in the Supreme Court of the United States in Weeks v. Angelone. The Supreme Court
upheld the denial of federal habeas corpus relief, ruling that the jury's verdict in the penalty phase of the trial was constitutionally imposed and that the trial judge had appropriately answered its inquiry about its sentencing options. The Court also sustained a capital murder conviction on our argument in Strickler v. Greene. In Lilly v. Virginia, the Court held that the Confrontation Clause of the Sixth Amendment bars admission of a nontestifying codefendant's confession which identified the defendant as the triggerman in a capital murder. It was remanded to the circuit court for resentencing.

The Correctional Litigation Section provided daily legal advice to its major clients—the Department of Corrections, Department of Juvenile Justice, and the Virginia Parole Board—and maintained an active caseload of 1,296 cases. The Investigative and Enforcement Section continued to aggressively pursue a wide range of wrongdoers by exercising its own jurisdiction under § 2.1-124 of the Code of Virginia, or working in conjunction with Commonwealth's attorneys throughout the state.

Our Office played a significant role in United States v. Beverly Claiborne (the “17th Street Boys” case). Claiborne is charged with capital murder, resulting from a killing related to drug trafficking activities. The prosecutorial team pairs attorneys from the United States Attorney's Office and the Office of the Attorney General.

In June, we assisted Carroll County Commonwealth's Attorney Gregory Goad in prosecuting and convicting a Ku Klux Klan leader under Virginia's anti-cross burning statute, § 18.2-423. The decision of the jury confirmed what we in Virginia have long believed—intimidation is never free speech.

While fighting crime on all fronts, I have continued to address the needs and concerns of the victims of crime in Virginia. Our Victim Notification Program continued to inform victims of appellate proceedings in their cases. Since its implementation in September 1997, the program has assisted over 1,500 victims. We also continued our strong emphasis on crime prevention for our senior citizens through the TRIAD program. Today, over 70 counties, cities and towns have active TRIAD organizations, and 2,100 people attended six regional conferences with topics on telemarketing fraud, repair scams, personal safety, home security, Y2K concerns, and medicare and medicaid fraud.

Mentoring

The highlight of our preventive measures against crime came in the success of our program, Virginia's Future: Building Up the First Generation of the New Century. This program successfully recruited over 2,000 individuals to mentor young people across Virginia. The idea came out of the 50-member Task Force on Gangs and Youth Violence which I appointed in 1998. Our goal was to recruit 2,000 new mentors by January 1, 2000. We exceeded that goal. The effects of this mentoring initiative will be seen and felt over the coming years as young lives are nurtured and guided across the Commonwealth.

Consumer Protection

The Attorney General is charged by statute to be the consumer counsel for the people of Virginia. In November, I announced Virginia's participation in the Know Fraud program, a national effort by AARP, the Better Business Bureau, Department of
Justice, FBI, and other groups to help consumers help themselves by teaching them how to avoid being a victim of telemarketing and mail fraud.

Our Antitrust and Consumer Litigation Section reached settlement in a multi-state antitrust action against Toys R Us and three major toy manufacturers. Once the court approves the settlement, Virginia will receive toys and cash worth more than $1 million over a three-year period. The toys will be distributed through the Toys for Tots program and the cash will be disbursed to existing charities.

The Office distributed more than $140,000 in consumer refunds resulting from an assurance of voluntary compliance entered into with Holdren's, Inc., of Roanoke, an extended service provider that had gone out of business. Also in July 1999, we entered into an assurance of voluntary compliance and discontinuance with Knoll Pharmaceutical over allegations of misleading marketing practices. Virginia's share of the settlement was $1.15 million.

We also entered into an assurance of voluntary compliance with Direct American Marketers, Inc., LPG USA, Inc., and United Industries Corporation, resulting in a plan for total restitution for Virginia consumers in the amount of $166,500. New consumer protection actions were filed against American Career Centers, Inc./Washington Executive Group, Inc., and Equinox International.

The Insurance and Utilities Regulatory Section participated in numerous regulatory proceedings. Appalachian Power Company's rate proceeding before the State Corporation Commission culminated in a settlement that saves Virginia consumers more than $110 million over three years. We also opposed Columbia Gas of Virginia's attempt to introduce a new rate structure and helped save consumers $5.3 million annually.

Our Office also participated in utility and insurance matters before the General Assembly. The 1999 Virginia Electric Utility Restructuring Act, which permits competition for retail electric service, contains significant consumer protections supported by this Office, including (1) prohibitions on deceptive or unfair marketing practices; (2) a private right of action for consumers; (3) licensing of electricity suppliers; (4) equal opportunities for residential customers; (5) a regulated safety net for consumers; and (6) application of federal and state antitrust laws.

Environmental Protection

In one of the most critical issues of the past year, we successfully enforced the medical waste regulations against major trash hauler Waste Management, in Charles City Circuit Court, obtaining an injunction, penalty and fees. We then turned to the defense in federal court of legislation enacted by the General Assembly to ban the transportation of waste on the waterways of the Commonwealth and to place caps on the amount of such waste Virginia landfills can accept. The case is on appeal to the Fourth Circuit.

Last year, we successfully defended the Water Board's permits issued for the King William Reservoir project. Appeals of those decisions have continued in 1999. We have also closed down a large unpermitted waste facility in Prince William County,
again obtaining injunctive relief, penalties and fees. The enforcement case against Smithfield Foods is continuing and is now on appeal before the Supreme Court of Virginia.

This Office also began to exercise its prosecutorial powers under the environmental crimes statute. Prosecution has started in Goochland County involving the pollution of Powhatan Creek through the illegal destruction of a dam.

Transportation

This Office took an active role in advancing the Woodrow Wilson Bridge project. We defended in court the environmental and other federal regulatory documentation prepared for this project. When a federal district court judge ruled against the regulatory processes of the Federal Highway Administration, this Office attempted to intervene and to push an appeal of this case to the United States Court of Appeals for the District of Columbia Circuit. In following Virginia's lead, the federal government did decide to appeal the federal district court judge's decision. By unanimous decision, the U.S. Court of Appeals for the D.C. Circuit reversed the federal district court. This was a major transportation victory for the citizens of Virginia and moved a much-needed transportation project another giant leap toward reality.

This Office worked with the Virginia Department of Transportation and bond counsel, and coordinated a $250 million bond arrangement to provide financing for the Northern Virginia transportation district program and for the Route 58 project in Southside and Southwest Virginia.

Seven privatization initiatives under the Public/Private Transportation Act took place in 1999, involving Route 895, the Pinners Point Connector, Route 288 in Richmond, Route 264 in Hampton Roads, the Dulles Rail Proposal in Northern Virginia, and the Coalflelds Expressway in Southwest Virginia. These initiatives are important projects in Virginia's transportation system.

Economic Development

The role of this Office in helping to promote Virginia's pro-growth business environment is fourfold. First is our commitment to defending Virginia's Right-to-Work Law. In that regard, this Office offered assistance in the matter of Pusey v. H&H Consolidated, in which the plaintiff sought back pay and reinstatement because he was fired from his job for refusing to pay union dues. This Office also monitored compliance of contractors on Wallops Island with the Right-to-Work Law.

Second, we work to preserve competition and a level playing field for all businesses. When healthy competition is preserved, prices fall, productivity rises, and both consumers and companies benefit from a surge in creativity and innovation. My Office has taken strong, decisive action to ensure that all of Virginia's companies have access to the resources and markets they need to thrive.

Third, by aggressively fighting consumer fraud, we prevent deceptive business practices from robbing hard-working consumers of their money and legitimate businesses of their customers.
Finally, we are working to keep Virginia’s streets and communities safe. Customers should feel at ease walking through our business districts in the evening. Likewise, business owners and employees should not be worried about crime or violence in the areas where they work; instead, they should be free to engage in commerce and trade.

Education

In *United States v. Virginia*, we have entered the remedial phase of the VMI case, which means that the United States Department of Justice continues to seek information about VMI’s efforts to recruit and assimilate female cadets. We insisted, as a part of this process, that Justice agree (1) to recognize VMI’s good faith; (2) to a reasonable limit on information to be reported to the court; and (3) to a protocol for presumptive entitlement to dismissal of the case based on VMI’s prior reports, upon the graduation of the VMI class of 2001. The Department of Justice agreed to these conditions.

In August, the American Civil Liberties Union forwarded a letter to school superintendents across Virginia, which I judged to be a misguided attempt to micromanage our schools and intimidate schoolteachers and administrators with threats of litigation. I responded to the letter by advising that principals and teachers should determine what safety and security measures are necessary for the protection of Virginia’s schoolchildren and should not be constantly threatened with lawsuits.

Constitutional Issues

*Urofsky v. Gilmore*, currently pending before the *en banc* panel of the Fourth Circuit, is a case brought by six professors challenging, on First Amendment grounds, the constitutionality of §§ 2.1-804 through 2.1-806, which restrict access by state employees using state-owned or leased computer equipment to sexually explicit materials, unless such materials are related to an agency-approved project or undertaking. We await a ruling in the next few months.

We successfully defended Virginia’s parental notification statute, winning a unanimous decision in the Fourth Circuit which was sustained in the U.S. Supreme Court. This decision affirmed the importance and necessity of a parent’s guidance and counsel if a young, unwed, minor daughter is facing the trauma of considering an abortion. We continue to mount a vigorous defense of Virginia’s statute banning partial birth abortions. This matter awaits decision from the Fourth Circuit.

Health

In *United States v. Commonwealth* (Eastern State and Central State Hospitals), our Office successfully represented the Department of Mental Health, Mental Retardation and Substance Abuse Services in having the Department of Justice investigation of Eastern State Hospital under the Civil Rights of Institutionalized Persons Act dismissed with prejudice on March 29, 1999.

This Office also successfully negotiated a settlement agreement to resolve the Department of Justice’s investigation of similar allegations at Central State Hospital, which was filed with the court in Alexandria on May 6, 1999. We anticipate that resolution of the investigation will similarly lead to full implementation of the plan for
continuous improvement in July 2000 and improved quality of care for all Central State Hospital patients.

**Government Operations**

The Employment Law Section handled 32 new cases and 110 grievances. All of these cases and most of the grievances were either settled or won. Our attorneys also blocked two state court suits seeking to enjoin Virginia’s participation in the $256 billion national tobacco settlement.

During calendar year 1999, the Division of Debt Collection collected $14.37 million that would otherwise have been lost to the Commonwealth. For the first time, the Attorney General was able to return to client agencies a rebate of fees paid to the Division for collection services in the amount of $706,119.

The Child Support Enforcement Section reports very high numbers of cases handled. The 58 full- and part-time attorneys in this Section handled approximately 60,000 child support hearings in 1999.

**Summary**

This report is merely a broad overview of the numerous activities of this Office during the past year. The primary duty of this Office is to render to the agencies and institutions of the Commonwealth the most efficient and effective legal advice possible. It has been my honor to serve as Attorney General and to serve with the dedicated professionals in this Office. The Constitution of Virginia reminds us in Article 1, § 15 “[t]hat no free government, nor the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue; [and] by frequent recurrence to fundamental principles.” In all of the matters before this Office, I have attempted to adhere firmly to these principles and to position our Commonwealth to seize the opportunities of a new day while remaining loyal to timeless principles.

With kindest regards, I am

Very truly yours,

Mark L. Earley
Attorney General
<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mark L. Earley</td>
<td>Attorney General</td>
</tr>
<tr>
<td>Randolph A. Beales</td>
<td>Chief Deputy Attorney General</td>
</tr>
<tr>
<td>William H. Hurd</td>
<td>Solicitor General</td>
</tr>
<tr>
<td>Francis S. Ferguson</td>
<td>Deputy Attorney General</td>
</tr>
<tr>
<td>Judith W. Jagdmann</td>
<td>Deputy Attorney General</td>
</tr>
<tr>
<td>Robert C. Metcalf</td>
<td>Deputy Attorney General</td>
</tr>
<tr>
<td>Ashley L. Taylor Jr.</td>
<td>Deputy Attorney General</td>
</tr>
<tr>
<td>Stephen J. Telfeyan</td>
<td>Deputy Attorney General</td>
</tr>
<tr>
<td>E. Montgomery Tucker</td>
<td>Deputy Attorney General</td>
</tr>
<tr>
<td>Richard B. Campbell</td>
<td>Counsel to Attorney General</td>
</tr>
<tr>
<td>David E. Johnson</td>
<td>Counsel to Attorney General</td>
</tr>
<tr>
<td>Thomas D. Bagwell</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>John J. Beall Jr.</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>John R. Butcher</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>George W. Chabalewski</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>Roger L. Chaffe</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>Robert B. Cousins Jr.</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>C. Tabor Cronk</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>Donald R. Curry</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>E. Suzanne Darling</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>Mark R. Davis</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>John F. Dudley</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>Siran S. Faulders</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>Ronald C. Forehand</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>John P. Griffin</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>James F. Hayes</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>Jane D. Hickey</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>James W. Hopper</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>Guy W. Horsley Jr.</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>David B. Irvin</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>Michael K. Jackson</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>Alan Katz</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>Gregory E. Lucyk</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>Edward M. Macon</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>Rhonda McGarvey</td>
<td>Senior Assistant Attorney General</td>
</tr>
</tbody>
</table>

1This list includes all persons employed on a full-time basis in the Office of the Attorney General at any time during 1999, as provided by the Office's Division of Administration. The most recent title is used for employees whose position changed during the year.
<table>
<thead>
<tr>
<th>NAME</th>
<th>TITLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>John H. McLees Jr.</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>Peter R. Messitt</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>Francis W. Pedrotty</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>J. Steven Sheppard III</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>Jerry P. Slonaker</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>Richard B. Smith</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>Richard L. Walton Jr.</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>John S. Westrick</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>Richard B. Zorn</td>
<td>Senior Assistant Attorney General</td>
</tr>
<tr>
<td>Judith B. Anderson</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Robert H. Anderson III</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Susan W. Atkinson</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Stephen U. Baer</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Katherine P. Baldwin</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Kevin O. Barnard</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>A. Ann Berkebile</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Garland L. Bigley</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Martha B. Brissette</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Ellen F. Brown</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Margaret A. Browne</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Donna F. Bryant</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Amy L. Carson</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Howard M. Casway</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Ellen E. Coates</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Anne Marie Cushmac</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Leah A. Darron</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Christopher M. Day</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Marla G. Decker</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>William A. Diamond</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Robert T. Dively Jr.</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Raymond L. Doggett Jr.</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Matthew P. Dullaghan</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>W. Mark Dunn</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Christopher D. Eib</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Suzanne T. Ellison</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Deborah Love Feild</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Donald R. Ferguson</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Frederick S. Fisher</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>NAME</td>
<td>TITLE</td>
</tr>
<tr>
<td>-----------------------</td>
<td>----------------------------------------</td>
</tr>
<tr>
<td>Eric K.G. Fiske</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Paige S. Fitzgerald</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Scott J. Fitzgerald</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Evelyn R. Fleming</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Gregory C. Fleming</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Brian J. Goodman</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Charles R. Gray</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Teresa C. Griggs</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Jennifer L. Harper</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Natalie Harris</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Ondray T. Harris</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Robert Q. Harris</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Christy E. Harris-Lipford</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Rebecca W. Hartz</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Mark W. Hicks</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Catherine C. Hill</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Christopher G. Hill</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Patricia P. Holdsworth</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Michael T. Hosang</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Mary S. Hunncutt</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Shelly R. James</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Donald E. Jeffrey III</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Vaughan C. Jones</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>John P. Josephs Jr.</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Carl Josephson</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Michael T. Judge</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Donald A. Lahy</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Thomas J. Lambert</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Alison P. Landry</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Mary E. Langer</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Karen L. Lebo</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Stewart T. Leeth</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Todd E. LePage</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Rick R. Linker</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Amy L. Marshall</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Alton A. Martin</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Kathleen B. Martin</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Louis E. Matthews Jr.</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>NAME</td>
<td>TITLE</td>
</tr>
<tr>
<td>-----------------------</td>
<td>------------------------------------</td>
</tr>
<tr>
<td>Stephen B. McCullough</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Ruth M. McKeane</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Lisa R. McKeel</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Thomas M. McKenna</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Anthony P. Meredith</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Elaine S. Moore</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Michael C. Moore</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>John B. Moriarty Jr.</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Daniel J. Munroe</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Eugene P. Murphy</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Joan W. Murphy</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>William W. Muse</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Carol S. Nance</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Matthew D. Nelson</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>James W. Osborne</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Steven O. Owens</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Tracy E. Paner</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Martha M. Parrish</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Martika A. Parson</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Mark S. Paullin</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Donald G. Powers</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Daniel J. Poynor</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>John B. Purcell Jr.</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Patricia H. Quillen</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Sydney E. Rab</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>J. David Rigler</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Sandra B. Riggs</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Roscoe C. Roberts</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Daniel P. Rodgers</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Lisa J. Rowley</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Pamela A. Rumpz</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Pamela A. Sargent</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Amy H. Schwab</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Richard S. Schweiker Jr.</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>H. Elizabeth Shaffer</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Jeffrey S. Shapiro</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Jeffrey A. Spencer</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Paul S. Stahl</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>NAME</td>
<td>TITLE</td>
</tr>
<tr>
<td>-----------------------</td>
<td>----------------------------------------</td>
</tr>
<tr>
<td>Tracy D. Stith</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>G. Russell Stone Jr.</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>James C. Stuchell</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Gaye Lynn Taxey</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Alexander L. Taylor Jr.</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Jeb T. Terrien</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Banci E. Tewolde</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Virginia B. Theisen</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>William E. Thro</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Lee M. Turlington</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Julia D. Tye</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Barbara H. Vann</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Richard C. Vohris</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Robert L. Walker</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Linwood T. Wells Jr.</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Cheryl A. Wilkerson</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>John C. Wilkinson</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Jennifer C. Williamson</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Steven A. Witmer</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Rita R. Woltz</td>
<td>Assistant Attorney General</td>
</tr>
<tr>
<td>Jasma B. Adkins</td>
<td>Claims Representative</td>
</tr>
<tr>
<td>Elenora O. Allen</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>S. Elizabeth Allen</td>
<td>Legal Secretary Senior</td>
</tr>
<tr>
<td>Jonathan B. Amacker</td>
<td>Deputy Director of Communications</td>
</tr>
<tr>
<td>Kimberly M. Anderson</td>
<td>Victim Notification Project Director</td>
</tr>
<tr>
<td>Paul N. Anderson</td>
<td>Senior Investigator</td>
</tr>
<tr>
<td>Carol N. Atkinson</td>
<td>Legal Secretary Senior</td>
</tr>
<tr>
<td>Lisa A. Barnett</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Delilah Beaner</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Linda A. Belote</td>
<td>Investigator</td>
</tr>
<tr>
<td>Beverley C. Black</td>
<td>Legal Assistant Advocate</td>
</tr>
<tr>
<td>Carolyn R. Blaylock</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>David B. Botkins</td>
<td>Director of Communications</td>
</tr>
<tr>
<td>Frances B. Boynton</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Emily C. Brent</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Sterlita H. Bruce</td>
<td>Computer Network Support Technician Senior</td>
</tr>
<tr>
<td>Michelle J. Bruno</td>
<td>Program Assistant</td>
</tr>
<tr>
<td>Linda B. Buell</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Name</td>
<td>Title</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>------------------------------------------------------------</td>
</tr>
<tr>
<td>Alice H. Cannon</td>
<td>Accountant Senior</td>
</tr>
<tr>
<td>Kimberly A. Carter</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Jo L. Caruso</td>
<td>Executive Assistant</td>
</tr>
<tr>
<td>Addison L. Cheeseman</td>
<td>Senior Investigator</td>
</tr>
<tr>
<td>Amy K. Clark</td>
<td>Legal Assistant Advocate</td>
</tr>
<tr>
<td>Gloria A. Clark</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Anna M. Clay</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Randall L. Clouse</td>
<td>Director of Medicaid Fraud Control Unit</td>
</tr>
<tr>
<td>Betty G. Coble</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Christina I. Coen</td>
<td>Assistant Director, Planning &amp; Personnel</td>
</tr>
<tr>
<td>Kristine C. Coning</td>
<td>Chief Auditor</td>
</tr>
<tr>
<td>Deborah P. Cook</td>
<td>Claims Specialist</td>
</tr>
<tr>
<td>Patricia M. Cooper</td>
<td>Legal Secretary Senior</td>
</tr>
<tr>
<td>Christopher J. Davis</td>
<td>Computer Network Support Technician Senior</td>
</tr>
<tr>
<td>J. Randall Davis</td>
<td>Deputy Director of Communications</td>
</tr>
<tr>
<td>Michelle R. Day</td>
<td>Investigator</td>
</tr>
<tr>
<td>Bonnie N. Degen</td>
<td>Legal Secretary Senior</td>
</tr>
<tr>
<td>Linda A. Dickerson</td>
<td>Legal Assistant</td>
</tr>
<tr>
<td>Raymond Eaddy</td>
<td>Legislative Policy Analyst</td>
</tr>
<tr>
<td>Anna E. Eagle</td>
<td>Legal Secretary Senior</td>
</tr>
<tr>
<td>Marlene I. Ebert</td>
<td>Legal Secretary Senior</td>
</tr>
<tr>
<td>Betty L. Edgemon</td>
<td>Division Administrative Assistant</td>
</tr>
<tr>
<td>Vivian B. Ferry</td>
<td>Legal Secretary Senior</td>
</tr>
<tr>
<td>Sheila A. Figueroa</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Nina K. Fink</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Beverly A. Ford</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Kelly A. Ford</td>
<td>Claims Representative</td>
</tr>
<tr>
<td>Rosemary C. Foreman</td>
<td>Office Manager</td>
</tr>
<tr>
<td>Jennifer L. Fox</td>
<td>Legal Assistant</td>
</tr>
<tr>
<td>Judith B. Frazier</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Cheryl L. French</td>
<td>Legal Secretary Senior</td>
</tr>
<tr>
<td>Kurt B. Friday</td>
<td>Budget Analyst Senior</td>
</tr>
<tr>
<td>Barbara A. Galloway</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Amy L. Gilbert</td>
<td>Legal Secretary Senior</td>
</tr>
<tr>
<td>Paul C. Gillis</td>
<td>Regional Coordinator, Crime Prevention Programs</td>
</tr>
<tr>
<td>Bonita B. Gower</td>
<td>Accountant</td>
</tr>
<tr>
<td>Betty Jean Grafton</td>
<td>Legal Secretary Senior</td>
</tr>
<tr>
<td>Name</td>
<td>Title</td>
</tr>
<tr>
<td>---------------------</td>
<td>------------------------------------------------------</td>
</tr>
<tr>
<td>Jerry W. Ham</td>
<td>Claims Manager</td>
</tr>
<tr>
<td>Lynn Hammack</td>
<td>Legal Secretary Senior</td>
</tr>
<tr>
<td>Stephen D. Haner</td>
<td>Director of Administration</td>
</tr>
<tr>
<td>David A. Hardwich</td>
<td>Senior Investigator</td>
</tr>
<tr>
<td>Rhonda A. Hertz</td>
<td>Personnel Assistant</td>
</tr>
<tr>
<td>Kevin E. Hoeft</td>
<td>Legislative Policy Analyst Senior</td>
</tr>
<tr>
<td>Yi-Jer Huang</td>
<td>Director of Information Systems</td>
</tr>
<tr>
<td>Nancy A. Huber</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Jean C. Hutchinson</td>
<td>Legal Assistant</td>
</tr>
<tr>
<td>Wan Pui long</td>
<td>Computer Network Engineer</td>
</tr>
<tr>
<td>Judith G. Jesse</td>
<td>Legal Assistant</td>
</tr>
<tr>
<td>Ana I. Johnson</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Heather K. Johnson</td>
<td>Legal Assistant</td>
</tr>
<tr>
<td>Sharon L. Johnson</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Yvonne Johnson</td>
<td>Receptionist</td>
</tr>
<tr>
<td>Patsy L. Jones</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Tammy P. Kagey</td>
<td>Legal Assistant</td>
</tr>
<tr>
<td>Debra M. Kilpatrick</td>
<td>Travel and Meeting Coordinator</td>
</tr>
<tr>
<td>Frederick A. Knapp III</td>
<td>Consumer Affairs Specialist</td>
</tr>
<tr>
<td>Pamela H. Landrum</td>
<td>Administrative Assistant</td>
</tr>
<tr>
<td>Deborah A. Lane</td>
<td>Receptionist</td>
</tr>
<tr>
<td>Laureen S. Lester</td>
<td>Legal Assistant</td>
</tr>
<tr>
<td>Robert T. Lewis</td>
<td>Accountant</td>
</tr>
<tr>
<td>Tonya L. Lindsey</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Cynthia J. Lowery</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Susan E. Lowry</td>
<td>Legal Assistant Advocate</td>
</tr>
<tr>
<td>Carolyn Lumpkin</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Deborrah W. Mahone</td>
<td>Legal Assistant</td>
</tr>
<tr>
<td>Courtney M. Malveaux</td>
<td>Special Assistant to Chief Deputy</td>
</tr>
<tr>
<td>Brenda Wright Marrow</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Anndelynn T. Martin</td>
<td>Victim Notification Project Assistant Director</td>
</tr>
<tr>
<td>Betty M. Martin</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Jocelyn G. Maxim</td>
<td>Legal Assistant</td>
</tr>
<tr>
<td>Stephanie B. Maye</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Treva M. McGeachy</td>
<td>Document Technician</td>
</tr>
<tr>
<td>Linda G. Meeks</td>
<td>Personnel Assistant</td>
</tr>
<tr>
<td>Esther W. Messitt</td>
<td>Division Administrative Assistant</td>
</tr>
<tr>
<td>Tracy S. Mollo</td>
<td>Administrative Staff Specialist</td>
</tr>
<tr>
<td>Name</td>
<td>Title</td>
</tr>
<tr>
<td>-----------------------</td>
<td>-------------------------------------------------</td>
</tr>
<tr>
<td>Rebecca L. Muncy</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Janice M. Myer</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Connie C. Newcomb</td>
<td>Administrative Staff Assistant</td>
</tr>
<tr>
<td>Candy L. Newton</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Terence E. Noziglia</td>
<td>Technical Project Manager</td>
</tr>
<tr>
<td>Tracy L. Ocran</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Ellett A. Ohree</td>
<td>Office Technician</td>
</tr>
<tr>
<td>Trudy A. Oliver-Cuoghi</td>
<td>Legal Assistant</td>
</tr>
<tr>
<td>Sheila B. Overton</td>
<td>Network Administrator</td>
</tr>
<tr>
<td>Christa A. Perez</td>
<td>Assistant Director of Communications</td>
</tr>
<tr>
<td>Jane A. Perkins</td>
<td>Legal Assistant</td>
</tr>
<tr>
<td>Sharon P. Petersen</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Tichi L. Pinkney</td>
<td>Legal Assistant Advocate</td>
</tr>
<tr>
<td>Bruce W. Popp</td>
<td>Network Engineer</td>
</tr>
<tr>
<td>Jacquelin T. Powell</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Sharon B. Powell</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Danita B. Puller</td>
<td>Purchasing Manager/Accountant</td>
</tr>
<tr>
<td>N. Jean Redford</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Sharon M. Rhodes</td>
<td>Executive Assistant to Attorney General</td>
</tr>
<tr>
<td>Carolyn L. Richardson</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>John J. Richardson II</td>
<td>Office Technician</td>
</tr>
<tr>
<td>Robert B. Richardson</td>
<td>Investigator</td>
</tr>
<tr>
<td>Linda M. Roberts</td>
<td>Receptionist</td>
</tr>
<tr>
<td>Sarah E. Rodier</td>
<td>Claims Representative</td>
</tr>
<tr>
<td>Anne M. Rodriguez</td>
<td>Legal Assistant</td>
</tr>
<tr>
<td>John M. Rohrer</td>
<td>Director of Crime Prevention Programs</td>
</tr>
<tr>
<td>Hamilton J. Roye</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Sonia P. Ryan</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Bobbie T. Saunders</td>
<td>Legal Assistant</td>
</tr>
<tr>
<td>Kyle S. Sbarbaro</td>
<td>Investigator</td>
</tr>
<tr>
<td>Marian W. Schutrumpf</td>
<td>Director of Planning &amp; Personnel</td>
</tr>
<tr>
<td>Barbara H. Scott</td>
<td>Publications Coordinator</td>
</tr>
<tr>
<td>Janet L. Scott</td>
<td>Legal Assistant</td>
</tr>
<tr>
<td>Sherie F. Sensabaugh</td>
<td>Division Administrative Assistant</td>
</tr>
<tr>
<td>Patty B. Senter</td>
<td>Legal Secretary Senior</td>
</tr>
<tr>
<td>Karen A. Shumaker</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>William B. Siegfried</td>
<td>Investigator</td>
</tr>
<tr>
<td>William F. Slowinski</td>
<td>Senior Investigator</td>
</tr>
<tr>
<td>Name</td>
<td>Title</td>
</tr>
<tr>
<td>--------------------</td>
<td>--------------------------------------------</td>
</tr>
<tr>
<td>Crystal D. Smith</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Debra L. Smith</td>
<td>Administrative Executive Assistant</td>
</tr>
<tr>
<td>Faye H. Smith</td>
<td>Legal Secretary Senior</td>
</tr>
<tr>
<td>Jameen C. Smith</td>
<td>Claims Specialist</td>
</tr>
<tr>
<td>Justine E. Smith</td>
<td>Executive Assistant</td>
</tr>
<tr>
<td>Diane C. Southern</td>
<td>Legal Assistant</td>
</tr>
<tr>
<td>Kimberly F. Steinhoff</td>
<td>Legal Secretary Senior</td>
</tr>
<tr>
<td>Jennifer N. Sturgis</td>
<td>Criminal Analyst</td>
</tr>
<tr>
<td>Elsie B. Tate</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Angela E. Taylor</td>
<td>Legal Assistant</td>
</tr>
<tr>
<td>Katherine H. Terry</td>
<td>Office Manager</td>
</tr>
<tr>
<td>Paula C. Thompson</td>
<td>Legal Assistant</td>
</tr>
<tr>
<td>Mildred R. Tuppince</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Patricia L. Tyler</td>
<td>Legal Assistant Senior</td>
</tr>
<tr>
<td>Tijwana S. Tyler</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>John H. Vance</td>
<td>Division Administrative Assistant</td>
</tr>
<tr>
<td>Corrine Vaughan</td>
<td>Director of Constituent Affairs</td>
</tr>
<tr>
<td>Kathleen A. Vaughan</td>
<td>Director of Library Services</td>
</tr>
<tr>
<td>Kathleen B. Walker</td>
<td>Office Services Specialist</td>
</tr>
<tr>
<td>Kathy M. Walsh</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Pamela B. Watson</td>
<td>Legal Assistant</td>
</tr>
<tr>
<td>Jeri M. Weisberger</td>
<td>Legal Assistant</td>
</tr>
<tr>
<td>Georgiana G. Wellford</td>
<td>Director of Library Services</td>
</tr>
<tr>
<td>Janice S. White</td>
<td>Benefits Administrator/Facilities Manager</td>
</tr>
<tr>
<td>Matthew J. White</td>
<td>Library Assistant</td>
</tr>
<tr>
<td>Steven C. Wicks</td>
<td>Information Systems Manager</td>
</tr>
<tr>
<td>Elizabeth Wilson</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>Ericka L. Young</td>
<td>Legal Assistant</td>
</tr>
</tbody>
</table>
### Attorneys General of Virginia from 1776 to 1999

<table>
<thead>
<tr>
<th>Attorney</th>
<th>Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>Edmund Randolph</td>
<td>1776-1786</td>
</tr>
<tr>
<td>James Innes</td>
<td>1786-1796</td>
</tr>
<tr>
<td>Robert Brooke</td>
<td>1796-1799</td>
</tr>
<tr>
<td>Philip Norborne Nicholas</td>
<td>1799-1819</td>
</tr>
<tr>
<td>John Robertson</td>
<td>1819-1834</td>
</tr>
<tr>
<td>Sidney S. Baxter</td>
<td>1834-1852</td>
</tr>
<tr>
<td>Willis P. Bocock</td>
<td>1852-1857</td>
</tr>
<tr>
<td>John Randolph Tucker</td>
<td>1857-1865</td>
</tr>
<tr>
<td>Thomas Russell Bowden</td>
<td>1865-1869</td>
</tr>
<tr>
<td>Charles Whittlesey (military appointee)</td>
<td>1869-1870</td>
</tr>
<tr>
<td>James C. Taylor</td>
<td>1870-1874</td>
</tr>
<tr>
<td>Raleigh T. Daniel</td>
<td>1874-1877</td>
</tr>
<tr>
<td>James G. Field</td>
<td>1877-1882</td>
</tr>
<tr>
<td>Frank S. Blair</td>
<td>1882-1886</td>
</tr>
<tr>
<td>Rufus A. Ayers</td>
<td>1886-1890</td>
</tr>
<tr>
<td>R. Taylor Scott</td>
<td>1890-1897</td>
</tr>
<tr>
<td>R. Carter Scott</td>
<td>1897-1898</td>
</tr>
<tr>
<td>A.J. Montague</td>
<td>1898-1902</td>
</tr>
<tr>
<td>William A. Anderson</td>
<td>1902-1910</td>
</tr>
<tr>
<td>Samuel W. Williams</td>
<td>1910-1914</td>
</tr>
<tr>
<td>John Garland Pollard</td>
<td>1914-1918</td>
</tr>
<tr>
<td>J.D. Hank Jr.</td>
<td>1918-1918</td>
</tr>
<tr>
<td>John R. Saunders</td>
<td>1918-1934</td>
</tr>
<tr>
<td>Abram P. Staples</td>
<td>1934-1947</td>
</tr>
<tr>
<td>Harvey B. Apperson</td>
<td>1947-1948</td>
</tr>
<tr>
<td>J. Lindsay Almond Jr.</td>
<td>1948-1957</td>
</tr>
</tbody>
</table>

---

1. The Honorable J.D. Hank Jr. was appointed Attorney General on January 5, 1918, to fill the unexpired term of the Honorable John Garland Pollard, and served until February 1, 1918.

2. The Honorable Abram P. Staples was appointed Attorney General on March 22, 1934, to fill the unexpired term of the Honorable John R. Saunders, and served until October 6, 1947.

3. The Honorable Harvey B. Apperson was appointed Attorney General on October 7, 1947, to fill the unexpired term of the Honorable Abram P. Staples, and served until his death on January 31, 1948.

4. The Honorable J. Lindsay Almond Jr. was elected Attorney General by the General Assembly on February 11, 1948, to fill the unexpired term of the Honorable Harvey B. Apperson, and resigned September 16, 1957.
Kenneth C. Patty .......................... 1957-1958
Frederick T. Gray ......................... 1961-1962
Robert Y. Button .......................... 1962-1970
Andrew P. Miller ......................... 1970-1977
Anthony F. Troy ......................... 1977-1978
Gerald L. Baliles ......................... 1982-1985
William G. Broaddus ..................... 1985-1986
Mary Sue Terry ............................ 1986-1993
Richard Cullen ............................ 1997-1998
Mark L. Earley ............................ 1998-

The Honorable Kenneth C. Patty was appointed Attorney General on September 16, 1957, to fill the unexpired term of the Honorable J. Lindsay Almond Jr., and served until January 13, 1958.

The Honorable Frederick T. Gray was appointed Attorney General on May 1, 1961, to fill the unexpired term of the Honorable A.S. Harrison Jr. upon his resignation on April 30, 1961, and served until January 13, 1962.

The Honorable Anthony F. Troy was elected Attorney General by the General Assembly on January 26, 1977, to fill the unexpired term of the Honorable Andrew P. Miller upon his resignation on January 17, 1977, and served until January 14, 1978.

The Honorable William G. Broaddus was appointed Attorney General on July 1, 1985, to fill the unexpired term of the Honorable Gerald L. Baliles upon his resignation on June 30, 1985, and served until January 10, 1986.


The Honorable Richard Cullen was appointed Attorney General to fill the unexpired term of the Honorable James S. Gilmore III upon his resignation on June 11, 1997, at noon, and served until noon, January 17, 1998.
CASES

IN THE

SUPREME COURT OF VIRGINIA

AND

SUPREME COURT OF THE UNITED STATES
The complete listing of all cases handled by the Office of the Attorney General is not reprinted in this report. Selected cases pending in or decided by the Supreme Court of Virginia and the Supreme Court of the United States are included, as required by § 2.1-128 of the Code of Virginia.
CASES DECIDED IN THE SUPREME COURT OF VIRGINIA


Bramblett v. Commonwealth. From Roanoke County Circuit Court. Affirming capital murder conviction and death sentences.

Cherrix v. Commonwealth. From Accomack Circuit Court. Affirming capital murder conviction and death sentence.

Cochran v. Commonwealth. From Spotsylvania Circuit Court. Affirming Cochran's conviction for possession of PCP with intent to distribute, holding that (1) split decision of Court of Appeals affirms decision of the trial court and (2) when a passenger in a vehicle is told by a police officer to remain inside the car, yet makes several attempts to exit, he is not "seized" for purposes of the Fourth Amendment until he actually fully complies with officer's command.

Commonwealth v. Baker. From Stafford Circuit Court. Affirming Court of Appeals decision that both parents must be served with notice of juvenile proceedings.

Commonwealth v. Shifflett. From Albemarle Circuit Court. Reversing Court of Appeals decision reversing trial court's ruling about time of "mitigation" evidence defense can introduce to jury at sentencing phase under § 19.2-295.1.

Commonwealth v. Taylor. From Arlington Circuit Court. Reversing Court of Appeals decision reversing trial court's ruling that § 19.2-295.1 does not allow defendant to introduce his "life story" to jury at sentencing.

Earley v. Landsidle. Orig. juris. Dismissing petition for writ of mandamus asserting that it is unconstitutional for members of the General Assembly to receive a salary increase before the end of the term in which the member was elected.

El-Amin v. Virginia State Bar, ex rel. Third District Committee. Affirming Richmond Circuit Court order suspending plaintiff's license to practice law for four years.

Fairfax County Board of Supervisors v. Washington, DC, SMSA LP. Reversing Fairfax Circuit Court decision that an agency of the sovereign is exempt from local comprehensive planning in placing telecommunication towers in highway rights-of-way, where the tower is owned by the telecommunications company.

Finn v. Virginia Retirement System. Affirming Richmond Circuit Court decision that neither § 2.1-526.8 nor common law provides state officials a right of indemnification for costs allegedly incurred in defending against criminal investigations, and that § 51.1-124.28 is constitutional and does not authorize reimbursement for costs incurred in connection with acts which occurred before its effective date.

Glasco v. Commonwealth. From Newport News Circuit Court. Affirming decision of Court of Appeals of Virginia that a search of Glasco's car incident to his arrest was valid, even though he had moved away from his car before the police first approached him.
Herrick v. Commonwealth. From Appomattox County Circuit Court. Affirming capital murder conviction and death sentence.

Jackson v. Angelone. Orig. juris. Denying writ in Norfolk Circuit Court challenging capital murder conviction and death sentence.

Kasi v. Commonwealth. From Fairfax Circuit Court. Denying writ challenging capital murder conviction and death sentence.

Lilly v. Commonwealth. From Montgomery Circuit Court, on remand from United States Supreme Court, reversing capital murder conviction and death sentence.

Long v. Commonwealth. From Washington Circuit Court. Affirming DUI conviction where defendant was involved in single-vehicle accident.

Lovelace v. Commonwealth. From Halifax Circuit Court. Reversing decision of Court of Appeals of Virginia that a search incident to arrest was reasonable even though Lovelace had been stopped for an offense for which he could not be arrested.

Mercer v. Commonwealth. Affirming Newport News Circuit Court's decision that an insanity acquittee continues to be mentally ill as a result of her diagnosis of polysubstance dependence (PSD) and that she did not satisfy the requirements for conditional release. The Court held that whether PSD is a mental illness under Virginia law is a question of fact to be resolved by the trial court based on consideration of relevant statutes, written reports, and the testimony of mental health experts. The Court also noted that the U.S. Supreme Court did not hold, in Foucha v. Louisiana, that antisocial personality disorder is not a mental illness as a matter of law.

Musolino v. Department of Social Services. Denying petition appealing decision of Court of Appeals of Virginia affirming a sexual abuse finding on the basis that substantial evidence supported the disposition. The petition alleged that review is necessary because the court did not apply the "substantial evidence" standard to whether there was "clear and convincing" evidence to support the finding. The Court dismissed the petition, finding that the Court of Appeals decision involved no substantial constitutional question or matters of significant precedential value.

Orbe v. Commonwealth. From York Circuit Court. Affirming capital murder conviction and death sentence.

O'Sullivan v. Commonwealth. From Virginia Beach Circuit Court. Affirming O'Sullivan's conviction for carjacking, finding the evidence sufficient to support the conviction where victim had stepped away from her vehicle and left the motor running.


Pender v. Angelone. From Petersburg Circuit Court. Affirming holding that Pender had not been denied effective assistance of counsel, finding that his trial counsel had conducted an adequate investigation.
Perry v. Commonwealth. Dismissing petition appealing decision of Court of Appeals of Virginia finding that Perry had no standing to appeal a judgment in which he prevailed. The Court also upheld the trial court's denial of attorney fees. Perry had prevailed in the circuit court, and the physical abuse finding was amended to "unfounded." Nevertheless, he appealed, requesting reversal of the court's decision to grant him relief on nonconstitutional grounds and its denial of attorney fees and costs. The Supreme Court found that the decision of the Court of Appeals involved no substantial constitutional question or matters of significant precedential value.

Perry v. Commonwealth. From Norfolk Circuit Court. Affirming decision of Court of Appeals upholding separate robbery and abduction convictions as not violating double jeopardy protections.

Pertos v. Commonwealth. From Henrico Circuit Court. Affirming decision of Court of Appeals of Virginia that the trial court had properly instructed the jury on the inference of malice from the use of a deadly weapon.

Phan v. Commonwealth. From Arlington Circuit Court. Affirming Phan's conviction for first degree murder, finding the circumstantial evidence sufficient to prove identity.

Phillips v. Commonwealth. From Russell Circuit Court. Affirming conviction for felony charge of selling marijuana on school property, finding that previous misdemeanor conviction for same offense did not bar conviction for the felony.

Pulliam v. Coastal Emergency Service. Amicus curiae in constitutional challenge to statute which limits recovery in medical malpractice cases to $1 million. Statute upheld.

Roach v. Commonwealth. Orig. juris. Denying writ challenging Greene Circuit Court capital murder conviction and death sentence.

Robinson v. Commonwealth. From Henrico Circuit Court. Affirming Robinson's conviction for grand larceny, holding that price tags are admissible hearsay to prove value.

Sandy v. Commonwealth. From Westmoreland Circuit Court. Reversing decision of Court of Appeals of Virginia that a plea agreement is enforceable prior to court acceptance if defendant has not been prejudiced.

State Board of Elections v. Democratic Party of Virginia. Refusing to dissolve injunction issued by Richmond Circuit Court prohibiting State Board of Elections from implementing voter identification pilot.

Stevenson v. Commonwealth. From Albemarle Circuit Court. Reversing Court of Appeals' decision upholding forgery conviction on ground that Commonwealth did not prove victim was prejudiced by forgery.

Stewart v. Virginia Military Institute. Denying petition appealing Rockbridge Circuit Court dismissal on demurrer of claimed breach of employment contract against VMI, and civil rights claims against its officials arising from the same facts. Petitioner's failure to demand a hearing afforded by his contract was fatal to his claims.
Thomas v. Taylor. Orig. juris. Denying writ challenging Middlesex Circuit Court capital murder conviction and death sentence.


Walker v. Commonwealth. From City of Richmond Circuit Court. Affirming capital murder conviction and death sentence.


**CASES PENDING IN THE SUPREME COURT OF VIRGINIA**


Bass v. Commonwealth. From Chesterfield Circuit Court. Appealing decision of Court of Appeals that an officer has reasonable suspicion of criminal activity to justify an investigatory stop of a vehicle when he observes the vehicle evade a traffic checkpoint.

Bramblett v. Taylor. Orig. juris. Petition for writ of habeas corpus attacking Roanoke County Circuit Court capital murder conviction and death sentence.

Cherrix v. Taylor. From Accomack Circuit Court. Petition for writ of habeas corpus attacking capital murder conviction and death sentence.

Commonwealth v. Alexander. From Rockbridge Circuit Court. Appealing reversal of Court of Appeals of Virginia conviction where the sole issue is whether Alexander was entitled to a “defense of property” instruction in a jury trial in which he was charged with brandishing a firearm.

Commonwealth v. Dalton. From Pittsylvania Circuit Court. Appealing decision of Court of Appeals reversing murder conviction on the ground that Dalton was entitled to an accessory after the fact “finding” instruction, even though he was not charged with that crime nor was it a lesser-included offense of murder.

Commonwealth v. Fennell. From Virginia Beach Circuit Court. Appealing decision of Court of Appeals reversing robbery conviction on the ground that Fennell was entitled to an accessory after the fact “finding” instruction, even though he was not charged with that crime nor was it a lesser-included offense of robbery.

Commonwealth v. Smith. From Richmond Circuit Court. Granting petition for appeal after a panel of the Court of Appeals of Virginia reversed Smith’s conviction upon finding the evidence insufficient to prove his criminal agency in a stabbing case.

Dearing v. Commonwealth. From Arlington Circuit Court. Appealing decision of Court of Appeals of Virginia denying petition for appeal in a case involving reliance by the Commonwealth on a statement by a nontestifying codefendant.
Fishback v. Commonwealth. From Fauquier Circuit Court. Appealing decision of Court of Appeals of Virginia that the trial court did not err in refusing to instruct the jury on parole.

Hedrick v. Taylor. Orig. juris. Petition for writ of habeas corpus attacking Appomattox Circuit Court capital murder conviction and death sentence.

Hertz v. Times-World Corp., consolidated with Mason v. Richmond Newspapers. Appealing Bedford and Brunswick Circuit Court orders holding that members of the press had a right to be present at hearings involving juveniles. Arguing on behalf of the general district court judges that the First Amendment right of public access does not apply to juvenile court proceedings.

Johnson v. Commonwealth. From Petersburg Circuit Court. Appealing capital murder conviction and death sentence.

Larrimore v. Blaylock. Appealing Radford Circuit Court order dismissing defamation case against Radford University and four of its professors pertaining to publishing scholarly articles.

Moore v. Commonwealth. From Henrico Circuit Court. Appealing Court of Appeals of Virginia decision raising for the first time the failure of the juvenile court to serve Moore's biological father with notice of the filing of the petition and of his certification hearing.


Moore v. Hinkle. Appealing Fairfax Circuit Court decision that Moore had not been denied effective assistance of counsel due to an alleged conflict of interest between his attorney and himself.

Reittinger v. Commonwealth. From Rockbridge Circuit Court. Appealing Court of Appeals' en banc decision that, during a consensual encounter, an officer may conduct a patdown for weapons if he has reasonable suspicion that the person is armed and dangerous, even though the officer does not suspect the person is engaged in any criminal activity. This conclusion is limited to a situation where the consensual encounter flows from a legitimate law-enforcement function such as a traffic stop.

Solano v. Commonwealth. Appealing dismissal of suit by Roanoke Circuit Court, alleging that the negligent design and maintenance of a roadway caused automobile accident and subsequent death.

Turner v. Commonwealth. From Pittsylvania Circuit Court. Appealing issue whether Turner should have received new trial where he alleged court-appointed counsel had a conflict of interest due to counsel's pending application for employment in the Commonwealth's attorney's office.
Turner v. Commonwealth. From Virginia Beach Circuit Court. Appealing decision of Court of Appeals of Virginia not to grant an appeal in case alleging error based on introduction of evidence of prior crimes.

CASES IN THE SUPREME COURT OF THE UNITED STATES


Bramblett v. Virginia. From Roanoke County Circuit Court. Denying petition for certiorari from Virginia Supreme Court affirmation of capital murder conviction and death sentence.

Chichester v. Taylor. From Prince William Circuit Court. Denying petition for certiorari from habeas corpus decision of Fourth Circuit upholding capital murder conviction and death sentence.

Collins v. Commonwealth. Pending petition for certiorari from district court affirmation that bail bond forfeiture debt was dischargeable.

Debauche v. Trani. Pending petition for certiorari from Fourth Circuit arising out of a candidates' debate held at Virginia Commonwealth University. The Reform Party candidate was excluded and subsequently sued the University president. Case was dismissed by the district court and affirmed by the Fourth Circuit.


Fisher v. Young. From Gloucester Circuit Court. Denying petition for certiorari from Fourth Circuit denial of habeas corpus relief from murder conviction.

Fry v. Angelone. From Chesterfield Circuit Court. Denying petition for certiorari from habeas corpus decision of Fourth Circuit upholding capital murder conviction and death sentence.

George Mason University v. United States. Pending petition for certiorari from Fourth Circuit on issue whether Congress may require states to waive their sovereign immunity as a condition of receiving federal funds in this sexual harassment case.

Hedrick v. Virginia. From Appomattox Circuit Court. Denying petition for certiorari from Virginia Supreme Court affirmation of capital murder conviction and death sentence.


Lilly v. Commonwealth. From Montgomery Circuit Court. Remanding case to Virginia Supreme Court to review for harmless error capital murder conviction and death sentence.

Ramadass v. Angelone. From Fairfax Circuit Court. Granting certiorari review of habeas corpus decision of Fourth Circuit upholding capital murder conviction and death sentence.

Reid v. Virginia. From Montgomery Circuit Court. Denying petition for certiorari from Virginia Supreme Court decision upholding capital murder conviction and death sentence.


Royal v. Taylor. From Hampton Circuit Court. Denying petition for certiorari from habeas corpus decision of Fourth Circuit upholding capital murder conviction and death sentence.

Smith v. Angelone. From Norfolk Circuit Court. Denying petition for certiorari from Fourth Circuit denial of habeas corpus relief from robbery and burglary convictions.


Swinson v. Angelone. From Suffolk Circuit Court. Denying petition for certiorari from Fourth Circuit denial of habeas corpus relief from conviction for distribution of cocaine.

Swisher v. Virginia. From Augusta Circuit Court. Denying petition for certiorari from Virginia Supreme Court affirmance of capital murder conviction.

Thomas v. Taylor. From Middlesex Circuit Court. Denying petitions for certiorari in two separate cases from Virginia Supreme Court and Fourth Circuit denials of habeas corpus relief in death penalty case.


Williams v. Angelone. From Chesapeake Circuit Court. Denying petition for certiorari from habeas corpus decision of Fourth Circuit upholding capital murder conviction and death sentence.


OFFICIAL OPINIONS

OF

ATTORNEY GENERAL MARK L. EARLEY

JANUARY — DECEMBER 1999
Section 2.1-118 of the *Code of Virginia* authorizes the Attorney General to render official advisory opinions in writing only when requested in writing to do so by the Governor; members of the General Assembly; judges and clerks of courts of record and judges of courts not of record; the State Corporation Commission; Commonwealth's, county, city or town attorneys; city or county sheriffs and treasurers; commissioners of the revenue; electoral board chairmen or secretaries; and state agency heads.

Each opinion in this report is preceded by a main headnote briefly describing the subject matter of the opinion. For purposes of citing an opinion, each opinion begins on the page on which the headnote preceding the opinion first appears. Cite an opinion in this report as follows: 1999 Op. Va. Att'y Gen. ___.

Opinions of the Attorney General may be accessed on the Internet, beginning with opinions issued in January 1996, at www.vaag.com; on LEXIS-NEXIS, beginning with opinions issued in July 1980; and on WESTLAW, beginning with opinions issued in 1976. The following CD-ROM products contain opinions of the Attorney General: Michie's Virginia Law on Disc, including opinions from July 1980; CaseFinder, including opinions from July 1967; and Virginia Reporter & West's Virginia Code, including opinions from July 1976.
ADMINISTRATION OF GOVERNMENT GENERALLY: AT-RISK YOUTH AND FAMILIES.

State pool of funds is to be expended for residential and nonresidential services provided to targeted children and their families. Attorney General defers to interpretation of Comprehensive Services Act for At-Risk Youth and Families by state agency that funds not be used to pay administrative or case management costs. Attorney General has no authority to review determination by state agency review team that services rendered under community care coordination constitute services that are duties of local stakeholder staff and not direct services for children that are reimbursable from state pool of funds.

The Honorable Phillip Hamilton
Member, House of Delegates
August 13, 1999

You ask whether community care coordination provided the City of Newport News by the Hampton-Newport News Community Services Board (the "Community Services Board") constitutes case management services eligible for purchase by pool funds under the Comprehensive Services Act for At-Risk Youth and Families (the "CSA").

The intent of the CSA is "to create a collaborative system of services and funding [for] addressing the ... needs of troubled and at-risk youths and their families." The CSA establishes a state executive council and a state management team. The state executive council is to oversee the administration of the CSA, including the administration of the policies regarding the use and distribution of the state pool of funds established under § 2.1-757(A) of the Code of Virginia and the state trust fund established under § 2.1-759(A).

The state executive council appoints the members of the state management team. One of the duties of the state management team is to "[d]evelop and recommend to the state executive council state interagency policies governing the use, distribution and monitoring of moneys in the state pool of funds and the state trust fund." Pursuant to this duty, the state management team recommended and the state executive council adopted the Comprehensive Services Act Manual. The Office of Comprehensive Services (the "OCS") administers the CSA.

The CSA also requires every county, city or combination of counties and cities to establish a community policy and management team ("CPMT") and requires each CPMT to establish one or more family assessment and planning teams ("FAPTs"). The local CPMT is to include the agency head, or his designee, of the following community agencies: the community services board established under § 37.1-195; the juvenile court services unit; the local departments of health and social services; and the local school division. These community agencies deliver services under the CSA and are generally referred to as "stakeholder agencies."

The state pool of funds established under § 2.1-757(A) funds the CSA. The pool consists of General Assembly appropriations. The fund is to be allocated to CPMT "in accordance with the appropriations act and appropriate state regulations" and is to be "expended for ... nonresidential or residential services for troubled youths and families."
Section 2.1-757(B) further provides: "The state pool shall consist of funds which serve the target populations identified in subdivisions 1 through 5 below in the purchase of residential and nonresidential services for children." Subdivisions 1 through 5 describe the target population as: (1) "[c]hildren placed for purposes of special education in approved private school educational programs"; (2) "[c]hildren with disabilities placed by local social services agencies or the Department of Juvenile Justice in private residential facilities or ... special education day schools"; (3) "[c]hildren for whom foster care services ... are being provided to prevent foster care placements, and children placed ... in suitable family homes, child-caring institutions, residential facilities or independent living arrangements"; (4) "[c]hildren placed by a juvenile and domestic relations district court ... in a private or locally operated public facility or nonresidential program; and" (5) "[c]hildren committed to the Department of Juvenile Justice and placed by it in a private home or in a public or private facility." There is no language in the statutes suggesting that the fund may be used to pay a locality's administrative costs in providing services for the children.

By stating that the fund is to be used for "the purchase of residential and nonresidential services for children" and by describing the types of services and placements included, it is clear that the General Assembly intended the funds in the state pool to be confined to the payment for services directly provided the children. The CSA Manual is consistent with this conclusion. The CSA Manual provides:

Pool Funds "shall be expended for public or private non-residential or residential services for troubled youths and families." Pool Funds are to be used for services for specific children and their families. Moreover, "[t]o assure that Pool Funds continue to purchase direct services for children and their families," the CSA Manual sets out restrictions on the use of the funds. Pool funds must not be expended for administrative support services incurred by CPMTs and FAPTs. Nor shall pool funds be used to pay for interagency coordinators. Pool funds also must not be expended for case management services related to administering the CSA (e.g., case management services provided by FAPTs, as described in § 2.1-754 of the CSA). Each FAPT, in compliance with the policies of the CPMT, shall (1) provide for review referrals and for family participation; (2) develop individual family service plans and appoint someone to monitor and report their progress; (4) refer to community resources; and (5) recommend expenditures from pool funds. With regard to case management services, the CSA Manual excepts those services "that are provided as direct services for children and their families." You state that in 1997, Newport News and the Newport News CPMT contracted with the Community Services Board for it to assume management responsibility for all activities relating to the CSA. As part of its management plan, the Community Services Board adopted a practice known as "community care coordination." You specifically ask whether community care coordination provided by the Community Services Board is a direct client service for which pool funds may be expended under the CSA.
Whether community care coordination is a direct service for children rather than an administrative expense will depend on an analysis of what the service entails.23 The OCS in 1998 formed a team consisting of representatives from the State Departments of Education, Social Services and Juvenile Justice. The team conducted a review of Newport News' operation and management of the CSA and considered the community care coordination provided by the Community Services Board. The review team concluded that the services rendered under community care coordination were services that were the duties of, and were primarily performed by, the staff of the local stakeholder agencies. The review team thus determined that the services were not direct services to children and could not be reimbursed from the state pool of funds.24

Prior opinions of the Attorney General defer to the interpretations of the law by an agency charged with administering the law unless the agency interpretation is clearly wrong.25 Pursuant to §§ 2.1-746 and 2.1-748, the state executive council and the state management team are the entities charged with developing and administering policies governing the use of moneys in the state pool of funds. These entities have adopted the policies set out in the CSA Manual and have authorized OCS to administer the policies. Prior opinions also consistently take the position that the propriety of the actions of another entity interpreting matters reserved solely to it is not subject to review by the Attorney General.26

It is my opinion that the policies set out in the CSA Manual providing that the state pool of funds may not be used for the payment of administrative or case management costs is consistent with the language of the CSA. Accordingly, I must defer to the agency's interpretation of the CSA's limitation on the use of the state pool of funds.27 In addition, I must decline to review the decision by OCS that the community care coordination provided by the Community Services Board does not constitute direct services for children that may be purchased with state pool of funds.28 The statutes clearly place decisions regarding the use and distribution of the state pool of funds within the authority of the state executive council and the state management team and its staff. The CSA grants no authority to the Attorney General to review the decisions.

At its 1999 Session, the General Assembly amended the CSA.29 These amendments include the requirement of a public participation process for programmatic and fiscal guidelines for administrative actions and the establishment of a dispute resolution procedure, which is to include an appeals process, should the state executive council find that a CPMT has failed to comply with the CSA.30

3See § 2.1-746.
4See §§ 2.1-747, 2.1-748.
5Section 2.1-746(4).
6Section 2.1-746(1).
7Section 2.1-748(2).
Part II of the CSA Manual sets out a certification requirement. See id. at 31-32. The locality certifies to the state executive council that it is in compliance with the programmatic and fiscal policies established by the CSA and the council. See id. at 32. The CSA Manual states that, upon signing of the certificate by the chairmen of the local CPMT and of the state executive council, the CSA Manual constitutes an agreement between the locality and the state. See id. at 2.

The state executive council established the OCS pursuant to its duty under § 2.1-746(7) to provide administrative support for the establishment and operation of local comprehensive services.

In addition, § 2.1-759(A) establishes a state trust fund. Monies in the state trust fund are to be expended to develop "[e]arly intervention services for young children and their families" and "[c]ommunity services for troubled youths." Section 2.1-759(A)(1), (2).

In addition to the management responsibilities, the Community Services Board would continue as a provider of established behavioral health care services under the CSA.

You state in your letter that community care coordination is a well-accepted community services board practice. You do not describe what the practice involves, and I have no specific information on the practice.

It is my understanding that if a child needs a service that is not provided by one of the local stakeholder agencies, the local CPMT may contract with another entity to provide the service. In such instances, the necessary case management services that the entity provides would be reimbursable from the state pool of funds.

In addition to the management responsibilities, the Community Services Board would continue as a provider of established behavioral health care services under the CSA.

You state in your letter that community care coordination is a well-accepted community services board practice. You do not describe what the practice involves, and I have no specific information on the practice.

It is my understanding that if a child needs a service that is not provided by one of the local stakeholder agencies, the local CPMT may contract with another entity to provide the service. In such instances, the necessary case management services that the entity provides would be reimbursable from the state pool of funds.

A high degree of familiarity with the programs and manner in which they operate is necessary for the type of detailed and factual review conducted by OCS.

Community college employee may not accept additional cash bonus from private corporation for training services provided to corporation by college.
You ask whether an employee of a community college whose duties include administering a training program as part of an agreement between the college and a private corporation may accept a cash bonus from the private corporation for exemplary services rendered over a period of several years.

You relate that a community college is party to an agreement with the private corporation by which the college provides extensive training services to the corporation. You state that the private corporation does not provide any services to the community college. You also state that the college employee coordinates and manages this project, selects and supervises the staff for the project, and develops the budgets for the activities of the project. You further state that in recognition of this employee's exemplary services, the corporation seeks to award the employee a cash bonus. You inquire whether such an award would violate the State and Local Government Conflict of Interests Act (the "Act").

The community college employee is an "employee" of a "governmental agency," subject to the Act's prohibitions and restrictions. Section 2.1-639.4(1) of the Code of Virginia, a portion of the Act, provides that no employee of a state governmental agency shall solicit or accept money or other thing of value for services performed within the scope of his official duties, except the compensation, expenses or other remuneration paid by the agency of which he is an employee. This prohibition shall not apply to the acceptance of special benefits which may be authorized by law.

The express legislative intent of the Act is to assure the citizens of the Commonwealth that "the judgment of public officers and employees will not be compromised or affected by inappropriate conflicts." To further this end, the Act identifies certain prohibited and unlawful conduct on the part of public employees including the conduct described in § 2.1-639.4. The Act provides that it "shall be unlawful" for any state government employee to "accept money ... for services performed within the scope of his official duties, except the [amounts] paid by the agency of which he is an ... employee." The use of the word "shall" indicates that the General Assembly intends the terms of § 2.1-639.4 to be mandatory. Additionally, under well-accepted principles of statutory construction, when the language of a statute is plain and unambiguous and its meaning clear and definite, it must be given effect.

Under the facts you present, the responsibilities of the employee of the community college include administering the training program, and the employee is paid by the community college for performing these duties. The plain, unambiguous, and mandatory language of § 2.1-639.4(1) prohibits a public employee from accepting money for services performed within the scope of his official duties beyond the "compensation, expenses or other remuneration" paid by the college. The General Assembly has clearly
placed restrictions on public employees with regard to that which they may accept resulting from the performance of their official duties. Accordingly, it is my opinion that the community college employee may not accept an additional cash bonus from the private corporation for the performance of such duties.

1For the purposes of this opinion, I shall assume that the employee is a full-time, salaried employee of the community college.
3See § 2.1-639.2 (defining "employee," "governmental agency").
4Section 2.1-639.1.
5Section 2.1-639.3 (emphasis added).
6Section 2.1-639.4(1).

ADMINISTRATION OF GOVERNMENT GENERALLY: STATE AND LOCAL GOVERNMENT CONFLICT.

School board members and employees designated by ordinance adopted by board of supervisors must file disclosure statement of their personal interests with clerk of school board.

The Honorable William J. Howell
Member, House of Delegates
October 29, 1999

You inquire regarding interpretation of § 2.1-639.14(A) of the Code of Virginia pertaining to the filing of disclosure statements under the State and Local Government Conflict of Interests Act1 (the "Act").2

You relate that members of the Stafford County School Board believe that the Act permits the board of supervisors to designate, by ordinance, positions within the school division that are required to file disclosure statements. You also relate that the county attorney believes that local law requires the filing of disclosure forms with the clerk of the county board of supervisors and, in the absence of a local ordinance, with the clerk of the school board.

The intent of the reporting requirements for the Statement of Economic Interests contained in § 2.1-639.15 is to further the general purposes of the Act, by establishing a written record of economic interests which may affect the judgment of governmental officers and employees in the performance of their official duties.3 Section 2.1-639.14(A) allows a local governing body to designate by ordinance persons appointed to and occupying positions of trust who are required to file the financial disclosure form set forth in § 2.1-639.15. A 1989 opinion of the Attorney General concludes that, because this grant of authority is discretionary, a local governing body is not required to adopt such an ordinance.4 When a local governing body adopts an ordinance designating
and requiring persons appointed to positions of trust to file financial disclosure forms pursuant to § 2.1-639.14(A), they "shall file, as a condition to assuming office ..., a disclosure statement of their personal interests ... as is specified on the form set forth in § 2.1-639.15." The use of the word "shall" indicates that filing of this form is mandatory. A 1996 opinion of the Attorney General concludes that directors of an industrial development authority, having been designated by ordinance of the local board of supervisors pursuant to § 2.1-639.14(A) as persons appointed to and occupying "positions of trust," are required to file the financial disclosure form detailed in § 2.1-639.15.

Section 2.1-639.14(A) also requires that "[t]he members of every ... school board of each county ... shall file ... a disclosure statement of their personal interests." In addition, § 2.1-639.14(C) provides that such disclosure forms "shall be filed and maintained as public records for five years in the office of the clerk of the respective ... school board." It is a well-settled rule of statutory construction that "[i]f the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it." It is equally well-settled that "[a statute] which is plain needs no interpretation." Section 2.1-639.14(A) also requires "persons occupying such positions of employment as may be designated ... by ordinance of the governing body" to file disclosure statements on the form set forth in § 2.1-639.15. Section 2.1-639.14(C) requires that such forms be filed with "the clerk of the respective governing body or school board." The purpose underlying a statute's enactment is particularly significant in construing it. Moreover, statutes should not be interpreted in ways that produce absurd or irrational consequences.

I am, therefore, of the opinion that members of the school board must file a disclosure statement of their personal interests on the form set forth in § 2.1-639.15 with the clerk of the school board. It is further my opinion that employees of the school board designated by ordinance of the county board of supervisors must file disclosure statements on the form contained in § 2.1-639.15 with the clerk of the school board.

---

1 Tit. 2.1, ch. 40.1, §§ 2.1-639.1 to 2.1-639.24.
2 Section 2.1-639.14(A) pertains to the filing of disclosure statements by persons occupying positions of trust (local governing body and school board officers) and positions of employment (local government and school board employees).
3 See § 2.1-639.1.
Loans made by Virginia Housing Development Authority to its employees to finance purchase or improvement of single family homes are considered payments which are excepted from general contract prohibitions of State and Local Government Conflict of Interests Act. HDA employee applicants are not required to disqualify themselves from participating in their loan transactions, to publicly disclose their loans and record their disqualification, and refrain from voting or acting on behalf of HDA with respect to their loans.

Mr. Sam Kornblau
Chairman, Board of Commissioners
Virginia Housing Development Authority
September 10, 1999

You ask whether the State and Local Government Conflict of Interests Act, Chapter 40.1 of Title 2.1, §§ 2.1-639.1 through 2.1-639.24 of the Code of Virginia (the "Act"), prohibits the Virginia Housing Development Authority ("HDA") from making loans to its employees to finance the purchase or improvement of single-family homes. If such loans are not prohibited, you also inquire whether the Act requires that HDA employees disqualify themselves from participating in any capacity in their HDA loan transactions and whether they must disclose their loans and disqualification in HDA's public records. You state that the loans will be made available to HDA employees consistent with the procedures, requirements and eligibility criteria, and according to the terms and conditions (including principal amounts, interest rates and maturities), established by HDA for loans made available to the general public.

Chapter 1.2 of Title 36 creates the HDA and details its powers and duties. Specifically, HDA makes loans to persons and families of low and moderate income to finance the acquisition of single-family homes or for rehabilitation of their homes. The HDA has also adopted detailed rules and regulations which establish procedures, requirements, and eligibility criteria to be satisfied in order for persons and families to qualify for such loans.

Section 2.1-639.6(A) restricts the personal interest a state employee may have in a contract with the governmental agency that employs him, "other than his own contract of employment." Section 2.1-639.2 defines "contract" as

any agreement to which a governmental agency is a party, or any agreement on behalf of a governmental agency which involves the payment of money appropriated by the ... political subdivision, whether or not such agreement is executed in the name of the ... political subdivision.
In a 1985 opinion addressing the issue you present, the Attorney General states that "[a]n [HDA] loan to an employee would be an agreement within the Act's definition of a 'contract.'" The 1985 opinion notes the Act's definition of a "personal interest" as "a financial benefit or liability accruing to an ... employee or to a member of his immediate family." Accordingly, the opinion concludes that "[a]n [HDA] employee, being a party to a loan agreement with the [HDA], would have a 'personal interest in a contract' as that term is defined in [the Act]," and "[a]ny such personal interest in a contract which accrues to an [HDA] employee is prohibited unless specifically excepted by the Act." The opinion concludes that there is no applicable exception and thus "[HDA] loans to employees are prohibited by [the Act]."

At its 1987 Special Session, the General Assembly enacted § 2.1-639.9(A)(7) to include as an exception to the general contract prohibitions of § 2.1-639.6 "[g]rants or other payments under any program wherein uniform rates for, or the amounts paid to, all qualified applicants are established solely by the administering governmental agency." When new provisions are added to existing legislation by amendment, a presumption arises that, "in making the amendment the legislature acted with full knowledge of, and in reference to, the existing law upon the same subject and the construction placed upon it by the courts." It is presumed further that the legislature acted purposefully with the intent to change existing law. Because the Act contains no definition of what constitutes a "payment," the plain and ordinary meaning of that term is controlling. A "payment" is defined as "[t]he fulfillment of a promise, or the performance of an agreement." When a lender lends money, it is fulfilling its part of an agreement with the borrower. Consequently, it is my opinion that a loan is a "payment" within the meaning of § 2.1-639.9(A)(7).

Based on the above, therefore, the exception provided in § 2.1-639.9(A)(7) for "payment under any program wherein uniform rates for, or the amounts paid to, all qualified applicants are established solely by the administering governmental agency" is applicable to HDA loans. Such loans, therefore, are excepted from the Act's general contract prohibitions, and, in my opinion, may be made available to HDA employees.

You next inquire whether the Act requires employee applicants for an HDA loan (1) to disqualify themselves from participating in their loan transactions, (2) to refrain from voting or acting on behalf of the HDA with respect to their loans, and (3) to disclose their loans and their disqualification in the public records of the HDA.

The exception provided in § 2.1-639.9(A)(7) is one of eight exceptions contained in § 2.1-639.9 applicable to the general prohibition in § 2.1-639.6(A) against a state employee having "a personal interest in a contract with the [governmental] agency of which he is an ... employee." When the General Assembly intends a statute to impose requirements, it knows how to express its intention. Thus, whereas several of the exceptions in this statute do provide that the employee not participate in the contract, the employee disqualify himself from participation, and the employee have his disqualification publicly recorded, these requirements are not imposed in § 2.1-639.9(A)(7). It is my opinion, therefore, that such requirements are not applicable to the exception set forth in § 2.1-639.9(A)(7).
ADMINISTRATION OF GOVERNMENT GENERALLY: VIRGINIA FREEDOM OF INFORMATION ACT.

Act prohibits local governing body from conducting meeting through any communication means where members are not physically assembled; does not prohibit all forms of communication among members when body is not physically assembled or sitting. Transmitting messages by electronic mail does not constitute conducting meeting through electronic means. Act does not prohibit local governing body members from sending electronic mail communications to other members. Official actions of governing body must be conducted at meeting where membership is physically present.

The Honorable Phillip Hamilton
Member, House of Delegates
January 6, 1999

You ask whether § 2.1-343.1(A), a portion of The Virginia Freedom of Information Act, §§ 2.1-340 through 2.1-346.1 of the Code of Virginia, prohibits an elected member of a local governing body from sending electronic mail communications to three or more other members of the governing body.

Section 2.1-343.1(A) provides:

It is a violation of [The Virginia Freedom of Information Act] for any political subdivision or any governing body, authority, board, bureau, commission, district or agency of local government to conduct a meeting
wherein the public business is discussed or transacted through telephonic, video, electronic or other communication means where the members are not physically assembled.\(^1\)

The remainder of § 2.1-343.1 establishes the requirements under which public bodies other than the local government bodies named in § 2.1-343.1(A) may hold meetings through telephonic or video means. The term “meeting(s)” is defined in § 2.1-341 to include “sitting physically … as a body or entity, or as an informal assemblage of … as many as three members” of a governing body.

Section 2.1-343.1(A) clearly prohibits a local governing body from “conduct[ing] a meeting” through any “communication means” other than the physical assembly of its members. It does not, however, prohibit all forms of communication among the members of a local governing body when that body is not physically assembled or sitting. In fact, § 2.1-343.2 expressly provides that, while the transaction of public business must be authorized by votes taken at public meetings, this requirement is not to be construed “to prohibit separately contacting the membership, or any part thereof, of any public body for the purpose of ascertaining a member’s position with respect to the transaction of public business.”

Electronic mail is commonly understood to be the electronic transmission of keyboard-entered correspondence over communication networks.\(^2\) An electronic mail system enables the sender to compose and transmit a message to a recipient’s electronic mailbox, where the message is stored until the recipient retrieves it.\(^3\) The message may be sent to several recipients at the same time.\(^4\)

Transmitting messages through an electronic mail system is essentially a form of written communication\(^5\) and, in my opinion, does not constitute “conduct[ing] a meeting … through … electronic … means” as contemplated by § 2.1-343.1(A).\(^6\) Accordingly, it is my opinion that § 2.1-343.1(A) does not bar members of a local governing body from sending electronic mail communications to other members of the governing body.\(^7\) All official actions of the governing body must, however, take place at a meeting where the membership is physically present.

\(^1\)Section 2.1-343.1(A) further provides that “[n]othing in this section shall be construed to prohibit the use of interactive audio or video means to expand public participation.”

\(^2\)PC Webopaedia Definition and Links (last modified Apr. 24, 1997) <http://www.pcwebopaedia.com/e-mail.htm>.

\(^3\)Id.

\(^4\)Id.

\(^5\)For purposes of this opinion, I consider only the basic type of electronic mail system commonly in use today and as described in the opinion. Thus, I do not consider whether systems exist that contain features making them similar to communications by audio or video means or whether the use of such systems would result in the same conclusion.

\(^6\)See 1983-1984 Op. Va. Att’y Gen. 440, 441 n.3 (enactment of prohibition against meetings through telephonic, video, electronic or other communication means may be viewed as legislative response to decision in Roanoke City School Board v. Times-World Corp., 226 Va. 185, 307 S.E.2d 256 (1983), in
which Supreme Court of Virginia held that local school board may discuss matters proper for closed meeting by telephone conference call because telephone calls do not constitute meetings).

7This is not to say that, in a particular factual setting, communicating through electronic mail could not violate some other provision of The Virginia Freedom of Information Act or conflict with the policy of the Act.

ADMINISTRATION OF GOVERNMENT GENERALLY: VIRGINIA FREEDOM OF INFORMATION ACT.

Members of state board representing quorum of board, who are not committee or acting on behalf of board, may confer informally regarding business of board.

The Honorable Walter A. Stosch
Member, Senate of Virginia
October 29, 1999

You ask whether the definition of “meeting” in § 2.1-341 of the Code of Virginia,1 a portion of The Virginia Freedom of Information Act, includes a situation in which two members of a seven-member state board confer informally by telephone or by personal contact regarding the business of the board, when such members are not standing or established committees of the board nor do they have the authority to act on the board’s behalf.

Section 2.1-341 provides that “‘meetings’ means the meetings, when sitting as a body or entity, or as an informal assemblage of (i) as many as three members, or (ii) a quorum, if less than three, of the constituent membership.”2 A 1981 opinion of the Attorney General concludes that this statute “permits two members of a public body to meet privately without violating [T]he Virginia Freedom of Information Act ..., except where such two members constitute a standing committee acting on behalf of the full membership of the public body.”3 I concur in this conclusion, and therefore must also conclude that, under the facts presented, two members4 of a state board,5 who are neither a committee nor acting on behalf of the board, may confer informally regarding business of the board.6

1“‘Meeting’ or ‘meetings’ means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.1-343.1, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body.” Section 2.1-341.


3Id.

4Note that a quorum for a seven-member board is four members. See Merriam-Webster’s Collegiate Dictionary 960 (10th ed. 1996) (defining “quorum” as “the number (as a majority) of officers or members of a body that when duly assembled is legally competent to transact business”).

5See § 2.1-341 (defining “public body” to include “any ... board ... of the Commonwealth”).

6Compare 1980-1981 Op. Va. Att’y Gen. 384, 385 (holding that meeting of two members of two-member committee, which committee constitutes organization or agency in Commonwealth, necessarily constitutes quorum of two-member committee, thus falling within purview of § 2.1-341); see also
§ 2.1-343(G) (stating that nothing in Virginia Freedom of Information Act "shall be construed to prohibit the gathering or attendance of two or more members of a public body (i) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business").

ADMINISTRATION OF GOVERNMENT GENERALLY: VIRGINIA FREEDOM OF INFORMATION ACT.

EDUCATION: SCHOOL BOARDS; SELECTION, ETC. — POWERS AND DUTIES OF SCHOOL BOARDS.

Annual meeting at which each school board is required to elect chairman from its membership falls within purview of Act's definition of 'meeting' which must be open to public. List of personnel-related actions which school board may discuss in executive session does not include election. Local school board may not meet in executive session to discuss selection of its chairman and vice-chairman.

The Honorable Patricia S. Ticer
Member, Senate of Virginia
April 5, 1999

You ask whether § 2.1-344(A)(1) of the Code of Virginia, a portion of The Virginia Freedom of Information Act (the "Act"), permits a local school board to meet in executive session to discuss the selection of its chairman and vice-chairman.

Section 22.1-76 provides that "at its annual meeting each school board shall elect one of its members as chairman [and] may also elect one of its members as vice-chairman." Clearly, the annual meeting is a meeting falling within the purview of the Act. Furthermore, a prior opinion of the Attorney General concludes that the election of a chairman must be conducted by an openly recorded vote taken in an open public session.

The General Assembly has determined that the Act is to be liberally construed so that citizens are afforded the opportunity to witness the operations of government. The Act requires that all meetings of public bodies be public meetings, "[e]xcept as otherwise specifically provided by law." Local school boards are "public bodies" under the Act. Section 2.1-344(A)(1) of the Act allows public bodies to discuss certain matters in executive or closed meetings, including discussion or consideration of "assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific public officers, appointees or employees of any public body." "Any exception or exemption from [the Act's] applicability shall be narrowly construed." The use of the word "shall" in a statute ordinarily implies that its provisions are mandatory. "[T]he primary objective of statutory construction is to ascertain and give effect to legislative intent." Analysis of legislative intent includes appraisal of the subject matter and purpose of the statute, in addition to its express terms. The purpose underlying a statute's enactment is particularly significant in construing it. Moreover, statutes should not be interpreted in ways that produce absurd or irrational consequences.
"Section 2.1-344(A)(1) allows public bodies to discuss certain personnel matters in executive or closed meetings." 14 This exception to the open meeting requirement allows private discussion of personnel matters involving individual employees 15 and is "designed to protect the privacy of individual employees of public bodies in matters relating to their employment." 16 Giving the required narrow construction to this exception, it is not available for a decision regarding which members of a school board shall serve as the board's chairman and vice-chairman; rather, it is available only to discuss "personnel considerations regarding the individuals [a public body] appoints or employs." 17 Section 22.1-76 specifically requires a school board to elect a chairman and permits the election of a vice-chairman. The list of personnel-related actions which, pursuant to § 2.1-344(A)(1), may be discussed in closed or executive session does not include an election.

A 1980 opinion summarily concludes that the exception provided in § 2.1-344(A)(1) permits a city council to meet in executive session to select one of its members to serve as mayor. 14 It is my opinion that such discussion, like the one in issue, does not concern a personnel matter as contemplated by the exception. Accordingly, to the extent the 1980 opinion is inconsistent with this opinion, it is overruled. 19

Based on the above, therefore, it is my opinion that a local school board may not meet in executive session to discuss the selection of its chairman and vice-chairman.

1Sections 2.1-340 to 2.1-346.1.
2Compare § 22.1-57.3:3(B) (providing that, in certain counties, school board member elected at large "shall be the chairman of the school board").
41987-1988 Op. Va. Att'y Gen., supra, at 35 (concluding that election of chairman of county school board by secret ballot, even though secret ballot voting was conducted in open public session, is violative of Act).
6Section 2.1-343.
7Section 2.1-341 (including "school boards" in Act's definition of "public body").
8Section 2.1-340.1 (emphasis added).
9See Andrews v. Shepherd, 201 Va. 412, 414, 111 S.E.2d 279, 281 (1959) ("shall" is word of command, used in connection with mandate); see also Schmidt v. City of Richmond, 206 Va. 211, 218, 142 S.E.2d 573, 578 (1965) ("shall" generally indicates procedures are intended to be mandatory, imperative or limited); Op. Va. Att'y Gen.: 1997 at 16, 17; 1996 at 20, 21; 1991 at 126, and opinions cited therein; id. at 127, 129, and opinions cited therein.
141998 Op. Va. Att'y Gen. 9, 10. This prior opinion concludes that a city council may not meet in executive session to discuss personnel matters related to city employees not under its authority. Id. at 11.


TAXATION: GENERAL PROVISIONS OF TITLE 58.1 (SECRET OF INFORMATION) — LOCAL OFFICERS - COMMISSIONERS OF THE REVENUE.

Freedom of Information Act does not require office of commissioner of revenue to copy personal property book. Records custodian may place burden for copying records on requester if custodian has no system or computer database available that is capable of producing copies. Act expressly grants citizens right to copy official records required by law to be open for inspection. Because electronic system for producing copies of book does not exist does not prevent persons within commissioner's office or requester from making copies of book. Privacy Protection Act does not prohibit disclosure of personal information required to be disclosed under Freedom of Information Act. Only that information required by law to be entered in personal property book is subject to disclosure; other information relating to taxpayer's personal property is protected by secrecy requirements, unless some other authority permits its release.

The Honorable Joyce A. Fuller
Commissioner of the Revenue for Franklin County
June 1, 1999

You ask whether The Virginia Freedom of Information Act, §§ 2.1-340 through 2.1-346.1 of the Code of Virginia, requires that you, in addition to making the personal property book available for inspection, furnish a requester copies of the book if a data processing program capable of producing such copies is not presently in operation.

Section 2.1-342(A) requires that, "[e]xcept as otherwise specifically provided by law," official records must be open for inspection and copying by any citizen of the Commonwealth during the regular office hours of the custodian of the records. Prior opinions of the Attorney General conclude that the personal property book is a "public assessment book" not encompassed within the secrecy provisions of § 58.1-3 and is thus subject to disclosure under § 2.1-342(A).¹

If records are subject to disclosure, the custodian is to provide the requested records to the citizen within five work days from receipt of the request unless additional time is necessary.² Section 2.1-342(A) also permits "reasonable charges for the copying, search time and computer time expended in the supplying of such records."³ Public bodies are not required, however, to "create or prepare a particular requested record if it does not
already exist” or to “convert an official record available in one form into another form at
the request of the citizen.”

It is my opinion that, while § 2.1-342 allows your office to copy the personal property
book and charge for the copying and, if necessary, to extend the five-day time limit for
responding to the request, the section does not require that your office actually make
the copies. Rather, in stating that official records are to be “open to inspection and copy-
ing by any citizens of the Commonwealth,” the statute suggests that the custodian of
the records may place the burden for copying the records on the citizen making the
request if the custodian has no system or computer database available that is capable of
producing the copies.

The Virginia Freedom of Information Act does not, however, permit you to refuse a
request for “copies” of the personal property book on the grounds that the request
would require you “to create or prepare a particular requested record” that does not
already exist. The requested document in this instance is the personal property book, a
record that clearly exists. Section 2.1-342(A) expressly grants citizens not only the right
to inspect official records but also the right to copy the records. That an electronic
system for producing copies of the book does not exist does not prevent persons within
your office or the requester himself from making copies of the book.

You ask also whether § 2.1-378(B)(9), a portion of the Privacy Protection Act of 1976,
would prohibit your providing copies of the personal property book, even if a program
existed to provide the copies. Section 2.1-378(B)(9) states the General Assembly’s
finding that there be “a clearly prescribed procedure to prevent personal information
collected for one purpose from being used for another purpose.” You express your con-
cern that the information contained in the personal property book is collected for tax
purposes and that distribution to the public for other uses would be inconsistent with
this legislative finding.

The Privacy Protection Act requires that agencies maintaining systems that include
personal information shall “[c]ollect, maintain, use, and disseminate only that personal
information permitted or required by law to be so collected, maintained, used, or
disseminated.” Prior opinions of the Attorney General conclude that the legislature
clearly does not intend the Privacy Protection Act to prohibit the disclosure of personal
information required by law to be disclosed under The Freedom of Information Act.
The distribution of copies of the personal property book thus is not inconsistent with
the legislative finding stated in § 2.1-378(B)(9).

Finally, you ask whether documents in your office containing information that will
ultimately be included in the personal property book, such as personal property forms,
may be released under The Freedom of Information Act without violating the secrecy
provisions of § 58.1-3. If the form is a personal property tax return, it is specifically
exempt from disclosure under § 2.1-342(B)(3). As to other personal property docu-
ments that you may have in your possession, it is my opinion that if the documents con-
tain only “[m]atters required by law to be entered” in the personal property book,
they are not protected by the secrecy requirement of § 58.1-3, notwithstanding the fact that the information has not yet been transferred to the book.

To the extent, however, that the documents contain information respecting "the transactions, property, including personal property, income or business of any person, firm or corporation" that is not required to be entered in the personal property book, the forms would be protected by the secrecy requirement of § 58.1-3. Pursuant to § 58.1-3115, the personal property book is to contain only the name, address and amount of the assessment. Accordingly, as prior opinions of the Attorney General conclude, other information relating to the taxpayer's personal property is subject to the secrecy provisions of § 58.1-3 unless some other authority would permit its release.  


2See § 2.1-342(A) (allowing seven additional days for requests "practically impossible" to satisfy within five days (§ 2.1-342(A)(4)), and authorizing court to grant additional period for extraordinary volume of records).

3See also § 58.1-3122.1 (permitting commissioner of revenue to charge no more than 50¢ per page for photocopying papers or records upon request of taxpayer).

4Section 2.1-342(A).

5Section 2.1-342(A) (emphasis added).

6If a computer database containing the information exists, it must be made available to the public at a reasonable cost. See § 2.1-342(A). If you choose to require the requester to make the copies, you must, of course, have reasonable facilities available within your office for the requester to copy the book.

7Section 2.1-342(A).

8That you are not required to "convert an official record available in one form into another form at the request of the citizen" likewise would not apply to requests for copies of official records. Section 2.1-342(A). Moreover, even in instances in which the custodian is under no statutory obligation to provide records in the form requested, The Virginia Freedom of Information Act requires that "[t]he public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested." Section 2.1-342(A).

9Sections 2.1-377 to 2.1-386.

10Section 2.1-380(1) (emphasis added).


12You state that you believe the requester intends to use the information to solicit business from the owners of personal property. No provision of The Virginia Freedom of Information Act permits the custodian of the personal property book to deny access on the basis of a citizen's intended use of the information in the book.

13While you do not describe the type of personal property forms that you may have in your possession, I assume for purposes of this opinion that the forms would constitute "official records" open for inspection or copying under § 2.1-342(A), unless otherwise specifically provided by law. Section 2.1-341 defines "official records" as "all written or printed books, papers, letters, documents, maps and tapes, photographs, films, sound recordings, reports or other material, regardless of physical form or characteristics, prepared, owned, or in the possession of a public body or any employee or officer of a public body in the transaction of public business."

14Section 58.1-3(A)(1).

15Section 58.1-3(A).
AGRICULTURE, HORTICULTURE AND FOOD: COMPREHENSIVE ANIMAL LAWS.

Dog that attacks, bites or injures persons who intervene in dog's attack on another dog is not excluded from definition of 'dangerous dog' for purposes of obtaining summons to require owner to appear in general district court. Whether animal is dangerous dog subject to provisions in ordinance regulating such dogs is question of fact for determination by court after hearing evidence.

Mr. Paul M. Mahoney
County Attorney for Roanoke County
May 4, 1999

You ask whether a dog would be considered a "dangerous dog" under § 3.1-796.93:1 of the Code of Virginia, if the dog bites a person who intervenes in a fight between two dogs.

Section 3.1-796.93:1(A) authorizes a local governing body to "enact an ordinance regulating dangerous dogs and vicious dogs." Section 3.1-796.93:1(B) defines "dangerous dog" as "a canine or canine crossbreed which has bitten, attacked, or inflicted injury on a person or companion animal, other than a dog, or killed a companion animal." An ordinance enacted pursuant to § 3.1-796.93:1 is to contain the procedure set out in § 3.1-796.93:1(C) for determining whether a dog is "dangerous." Section 3.1-796.93:1(C)(1) provides:

Any animal control officer who has reason to believe that a canine or canine crossbreed within his jurisdiction is a dangerous dog ... shall apply to a magistrate of the jurisdiction for the issuance of a summons requiring the owner or custodian, if known, to appear before a general district court at a specified time.

The summons is to set forth "the nature of the proceeding and the matters at issue." If the court determines from the evidence that the dog is "dangerous," the court is to order the owner to comply with the provisions of the ordinance.
You state that several magistrates have refused to issue warrants under the county's ordinance in situations in which a dog inflicts injury on a person who, in a fight between two dogs, intervenes to defend his own dog from the attack. You indicate that the magistrates construe the phrase "other than a dog" to exclude totally from the definition of "dangerous dog" a dog who attacks another dog. It is your opinion that the phrase "other than a dog" does not exclude from the definition a dog who inflicts injury on a person, notwithstanding the fact that the injury occurred in connection with the dog's attacking another dog.

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the legislature. When the language of a statute is plain and unambiguous, however, it is presumed that the legislature intended what it plainly expressed, and no room is left for statutory interpretation. The language of § 3.1-796.93:1(B) is plain and unambiguous. A dog is defined as dangerous for purposes of the statute if the dog bites, attacks, or inflicts injury on a person or on a companion animal. While the definition excludes another dog from the language "companion animal," it contains no exclusion for biting, attacking or inflicting injury on persons. It is my opinion that the statute does not exclude a dog who attacks, bites or injures persons who intervene in a dog's attack on another dog from the definition of "dangerous dog" for purposes of obtaining a summons to require the owner to appear in general district court. Whether the animal is a dangerous dog and thus subject to the provisions in the ordinance regulating dangerous dogs is a question of fact for determination by the court after hearing the evidence.

1Section 3.1-796.93:1(C)(1).

2Id. The ordinance is to require that the owner of a dangerous dog obtain a "dangerous dog registration certificate" and identification tag from the animal control officer. Section 3.1-796.93:1(C)(3). The ordinance also is to require that an animal found to be a dangerous dog is to be kept indoors or in an enclosed and locked structure and, when off the owner's property, kept on a leash and muzzled. Section 3.1-796.93:1(C)(5). Section 3.1-796.93:1(C)(2) contains circumstances under which a dog is not to be found a dangerous dog. For example, if, at the time of the acts complained of, the dog was responding to injury or protecting itself, the dog shall not be found to be a dangerous dog. Id. Whether any of the circumstances set out in § 3.1-796.93:1(C)(2) applies is a question of fact for determination by the judge.

3Section 3.1-796.93:1(B).

4Id.


7Section 3.1-796.93:1(B), (C)(1).

8Section 3.1-796.93:1, as amended in 1997, also authorizes an ordinance to provide that the local animal control officer may determine that a dog is a dangerous dog and may order the owner to comply with the provisions of the ordinance regulating dangerous dogs. See 1997 Va. Acts ch. 892, at 2403, 2404 (adding subsection E to § 3.1-796.93:1); see also 1998 Va. Acts ch. 817, at 1985, 1991 (amending § 3.1-796.93:1(E) by replacing term "warden" with "control officer"). The owner may appeal the control officer's finding to the general district court for a trial on the merits. Section 3.1-796.93:1(E). This amendment overrules a 1996 opinion of the Attorney General. See 1996 Op. Va. Att'y Gen. 17.
1999 REPORT OF THE ATTORNEY GENERAL

BANKING AND FINANCE: MONEY AND INTEREST.

In loan made by bank, savings institution, industrial loan association or credit union, lenders and borrowers of $5,000 or more may agree in contract of indebtedness to imposition of higher interest rate upon failure of borrower to pay loan. Payment of late charge is not considered payment of interest. Five percent late charge limitation is not applicable to loan in initial principal amount of $5,000 or more.

The Honorable Walter A. Stosch
Member, Senate of Virginia
June 8, 1999

You inquire regarding the application of certain provisions in Chapter 7.3 of Title 6.1 of the Code of Virginia regarding money and interest. You first ask whether §§ 6.1-330.61 and 6.1-330.55 permit a lender of $5,000 or more to raise the contract rate of interest on a loan to consumers should the borrower default on one or more installment loan payments.

Section 6.1-330.61 provides that “[n]o person shall use any provision of Chapter 7.3 of Title 6.1 or “any other section relating to usury to avoid or defeat the payment of interest, or any other sum,” in connection with a loan made by “a bank, savings institution, industrial loan association or credit union, provided the initial principal amount of the loan is $5,000 or more.” (Emphasis added.) Section 6.1-330.55 similarly provides that “[i]n the case of any loan upon which a person is not permitted to plead usury, interest and other charges may be imposed and collected as agreed by the parties.” (Emphasis added.)

Under recognized principles of statutory construction, statutes dealing with the same subject matter must be read together to give effect to the legislative intent. Such statutes should not be considered in isolation, but must be construed to produce a harmonious result, giving effect to all provisions if possible. Consequently, it is my opinion that banks, savings institutions, industrial loan associations and credit unions (“lender”), and their borrowers of amounts of $5,000 or more, may agree in the contract of indebtedness to the imposition of a higher interest rate should the borrower default on the payment of the loan evidenced by the contract of indebtedness.

You next ask whether §§ 6.1-330.55 and 6.1-330.61 prohibit a borrower from raising as a defense the late charge limitations contained in § 6.1-330.80 when the parties to an installment loan contract have agreed to the imposition of late charges upon failure of the borrower to make the loan payment(s).

Section 6.1-330.80(A) permits “[a]ny lender or seller” to impose a late charge upon borrowers "for failure to make timely payment of any installment due on a debt, ... provided that such late charge does not exceed five percent of the amount of such installment payment and that the charge is specified in the contract between the lender or seller and the debtor.” The language of the statute is plain and must be given its clear and unambiguous meaning. By its plain language, § 6.1-330.80 applies broadly to any “lender” or “seller.”
The payment of a late charge has long been considered not to constitute the payment of interest under a traditional usury law analysis. Regardless of whether a late charge is considered interest, the payment of a late charge clearly constitutes the payment of "any other sum," as that term is used in § 6.1-330.61, and "other charges," as used in § 6.1-330.55.

Statutes relating to the same subject "are not to be considered as isolated fragments of law, but as a whole, or as parts of a great connected, homogeneous system, or a single and complete statutory arrangement." Such statutes must be construed to operate in harmony with the system if their terms, fairly and reasonably considered, will permit such construction. This rule of construction is employed when two or more statutes can be reconciled. Construing §§ 6.1-330.61, 6.1-330.55 and 6.1-330.80 to produce a harmonious result, therefore, it is my opinion that the late charge limitations of § 6.1-330.80(A) are not applicable to loans made by a lender, provided the initial principal amount of the loan is $5,000 or more. Accordingly, on such loans, I am of the opinion that § 6.1-330.80 may not be used as a defense to the payment of a late charge that exceeds five percent of the amount of the installment loan payment to which the parties have previously indicated agreement in the installment loan contract.

1Sections 6.1-330.49 to 6.1-330.90.
7See Winslow v. Dawson, 1 Va. (1 Wash.) 153 (1792); see also Barbour v. Handlos Real Est. and Bldg. Corp., 152 Mich. App. 174, 393 N.W.2d 581 (1986); Homewood Inv. Co., Inc. v. Moses, 96 Nev. 326, 608 P.2d 503 (1980). Recent federal decisions, however, have held that late charges fall within the scope of "interest" for purposes of certain federal banking statutes. See Greenwood Trust Co. v. Com. of Mass., 971 F.2d 818, 830-31 (1st Cir. 1992) (late charges are interest for purposes of Depository Institutions Deregulation and Monetary Control Act of 1980); accord Smiley v. Citibank (South Dakota), N. A., 517 U.S. 735 (1996) (holding that Comptroller of the Currency reasonably interpreted term "interest" in National Bank Act to include late-payment fees, and that petitioner failed to establish that Court should not accord its usual deference to Comptroller’s interpretation of ambiguous provision of Act).
CIVIL REMEDIES AND PROCEDURE: ACTIONS - UNLAWFUL ENTRY AND DETAINER — EXECUTIONS AND OTHER MEANS OF RECOVERY.

Officer to whom writ of possession has been delivered in unlawful detainer action must provide defendant 72-hour notice of intent to execute writ, notwithstanding court's 'immediate possession' direction on writ.

The Honorable John R. Newhart
Sheriff for the City of Chesapeake
May 20, 1999

You ask what constitutes immediate possession under § 8.01-129 of the Code of Virginia.

You state that, in unlawful detainer actions, the office of the sheriff has been receiving writs of possession on which the courts have written "immediate possession." Your office has been posting a seventy-two hour notice to vacate and proceeding with the eviction as soon as possible following this period. You question whether this procedure is consistent with § 8.01-129.

Section 8.01-129 provides for an appeal to the circuit court from a judgment of a general district court in a proceeding for unlawful entry and detainer. The appeal must be taken and the required security posted within ten days of the date of the general district court judgment. Section 8.01-129 further provides:

Unless otherwise specifically provided in the court's order, no writ of execution shall issue on a judgment for possession until the expiration of this ten-day period, except in cases of judgment of default for the nonpayment of rent where the writ of execution shall issue immediately upon entry of judgment for possession, if requested by the plaintiff.

Section 8.01-470 governs the issuance and execution of a writ of possession on a judgment for the recovery of specific property:

In cases of unlawful entry and detainer and of ejectment, the officer to whom a writ of possession has been delivered to be executed shall, at least seventy-two hours before execution, serve notice of intent to execute, including the date and time of execution, on the defendant in accordance with § 8.01-296, with a copy of the writ attached.

The primary goal of statutory construction is to discern and give effect to the intent of the legislature. In determining legislative intent, statutes dealing with the same subject matter should be construed together in order to give effect to all acts of the legislature. While § 8.01-129 provides that the court is to issue the writ of execution "immediately upon entry of judgment for possession," the statute contains no language suggesting a legislative intent to override the seventy-two hour notice requirement imposed on officers by § 8.01-470. Both statutes thus should be given full effect to the extent possible. Accordingly, it is my opinion that, notwithstanding the courts' "immediate possession" direction on a writ of execution issued under § 8.01-129, the officer to whom the writ of execution is delivered is to provide the seventy-two hour notice mandated by § 8.01-470.
Sections 8.01-124 to 8.01-130 comprise the unlawful entry and detainer statutes. A motion for judgment for unlawful entry and detainer may be heard in general district court if the summons is issued by a magistrate. Section 8.01-126. The case may be removed to the circuit court if the amount in controversy exceeds $500. Section 8.01-127.

The exception clause for cases of judgment of default for the nonpayment of rent was added to the statute at the 1998 Session of the General Assembly. See 1998 Va. Acts ch. 750, at 1813.


CIVIL REMEDIES AND PROCEDURE: EXECUTIONS AND OTHER MEANS OF RECOVERY — PROCESS.

COURTS OF RECORD: CLERKS, CLERKS' OFFICES AND RECORDS — FEES.

Sheriff, and not private process server, serves 72-hour notice to vacate and may charge each person served with notice $12 fee; may charge additional $12 fee for execution of writ of possession.

The Honorable Eric Cantor
Member, House of Delegates
August 27, 1999

You ask several questions regarding the fees to be charged for service of notice to vacate and execution of writ of possession in unlawful detainer cases.

You first inquire whether, pursuant to § 8.01-470 of the Code of Virginia, a twelve dollar fee for serving a notice to vacate within seventy-two hours and an additional twelve dollar fee for executing the writ of possession may be charged in unlawful detainer cases.

Section 8.01-470 provides, in part:

In cases of unlawful entry and detainer and of ejectment, the officer to whom a writ of possession has been delivered to be executed shall, at least seventy-two hours before execution, serve notice of intent to execute, including the date and time of execution, on the defendant ..., with a copy of the writ attached.

A 1997 opinion of the Attorney General concludes that pursuant to § 8.01-470, "[t]he notice of an intent to execute [a writ of possession] must be served at least seventy-two hours before execution and the notice itself must include the date and time of execution." Accordingly, the opinion states that "[p]ursuant to [§ 17.1-272], a sheriff may charge twelve dollars for serving a notice of intent to execute a writ of possession." Section 17.1-272(A)(6) authorizes a fee of twelve dollars for levying an execution. Thus, this fee may likewise be charged. It is my opinion, therefore, that a sheriff may charge a twelve-dollar fee for each person served with a notice to vacate within seventy-two hours and may charge an additional twelve-dollar fee for executing the writ of possession.
You next inquire whether the property owner first may pay a fee for service of the seventy-two hour notice to vacate and pay a subsequent twelve-dollar fee should it be necessary to execute the writ of possession.

"The fees set out in [§ 17.1-272] shall be allowable for services provided by such officers." Thus, the fees chargeable for services of a sheriff in carrying out the instances of process and service set forth in § 17.1-272 are for services actually rendered. Therefore, a twelve-dollar fee may be imposed for service by the sheriff of a notice to vacate. 4 Another twelve-dollar fee subsequently may be charged for the sheriff's execution of a writ of possession; however, if the sheriff does not execute the writ of possession, the latter fee may not be charged. 5

Lastly, 6 you ask whether a private process server may serve the seventy-two hour notice to vacate.

"[U]nder § 8.01-293, 7 service by a qualified private process server and service by a sheriff are equally legitimate forms of service." 8 Previous opinions of the Attorney General recognize that "[t]o avoid the anticipated increase in the cost of bringing suit in general district court, some volume filers may use private process servers rather than the local sheriff to effect service of process." 9 Section 8.01-293(B), however, expressly provides that "only a sheriff may execute an order or writ of possession ... arising out of an action in unlawful entry and detainer or ejectment." Section 8.01-470 directs "the officer to whom a writ of possession has been delivered to be executed" to serve the notice of intent to execute such writ "at least seventy-two hours before execution." Reading these two statutes together, 10 it is my opinion that the service of the notice to vacate is restricted to the sheriff. Accordingly, it is my opinion that a private process server may not effect service of the seventy-two hour notice to vacate.

2 Id. (citing § 14.1-105, predecessor statute to § 17.1-272).
3 Section 17.1-272(C).
4 For purposes of clarification, it is my opinion that service of the notice to vacate (to which § 8.01-470 requires that a copy of the writ of possession be attached) is equivalent to service of the writ of possession; thus, only one $12 charge per person for such service is allowable. Compare 1987-1988 Op. Va. Att'y Gen. 128, 129 (concluding that motion for judgment and notice of motion for judgment are to be considered as single process and one fee charged for their service).
5 For example, where a tenant vacates the premises as a result of receiving the notice to vacate, making it unnecessary for the sheriff to execute the writ of possession (assuming the sheriff is so apprised).
6 Because it is my opinion that only one $12 fee may be charged for serving the notice to vacate (with the writ of possession attached to the notice), it is unnecessary to address your inquiry concerning a $24 fee for such service. See supra note 4.
7 Section 8.01-293 authorizes certain persons to serve process and includes sheriffs and private process servers. Note that only a sheriff, as opposed to a private process server, may execute a writ of possession. See § 8.01-293(B).
You ask whether an attorney-in-fact named in a confessed judgment note may appoint another party to act in his stead by executing a substitute power of attorney in which he names such party.

You relate that a debtor has executed a confessed judgment note. You also relate that, in accord with § 8.01-435 of the Code of Virginia, the note names a specific individual as attorney-in-fact. You state that this attorney-in-fact had been the general counsel to the creditor at the time he was so named. You further state that this individual no longer is employed by the creditor and has moved out-of-state. Finally, you advise that he has executed a substitute power of attorney, in which he appoints three attorneys from the law firm which currently represents the creditor to act in his stead.

Section 8.01-435 provides:

Confession of judgment under the provisions of § 8.01-432111 may be made either by the debtor himself or by his duly constituted attorney-in-fact, acting under and by virtue of a power of attorney duly executed and acknowledged by him ..., provided, however, that any power of attorney incorporated in, and made part of, any note or bond authorizing the confession of judgment thereon against the makers and endorsers in the event of default in the payment thereof at maturity need not be acknowledged, but shall specifically name therein the attorney or attorneys or other person or persons authorized to confess such judgment and the clerk's office in which the judgment is to be confessed. [Emphasis added.]

A principle of statutory construction provides that language of a statute that is plain should be given its clear and unambiguous meaning. Additionally, it is axiomatic that the use of the term "shall" in a statute indicates that the General Assembly intended its terms to be mandatory. Furthermore, the primary goal of statutory construction is to ascertain and give effect to the intent of the legislature.

Section 8.01-435 provides that any power of attorney incorporated in, and made part of, a note authorizing the confession of judgment shall specifically name the attorney(s)
or other person(s) authorized to confess judgment in the note. A 1986 opinion of the
Attorney General concludes that "the purpose of this provision is to limit the former
common practice of creditors to take from the debtor a general power of attorney which
authorized any attorney to confess judgment in any court." 5 Taking this purpose into
account, coupled with the clear and mandatory language of the statute, it is my opinion
that only the debtor or the person(s) 6 named in the note itself as the attorney-in-fact is
eligible to confess the judgment.

Furthermore, the statutes regarding judgments confessed in the clerk’s office “reflect a
general concern with the possible abuse of confessed judgments, particularly those
taken pursuant to a power of attorney waiving the right to due process.” 7 Moreover,
“[g]iven the considerable authority that is created by the power to confess judgment,
§ 8.01-435] should be strictly construed to prevent abuse.” 8 Accordingly, only the
attorney-in-fact named in the note is authorized to confess judgment under § 8.01-435.

Based on the above, it is my opinion that whereas the attorney-in-fact specifically
named in the note in issue is authorized to confess judgment pursuant to the note, the
individuals named in a substitute power of attorney executed by him are not so
authorized.

1Section 8.01-432 provides for the confession of judgments in the clerk’s office of a circuit court.
Att’y Gen. 113, 113.
cited therein.
6Id. (concluding that law firm may be specifically named in note as attorney-in-fact).
7KENT SINCLAIR & LEIGH B. MIDDLEDITCH, JR., VIRGINIA CIVIL PROCEDURE § 14.8, at 626 (3d ed. 1998); see

CIVIL REMEDIES AND PROCEDURE: MEDICAL MALPRACTICE.

Ore tenus hearings of medical malpractice review panel must be open to public and media, and
are to be closed only during deliberation of panel to reach decision.

The Honorable Emmett W. Hanger Jr.
Member, Senate of Virginia
May 10, 1999

You ask whether the ore tenus 1 hearings of medical malpractice review panels are to be
open to the public and media.

A newspaper constituency in your district advises you that the news media and others
were excluded from the courtroom where an ore tenus hearing was held before a medical
malpractice review panel. The constituency believes that a medical malpractice review panel ore tenus hearing is similar to a civil proceeding, and, therefore, public access may not be denied without some compelling interest. The constituency has observed certain characteristics of an ore tenus hearing that are similar to a civil proceeding, such as: (1) the panel hearing convenes in a courtroom and is presided over by a circuit court judge; (2) the panel meets after the close of discovery to hear evidence from witnesses and allow cross-examination; and (3) the panel issues a written opinion. The constituency also believes that the composition of the ore tenus panel hearing resembles that of a civil proceeding. For example, the panel is composed of two impartial attorneys, two impartial health care providers, and a judge. In addition, the panel's issuance of a written opinion as to malpractice, which later may be admitted in a court action, reflects the apparent intent of the General Assembly to have the panel act as an informed jury to reduce frivolous and dubious claims.

The medical malpractice review panels and methods for reporting medical malpractice claims were implemented in response to a perceived medical malpractice crisis in the mid-1970s. Article 1, Chapter 21.1 of Title 8.01, §§ 8.01-581.1 through 8.01-581.12:2 of the Code of Virginia, details the procedures for selecting a medical malpractice review panel and arbitrating malpractice claims. Section 8.01-581.2(A) allows a claimant or health care provider to request a panel to review a malpractice claim:

At any time within thirty days from the filing of the responsive pleading in any action brought for malpractice against a health care provider, the plaintiff or defendant may request a review by a medical malpractice review panel established as provided in § 8.01-581.3. The request shall be forwarded by the clerk of the circuit court to the Clerk of the Supreme Court of Virginia. Upon receipt of such request, the Supreme Court shall select the panel members as provided in § 8.01-581.3:1. If a panel is requested, proceedings on the action based on the alleged malpractice shall be stayed during the period of review by the medical review panel, except that the judge may rule on any motions, demurrers, or pleas that can be disposed of as a matter of law and, prior to the designation of the panel, shall rule on any motions to transfer venue.

When a review panel is requested, the Supreme Court of Virginia must designate two impartial attorneys and two impartial health care providers, from a preapproved list, to comprise the panel, along with a circuit court judge who presides over the panel. Either the claimant or health care provider may request a hearing on any claim referred to the panel. Should a request for a panel hearing be made, § 8.01-581.5 provides that "the medical review panel shall conduct a hearing thereon in accordance with § 8.01-581.6." The use of the word "shall" in a statute indicates that the General Assembly intended its terms to be mandatory. It is well-settled that when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.
Pursuant to the requirements of § 8.01-581.11, the Chief Justice of the Supreme Court of Virginia has promulgated rules "to carry out the provisions of [Chapter 21.1]." The rules govern the practice and procedures of malpractice review panels. Rule 5 of the Medical Malpractice Rules of Practice provides that "[e]ither party may request the panel to conduct an ore tenus hearing and, when such a hearing is requested, it shall be held." Rule 6 sets forth the procedural rules applicable to the conduct of the hearings. Pursuant to Rule 6(h), "[w]itnesses other than the parties or one representative of each may be excluded at the discretion of the judge." Rule 6(j) lists the general procedures to be followed at an ore tenus hearing. These procedures allow lawyers representing the parties to make opening statements, produce evidence, examine and cross-examine witnesses, and present oral argument. Rule 6(j)(13) specifically requires that, "[a]t the conclusion of the hearing, the panel will deliberate in executive session" in order to reach a decision.

It is apparent that the ore tenus hearings of the panel under the procedures contained in the Medical Malpractice Rules of Practice are to be open to the public and media, and are to be closed only during such time as the panel deliberates to reach a decision in the matter. If the ore tenus panel hearings were closed to the public and media, there would be no need to have a rule requiring that the panel convene in executive session to reach a decision. I am, therefore, of the opinion that the ore tenus hearings of medical malpractice review panels must be open to the public and media.


See 1976 Va. Acts ch. 611, at 784; see also DiAntonio v. Northampton-Accomack Memorial, 628 F.2d 287 (4th Cir. 1980). In the DiAntonio case, the Fourth Circuit noted the following with respect to the legislative intent of the Virginia Medical Malpractice Act: "There was a legislative finding that the high cost of medical malpractice insurance was beyond the means of some health care providers and that they were ceasing to render services. It was thought that passage of the Act would lower the cost of medical malpractice insurance, since the panel would weed out frivolous claims and would perform a mediation function with respect to other claims. In consequence of the panel's performance of these functions, it was believed that the amount of medical malpractice litigation would be substantially reduced, thus substantially lowering the cost of medical malpractice insurance." 628 F.2d at 290.

Section 8.01-581.3 stipulates that the medical review panel be selected "from a list of health care providers submitted by the Board of Medicine and a list of attorneys submitted by the Virginia State Bar."

Section 8.01-581.5.


See id. R. 6(j)(4)-(12), at 394.

Id. R. 6(j)(13), at 394.

I note that it is an elementary rule of statutory interpretation that the construction given to statutes by public officials charged with their administration is entitled to great weight and, in doubtful cases, will be regarded as decisive. See Bed Company v. Corporation Commission, 205 Va. 272, 136 S.E.2d 900 (1964).
The Honorable W.A. Talley Jr.
Judge, Goochland County General District Court
June 7, 1999

You ask whether § 8.01-296(2)(a) of the Code of Virginia permits a process server to serve civil process on the in-laws residing in the usual place of abode of the intended recipient.

Section 8.01-296 provides for the service of process in civil proceedings for which no other particular mode of service is prescribed. Section 8.01-296(1) provides that such process may be served “[b]y delivering a copy thereof in writing to the party in person.” Section 8.01-296(2)(a) provides that substituted service may be effected,

[i]f the party to be served is not found at his usual place of abode, by delivering a copy of such process and giving information of its purport to any person found there, who is a member of his family, other than a temporary sojourner or guest, and who is of the age of sixteen years or older[.]

Your inquiry concerns whether the phrase “member of his family,” as used in § 8.01-296(2)(a), includes in-laws residing in the usual place of abode of the party intended to be the recipient of process.

Section 8.01-296(2)(a) provides no statutory definition for the term “family.” In the absence of a statutory definition, the term “family” should be given its common, ordinary and accepted meaning. “Family” is defined as “[a] fundamental social group in society consisting esp. of a man and woman and their offspring.”

In the case of Fowler v. Mosher, the Supreme Court of Virginia discussed the legal definition of “family,” stating that, “[i]n a limited sense [family] signifies the father, mother and children. In a more extensive sense it comprehends all the individuals who live under the authority of another.” In this case, the Court considered the legality of a substituted service of process whereby a deputy sheriff had left a copy of the notice with a boarder at the home of the appellant. The boarder was over sixteen years of age and the deputy sheriff had explained its purport to her. The Court held that such service was not sufficient, stating that the term “family” did not contemplate “a mere boarder” in the house. The Court added that the purpose of the statute “was to require service upon some person who would feel interested by the ties of consanguinity [blood], and the relation of dependence, to communicate the fact of the service to the party for whom it was designed.”
The "authority to issue and serve process, as provided for by constitution and statute, must be strictly construed." "Section 8.01-296(2) sets forth the manner of serving papers upon natural persons by substituted service." and is to be used where "no particular mode of service is prescribed." 

"[T]his type of service has no validity unless the terms of the statute are strictly followed." Employing strict construction to the phrase "member of his family" and consistent with Fowler, the phrase would thus encompass relationships of consanguinity to the party. The relationship between an in-law and a particular individual is not a relationship of consanguinity. Although it is arguable that the relationship of an in-law residing in the home of a party upon whom service of process is sought may exceed that of a "mere boarder," strict construction of the terms in the statute requires a very limited application.

Accordingly, it is my opinion that the phrase "member of his family," as used in § 8.01-296(2)(a), would not include an in-law residing in the usual place of abode of a party subject to the substituted service of process provided therein.

1."Compare § 16.1-228 (stating specific definition for phrase "family or household member").


5."Id. at 423-24, 7 S.E. at 543.

6."Id. at 423, 7 S.E. at 543.

7."Id. at 424, 7 S.E. at 543.

8."Id.


CIVIL REMEDIES AND PROCEDURE: PROCESS.

CRIMES AND OFFENSES GENERALLY: CRIMES AGAINST PROPERTY — TRESPASS TO REALTY — CRIMES AGAINST PEACE AND ORDER — CRIMES AGAINST THE ADMINISTRATION OF JUSTICE.

CONSTITUTION OF THE UNITED STATES: FOURTH AMENDMENT.

Private process server is considered officer or sheriff for purpose of serving process; enters public area of business to serve process under authority of law. Entry into private offices of business area where there is justifiable expectation of privacy to serve process may constitute unreasonable search or seizure. In such case, process server would not be acting under authority of law and would be liable for trespass. Extent to which portion of business establishment constitutes private area is question of fact. Person acting jointly or in combination with other person(s) to resist or obstruct lawful service of process is guilty of misdemeanor violation. Private process server is not law-enforcement officer against whom any attempt to interfere with execution of service of process would constitute misdemeanor.
You ask several questions regarding the authority of private process servers acting pursuant to § 8.01-293(A) of the Code of Virginia.

Section 8.01-293(A)(2) provides that, in addition to the sheriff, "[a]ny person of age eighteen years or older and who is not a party or otherwise interested in the subject matter in controversy" is eligible to serve process. Section 8.01-293(A) further provides:

> Whenever in this Code the term "officer" or "sheriff" is used to refer to persons authorized to make, return or do any other act relating to service of process, such term shall be deemed to refer to any person authorized by this section to serve process.

Prior opinions of the Attorney General recognize that, under the plain language of the statute, service by a sheriff and service by a private process server are of equal force and legitimacy.

Your first question concerns the application of § 18.2-119 to a private process server. Section 18.2-119 provides that "[i]f any person without authority of law goes upon or remains upon the lands, buildings or premises of another" after having been prohibited by the owner or other person lawfully in charge from doing so, the person is guilty of a Class I misdemeanor. (Emphasis added.) You ask whether, because § 18.2-119 provides that a person must be acting "without authority of law," a private process server would be subject to prosecution for trespass under the statute. You ask specifically whether a private process server has authority under the law to enter a suite of offices and look in individual offices for the person named on the process.

It is my opinion that since a private process server is considered an "officer" or "sheriff" for purposes of serving process, a private process server who enters the public area of a business does so under "authority of law" for purposes of § 18.2-119. Whether a process server would have the authority to enter private offices, however, will depend on whether the entry would constitute an unreasonable search or seizure in violation of the Fourth Amendment of the Constitution of the United States. If so, the process server would not be acting under "authority of law" and would be liable for trespass under § 18.2-119.

The basic purpose of the Fourth Amendment "is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." A governing principle of the Fourth Amendment is that, subject to a few limited exceptions, a warrantless search of a private home is presumptively unreasonable, notwithstanding the fact that the government official may be acting pursuant to statutory authority. The United States Supreme Court has extended this principle to include a business as well as a home. In See v. City of Seattle, the Court recognized an expectation of privacy in an office, stating that "[t]he businessman, like the occupant of a residence, has a constitu-
tional right to go about his business free from unreasonable official entries upon his private commercial property."

These cases involve situations in which statutes authorize governmental entry into residential or business property for the purpose of conducting health and safety inspections. Neither the Supreme Court of the United States nor the Supreme Court of Virginia has expressly held that the entry into private offices merely to serve process constitutes an unreasonable search of the premises under the Fourth Amendment. It is my view that, because the intrusion of the entry is sufficient to trigger Fourth Amendment protections, regardless of the nature of the search, entering a business area where there is a justifiable expectation of privacy in order to serve process would be unreasonable under the Fourth Amendment. The Supreme Court of South Dakota has so held, concluding that a sheriff may serve process in the public areas of a business but may not enter the private areas for such purpose. The court considered the particular arrangement of the business's public and work areas and the company's policies on restricted entry to determine whether there existed a justifiable expectation of privacy in the area. Thus, the extent to which a portion of a business establishment constitutes a private area will be a question of fact. Should it be determined that there is a justifiable expectation of privacy in the area, it is my opinion that entry to serve process would not be under "authority of law" for purposes of § 18.2-119.

You next ask whether ordering a process server to leave property would constitute a violation of § 18.2-409. Section 18.2-409 provides:

Every person acting jointly or in combination with any other person to resist or obstruct the execution of any legal process shall be guilty of a Class 1 misdemeanor.

Assuming that the attempted service of process is consistent with Fourth Amendment restrictions, it is my opinion that an attempt to resist or obstruct the service by ordering the process server to leave the property would constitute a violation of § 18.2-409. I note, however, that § 18.2-409 applies only when persons are "acting jointly or in combination."

Your final question is whether ordering a private process server to leave property would constitute a violation of § 18.2-460. Section 18.2-460 makes it a misdemeanor for a person to knowingly obstruct "any law-enforcement officer in the performance of his duties" or, by threats or force, attempt to impede or intimidate "any law-enforcement officer, lawfully engaged in his duties." Section 18.2-460 is limited to attempts to interfere with a "law-enforcement officer." Although § 8.01-293 equates private process servers with "officers" and "sheriffs," it does not classify private process servers as "law-enforcement officers." Numerous sections of the Virginia Code contain definitions of "law-enforcement officers" for different purposes, with the term generally referring to government employees "responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this Commonwealth." Under none of the statutory definitions would a private process server be deemed a law-enforcement officer. Accordingly, it is my opinion that a private process server is not a
law-enforcement officer for purposes of § 18.2-460 and that attempting to interfere with a private process server’s execution of service would not constitute a violation of § 18.2-460.


2See Reed v. Commonwealth, 6 Va. App. 65, 70-71, 366 S.E.2d 274, 278 (1988) (as penal statute, § 18.2-119 requires criminal intent or willful trespass; no violation of statute if person has good faith belief that he has legal right or authorization to be on premises); see also 1996 Op. Va. Att’y Gen. 86, 87 (whether person has good faith belief that he has right to be on premises is factual issue).

The Fourth Amendment to the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."


4Camara v. Municipal Court, 387 U.S. 523, 528 (1967).

5See id. at 528-29. The Court in Camara held that "[t]he Fourth Amendment bars prosecution of a person who has refused to permit a warrantless code-enforcement inspection of his personal residence." Id. at 523.


"The question presented in See v. City of Seattle was whether a person could be prosecuted under a city ordinance for refusing to permit a fire inspector to inspect his locked warehouse without a warrant. The Court concluded that "administrative entry, without consent, upon the portions of commercial premises which are not open to the public may only be compelled through prosecution or physical force within the framework of a warrant procedure." 387 U.S. at 545. In Camara v. Municipal Court, the companion case to See v. City of Seattle, the Court considered the dual aspects of the Fourth Amendment protections—the right to be secure from intrusions into personal privacy and the right to be protected from searches for evidence of criminal action. The Court rejected the argument that the Fourth Amendment does not protect entry unless entry is followed by a search for criminal evidence. See 387 U.S. at 530-31.


8See id. at 594.

9See Johnson v. Com., 26 Va. App. 674, 496 S.E.2d 143 (1998) (court determines whether person has exhibited subjective expectation of privacy and whether expectation is objectively reasonable); see also Gateway 2000, Inc. v. Limoges, 552 N.W.2d at 593-94.

10Section 18.2-460(A).

11Section 18.2-460(B).

12Section 18.2-460 applies also to judges, magistrates, justices, jurors, Commonwealth’s attorneys, and witnesses.

13See, e.g., §§ 2.1-2.2, 2.1-116.1(1), 3.1-796.66, 9-169(9), 16.1-253.4(H), 18.2-57(E), 18.2-433.1, 19.2-81.3(G), 32.1-45.1(G), 46.2-100, 65.2-102(B).

14Section 9-169(9).

15See Gateway 2000, Inc. v. Limoges, 552 N.W.2d at 595 (when sheriff is operating in civil matters in same capacity as private process server, sheriff has only authority of private process server; sheriff has no authority to threaten management or employees with charge of obstruction of justice).
COMMISSIONS, BOARDS AND INSTITUTIONS: ADMINISTRATIVE PROCESS ACT.

Effective date—July 1, 1998—of change in reimbursement policy for Medicare cost sharing for QMBs is consistent with Administrative Process Act and 1998 Appropriation Act. Interpretation by Department of Medical Assistance Services that changes made by federal Balanced Budget Act of 1997 apply to QMBs, as currently defined, is consistent with position of Health Care Financing Administration. Department was authorized to change state policy allowing use of Medicaid rates to determine its payment responsibility for deductibles and coinsurance for QMBs.

The Honorable Jane H. Woods
Member, Senate of Virginia
January 18, 1999

You ask several questions regarding a June 30, 1998, memorandum from the acting director of the Department of Medical Assistance Services (the "Department") to participating providers billing Medicare for Parts A and B ("Medicaid memo" or "memorandum"). The Medicaid memo announces a change to the Virginia Medicaid Policy. Your questions relate primarily to the basis for the determination of the effective date of the changes and for the inclusion of certain recipients in the changes.

The purpose of the Medicaid memo is to inform providers of changes in the way Medicaid will reimburse coinsurance, effective for services on and after July 1, 1998, for dual eligibles and qualified Medicare beneficiaries. "Dual eligibles" are those persons who are eligible for both Medicare and Medicaid coverage. "Qualified medicare beneficiaries" ("QMBs"), as originally defined, "included persons eligible for Medicare and who met certain statutory requirements of poverty, but who did not meet a state's eligibility requirement for Medicaid." As discussed below, the definition of QMBs has changed to include both QMBs as originally defined and dual eligibles.

The Medicaid memo provides that, for nursing facilities, the Department will limit its coinsurance payments to the Medicaid, instead of the Medicare, maximum payment allowed and that the combined Medicare and Medicaid payments will not exceed the Medicaid per diem rate for the nursing facility in which the Medicare/Medicaid recipient resides. In addition, nursing facilities cannot collect more than the Medicaid per diem payment and must return any excess patient pay to the recipient. The memorandum further provides that, for Part B services, Medicaid payment for Medicare coinsurance will be limited to the difference between Medicaid's maximum fee for a procedure and 80 percent of Medicare's allowance.

You ask first what regulatory basis supports the determination stated in the memorandum that the change in reimbursement policy for Medicare cost sharing for QMBs is on July 1, 1998. July 1, 1998, is the date on which emergency regulations that changed the Department's reimbursement policy regarding QMBs and dual eligibles became effective. The effective date is consistent with the provisions of the Administrative Process Act. Under § 9-6.14:9(B) of the Code of Virginia, a portion of the Administrative Process Act, an emergency regulation filed in accordance with § 9-6.14:4.1(C)(5) of the Act "become[s] operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified." Section 9-6.14:4.1(C)(5) provides that a regulation
which an agency finds necessitated by an “emergency situation” is excluded from the public participation and other procedural requirements of Article 2 of the Act. Section 9-6.14:4.1(C)(5) defines “emergency situation” to include “a situation in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation shall be effective in 280 days or less from enactment of the law or the appropriation act.”

The emergency regulations were enacted under a mandate by the General Assembly included in the 1998 Appropriation Act as Item 335. Item 335(O) provides:

As authorized by section 4714 of the Balanced Budget Act of 1997 and section 1902 (a) (10) of the Social Security Act, or other applicable federal law, payments for Medicare Part A and Part B coinsurance for Medicaid covered services for all dual eligibles, including but not limited to Qualified Medicare Beneficiaries, shall be calculated based on the Medicaid rate. The State Plan and all necessary regulations shall be amended accordingly and shall be effective within 280 days of enactment of this provision.

The effective date of the change in the reimbursement policy is thus consistent with the Administrative Process Act and with the General Assembly mandate included in the 1998 Appropriation Act.

You ask also what basis the Department used in determining that dual eligibles are included in the proposed policy and whether this determination is in accordance with federal and state regulatory provisions. On August 5, 1997, the Balanced Budget Act of 1997 was signed into law by the President of the United States.

Section 4714(a)(2) of the Balanced Budget Act states:

“In carrying out paragraph (1), a State is not required to provide any payment for any expenses incurred relating to payment for deductibles, coinsurance, or copayments for medicare cost-sharing to the extent that payment under [subchapter] XVIII [of this chapter] for the service would exceed the payment amount that otherwise would be made under the State plan under this [subchapter] for such service if provided to an eligible recipient other than a medicare beneficiary.”

In addition, § 4714(a)(3) refers to “case[s] in which a State's payment for medicare cost-sharing for a qualified medicare beneficiary with respect to an item or service is reduced or eliminated through the application of paragraph (2).

In a letter to all state Medicaid directors, dated November 24, 1997, the Health Care Financing Administration (“HCFA”) advised that the changes made by § 4714 apply to both categories of QMBs: QMBs without other Medicaid, or pure QMBs, and to QMBs with Medicaid, also known as dual eligibles. Thus, the Department interpretation that the changes made by § 4714 of the 1997 Balanced Budget Act applies to both pure QMBs and dual eligibles is consistent with the position of the HCFA.
Court decisions discussing QMBs also recognize that the designation embraces two sets of individuals: “Medicare eligibles who are also eligible for Medicaid benefits (i.e., dual eligibles) and Medicare eligibles who are not eligible for Medicaid benefits but who meet certain criteria of poverty (i.e., pure QMBs).” In the case of Paramount Health Systems, Inc. v. Wright, the Seventh Circuit discussed QMBs or “quimbies” in the context of § 4714 of the Balanced Budget Act. The court explained:

Quimbies are elderly or disabled persons who qualify for Medicare and who, in addition, either qualify by reason of their poverty for Medicaid as well, in which event they are called “dual eligibles,” or, though not poor enough to qualify for Medicaid, cannot easily afford to pay the Medicare Part B premiums, deductible, and copayments; these quimbies are called “pure quimbies.”

The court in Paramount Health Systems recognized that § 4714 was applicable to both “dual eligibles” and “pure quimbies” and also determined that § 4714 was retroactively applicable to claims of QMBs arising before passage of the Balanced Budget Act. The court held that § 4714 was a “clarification” of congressional intent and was effective as to claims arising before its passage that were the subject of the litigation.

Based on these case decisions and the HCFA letter to state Medicaid directors, it is my opinion that § 4714 is applicable to both “dual eligibles” and “pure QMBs,” and that the Department was authorized to change its regulation allowing the use of Medicaid rates to determine its payment responsibility for deductibles and coinsurance for both of the groups. The Department thus has conducted itself within both the letter and spirit of the applicable laws and regulations with respect to the policy change.


2You include with your request a copy of the Medicaid memo, the subject of which is “Changes to the Virginia Medicaid Policy for Dually Eligible Medicaid/Medicare Recipients and Qualified Medicare Beneficiaries.”


4See Rehabilitation Ass'n of Va. v. Kozlowski, 42 F.3d 1444, 1447 (4th Cir. 1994).

5Id.

6See id.

7The Medicaid memo explains “Medicaid per diem” as the Medicare payment plus the patient pay amount.
The Medicaid memo provides the following example. If Medicare allows $10 for a procedure, 80% of the allowance is $8. If Medicaid allows $9 for the same procedure, Medicaid’s payment of the coinsurance would be limited to $1, the difference between the Medicaid allowance of $9 and the 80% amount of $8. In any event, the combined payment is not to exceed the Medicare or Medicaid allowance for the procedure, whichever is less.


Emergency regulations are effective for no more than 12 months. Section 9-6.14:4.1(C)(5). If the agency wishes to continue regulating the subject matter beyond this period, it is to promulgate a permanent regulation to replace the emergency regulation in accordance with the procedures set out in Article 2 of the Administrative Process Act. See id. The Department has initiated procedures under Article 2 to promulgate permanent final regulations to replace the emergency regulations.


State Plan Amendment 98-07, effective July 1, 1998, regarding the change in reimbursement, was approved on September 30, 1998. See letter from Claudette V. Campbell, Associate Regional Administrator, Division of Medicaid and State Operations, Region III Health Care Financing Administration, Department of Health & Human Services, to Mr. Dennis G. Smith, Director, Department of Medical Assistance Services, and enclosed Transmittal and Notice of Approval of State Plan Material.


Administration of Government Generally: Attorney General and Department of Law — Department of General Services - Division of Risk Management.


Taxation: Real Property Tax.

Watershed improvement district is a political subdivision of Commonwealth, not state department or agency; and has no access to legal services provided by Attorney General unless authorized by specific statute. Watershed improvement district may have access to such legal services if claim is made against district director exercising powers of soil and water conservation district for benefit of watershed improvement district. No charges assessed against property owners of watershed improvement district under county stormwater ordinance if district controls its own stormwater runoff consistent with locality's stormwater program. Watershed improvement district
should use form of land book similar to form prescribed by Department of Taxation for commissioner of revenue; must certify land book to county treasurer and file copy in clerk's office annually by September 1 or within 90 days from date real property tax rate is determined, whichever occurs later.

The Honorable Kathy J. Byron
Member, House of Delegates
June 7, 1999

You ask several questions related to the rights and responsibilities of a watershed improvement district created pursuant to § 10.1-614 of the Code of Virginia. Your questions relate specifically to the Timberlake Watershed Improvement District located in Campbell County.

Article 3, Chapter 6 of Title 10.1, §§ 10.1-614 through 10.1-635, authorizes the establishment of watershed improvement districts and specifies their rights and responsibilities. Section 10.1-614 provides that a watershed improvement district may be established within a soil and water conservation district to promote "the construction of improvements to check erosion, provide drainage, collect sediment or stabilize the runoff of surface water." Section 10.1-620 provides that, upon its organization, "[t]he watershed improvement district shall thereupon constitute a political subdivision of this Commonwealth."

The governing body of a watershed improvement district is to consist of the directors of the soil and water conservation district or districts in which the watershed improvement district is located. The directors may appoint three landowners within the watershed improvement district as trustees to perform the administrative duties and powers delegated to them by the directors. "The trustees may, with the approval of the directors ..., employ such officers, agents, and other employees as they require." Section 10.1-625 establishes the general powers of a watershed improvement district:

A watershed improvement district shall have all of the powers of the soil and water conservation district or districts in which the watershed improvement district is situated, and in addition shall have the authority to levy and collect a tax or service charge to be used for the purposes for which the watershed improvement district was created.

Section 10.1-632 provides that the powers granted watershed improvement districts are in addition "to the powers of the soil and water conservation district or districts in which the watershed improvement district is situated." The section further provides that, notwithstanding the creation of the watershed improvement district, the soil and water conservation district(s) may continue to exercise their powers within the watershed improvement district.

You ask first whether a watershed improvement district has access to state legal system services and other available state-run governmental services. Section 2.1-117 provides that "[t]he Attorney General shall be the chief executive officer of the Department of Law, and as such shall perform such duties as may be provided by law." Section 2.1-121
requires the Attorney General to provide "legal service in civil matters for the Commonwealth, the Governor, and every state department, institution, division, commission, board, bureau, agency, entity, official, court, or judge."

Because a watershed improvement district is a political subdivision of the Commonwealth, and not a state department or agency encompassed within § 2.1-121, a watershed improvement district is not encompassed within § 2.1-121 and would have no access to legal services provided by the Attorney General unless a specific statute so provides. Because the governing body of a watershed improvement district is composed of the district directors of the soil and water conservation district in which it lies, a watershed improvement district may have access to services provided by the Attorney General pursuant to § 10.1-501.1, if a claim is made against a district director exercising powers of the district for the benefit of a watershed improvement district. Section 10.1-501.1 provides:

The Attorney General shall provide the legal defense against any claim made against any soil and water conservation district, director, officer, agent or employee thereof (i) arising out of the ownership, maintenance or use of buildings, grounds or properties owned, leased or maintained by any soil and water conservation district or used by district employees or other authorized persons in the course of their employment, or (ii) arising out of acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization.

Insurance for public liability for such claims through the Department of General Services, Division of Risk Management, is authorized by § 2.1-526.8(E).9

Neither § 10.1-501.1 nor § 2.1-526.8(E) refers to trustees, officers, agents or employees of watershed improvement districts or to buildings, grounds or properties owned by such districts. Therefore, the defense provided by the Attorney General and the insurance provided by the Division of Risk Management would be limited to any acts or omissions of district directors while acting in the course and scope of that office for the benefit of the watershed improvement district. Whether either of these sections applies, of course, will depend on the particular circumstances.

Your second question involves the relationship between the Timberlake Watershed Improvement District and Campbell County. You ask specifically what would be the effect on the Timberlake Watershed Improvement District if Campbell County were to create an entity to deal with the problem of storm water runoff in the Timberlake watershed and whether the residents of the Timberlake Watershed Improvement District would be subject to taxes imposed as a result of the creation of the entity.

The statutes relating to watershed improvement districts do not specify any particular type of relationship between a district and the county within which such a district is established.10 While the purpose of a watershed improvement district is to raise funds for conservation or water management improvements within one drainage basin or watershed, or two or more contiguous watersheds, a watershed within the district could be a part of a larger watershed being managed by a county. I am aware of no statute that expressly prohibits a county from
including an existing watershed improvement district within a larger watershed. Should such a relationship develop, it would be logical and prudent for the district and the county to coordinate the programs to avoid duplication and to assure that proposed projects are mutually supporting.

In connection with this issue, you inquire specifically about county stormwater ordinances adopted pursuant to § 15.2-2114, industrial development authorities created under § 15.2-4903, and community development authorities created for the purposes of stormwater management under § 15.2-5158. Industrial development authorities are designed to facilitate industrial development and generally would be used to control pollution and stormwater to the extent connected with the industrial development. Similarly, community development authorities are created to construct some particular improvement for a community. I cannot anticipate at this point how the operations of either type of authority would interfere with the Timberlake Watershed Improvement District.

Regarding local stormwater ordinances adopted under § 15.2-2114, the statute authorizes the imposition of a service fee. Section 15.2-2114(B) provides that the charges assessed to property owners shall be based on their contributions to the stormwater runoff. Should Campbell County adopt a stormwater program pursuant to § 15.2-2114 to control stormwater runoff in the watershed which includes the Timberlake watershed, the Timberlake watershed would, of course, be included in the program. If, however, the Timberlake Watershed Improvement District controlled its stormwater runoff in a manner consistent with the county program, no charges would be assessed against the Timberlake property owners within the district pursuant to § 15.2-2114(B). In addition, the Timberlake Watershed Improvement District could be entitled to a waiver of charges under the language in § 15.2-2114(B), providing that a locality adopting such a system “shall provide for full waivers of charges to ... government agencies when the agency owns and provides for maintenance of storm drainage and stormwater control facilities.”

Your next question is what remedial process is available to a watershed improvement district that receives massive destructive and costly amounts of stormwater runoff and silt from outside its boundaries. The answer to this question depends, of course, on the particular facts. To the extent that the damage is caused by an upstream landowner that collects the water together and discharges it in a more damaging fashion than the natural discharge, the watershed improvement district may have a cause of action for damage to its facilities. I note also that the Board of Conservation and Recreation is authorized to promulgate regulations specifying “minimum technical criteria and administrative procedures for stormwater management programs in Virginia.” Local governments may adopt the programs. If a locality has such a program, a watershed improvement district may request assistance from the locality in eliminating or diminishing harm from outside the boundaries of the district resulting from violations of the local stormwater management programs.
You ask also what would be the effect on the watershed improvement district if, at some time in the future, the City of Lynchburg annexed the area of Campbell County in which the district is located. I can anticipate no particular effect on the watershed improvement district that would result from any future annexation. As you know, since the passage of § 15.1-1032.2 in 1987, cities and counties have been barred from instituting involuntary annexation proceedings. At its 1999 Session, the General Assembly extended the moratorium on annexation to the sooner of July 1, 2010, or the expiration of a biennium during which the General Assembly fails to appropriate a yearly sum of money for aid to localities with police departments.

Your final question concerns the maintenance and delivery of the watershed improvement district land book. You ask what information the land book is to contain and to whom and when the land book is to be delivered. Section 10.1-626(B) sets out the requirements of the land book. The land book is to be on forms similar to those used by the county and is to contain a list of the properties subject to the tax or service charge and the tax rate or service charge fixed by the governing body. The land book is to be certified to the county treasurer and filed in the clerk's office on or before the day that the county land book is required to be certified.

Section 58.1-3301 provides that "[t]he Department of Taxation shall prescribe the form of the land book to be used by the commissioner of the revenue." Therefore, the watershed improvement district should use a form of land book similar to the form the Department of Taxation furnishes each commissioner of the revenue. Section 58.1-3310 provides that the county commissioner of the revenue is to deliver the county land book to the treasurer "on or before September 1 of each year or within ninety days from the date on which the rate of tax on real property has been determined, whichever is later." The watershed improvement district likewise is to certify the land book to the county treasurer and file a copy in the clerk's office on or before that date.

1Sections 10.1-615 to 10.1-620 set out the procedure for creating a watershed improvement district.


3Section 10.1-623.

4Id. The appointment of the trustees is subject to the approval of the Virginia Soil and Water Conservation Board. Id.

5Section 10.1-624.

6See rit. 10.1, ch. 5, art. 3, §§ 10.1-506 to 10.1-559 (governing soil and water conservation districts).

7Section 10.1-628 grants a watershed improvement district the power to incur indebtedness, borrow funds, and issue bonds, and § 10.1-633 authorizes a watershed improvement district to accept and expend gifts, grants or loans from any source.

8See 1985-1986 Op. Va. Att'y Gen. 336 (discussing distinction between state agency and political subdivision); see id. at 149, 149-50 (soil and water conservation districts are independent political subdivisions and not state agencies).

9Section 2.1-526.8(E) expressly includes within the state insurance plan soil and water conservation district directors acting in the course and scope of their employment or authorization.
In the absence of any legislation to the contrary, a watershed improvement district, as a separate political subdivision, may exercise its statutory powers within its jurisdiction without seeking the approval of the county.

Section 10.1-603.4; see also tit. 10.1, ch. 6, art. 1.1, §§ 10.1-603.1 to 10.1-603.15.

Section 10.1-603.3.

Section 15.1-1032.2 is presently codified at § 15.2-3201.


Section 10.1-626(B) states: "The trustees of a watershed improvement district which imposes a tax on real estate or a service charge based on the increase in the fair market value of real estate caused by the district's project shall make up a landbook of all properties subject to the watershed improvement district tax or service charge on forms similar to those used by the county or city affected.

A separate landbook shall be made for each county or city if the district is located in more than one county or city. The landbook or landbooks of all properties subject to the district tax or the service charge, along with the tax rate or service charge rate fixed by the governing body of the district for that year, shall be certified to the appropriate county or city treasurer or treasurers, and filed in the clerk's office of such locality or localities, by the governing body of the watershed improvement district on or before the day the county or city landbook is required to be so certified. Such landbook or landbooks shall be subject to the same retention requirements as the county or city landbook."

Section 10.1-627 requires that the tax or service charge imposed on the landowners in the watershed improvement district "shall be collected at the same time and in the same manner as county or city taxes with the proceeds therefrom to be kept in a separate account by the county or city treasurer identified by the official name of the watershed improvement district."

The Department of Taxation may extend the time for delivery of the landbook. Section 58.1-3310.

CONSERVATION: FOREST RESOURCES AND THE DEPARTMENT OF FORESTRY.

Locality may regulate, by ordinance, silvicultural activities but must observe clear and unambiguous statutorily imposed duties and limitations.

The Honorable Clarence E. Phillips
Member, House of Delegates
July 2, 1999

You ask whether § 10.1-1126.1(B) of the Code of Virginia permits localities to regulate, by ordinance, silvicultural activities within the locality.

Section 10.1-1126.1(B) provides:

Norwithstanding any other provision of law, silvicultural activity, as defined in § 10.1-1181.1, that (i) is conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to § 10.1-1105 and (ii) is located on property defined as real estate devoted to forest use under § 58.1-3230 or in a district established pursuant to Chapter 43 (§ 15.2-4300 et seq.) or Chapter 44 (§ 15.2-4400 et seq.) of Title 15.2, shall not be prohibited or unreasonably limited by a local government's use of its police, planning and zoning powers. Local ordinances and regulations shall not require a permit or impose a fee for such silvicultural activity. Local ordinances and regulations pertaining to such silvicultural activity shall be reasonable
and necessary to protect the health, safety and welfare of citizens residing in the locality, and shall not be in conflict with the purposes of promoting the growth, continuation and beneficial use of the Commonwealth's privately owned forest resources. Prior to the adoption of any ordinance or regulation pertaining to silvicultural activity, a locality may consult with, and request a determination from, the State Forester as to whether the ordinance or regulation conflicts with the purposes of this section. Nothing in this section shall preclude a locality from requiring a review by the zoning administrator, which shall not exceed ten working days, to determine whether a proposed silvicultural activity complies with applicable local zoning requirements.

Several principles of statutory construction apply to this statute. When a statute begins with the phrase "notwithstanding any other provision of law," it is presumed that the General Assembly intended to override any potential conflicts with earlier legislation. In addition, "[i]f the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it." It is unnecessary to resort to any rules of statutory construction when the language of a statute is unambiguous. In those situations, the statute's plain meaning and intent govern. Use of the word "shall" in a statute generally implies that its terms are intended to be mandatory, rather than permissive or directive. Finally, when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.

The primary purpose of statutory construction is to ascertain and give effect to the intent of the legislature. It is clear from the language in § 10.1-1126.1(B) that local ordinances pertaining to silvicultural activity must be "reasonable and necessary to protect the health, safety and welfare of citizens residing in the locality," and must not "conflict with the purposes of promoting the growth, continuation and beneficial use of the Commonwealth's privately owned forest resources." In addition, before any ordinance regulating such activity is adopted, a locality is permitted to "consult with, and request a determination from, the State Forester as to whether" a proposed ordinance is in conflict with § 10.1-1126.1. Finally, § 10.1-1126.1(B) clearly restricts localities from prohibiting or unreasonably limiting by use of the local government's "police, planning and zoning powers" silvicultural activity that is conducted "in accordance with the silvicultural best management practices developed and enforced by the State Forester" and is "located on property defined as real estate devoted to forest use under § 58.1-3230 or in a district established pursuant to Chapter 43 (§ 15.2-4300 et seq.) or Chapter 44 (§ 15.2-4400 et seq.) of Title 15.2."

Based on the clear language of § 10.1-1126.1(B), therefore, it is my opinion that a locality may regulate by ordinance silvicultural activities but must observe the duties and limitations that are clearly and unambiguously set forth in the statute.

"Silvicultural activity" means any forest management activity, including but not limited to the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation." Section 10.1-1181.1.
CONSTITUTION OF THE UNITED STATES: FOURTH AMENDMENT.

Reasonableness of sheriff's use of drug-sniffing dogs to search person of students attending public school depends on whether facts support suspicionless search that is relatively unobtrusive coupled with government's interest in conducting search.

The Honorable W. Edward Meeks III
Commonwealth's Attorney for Amherst County
November 12, 1999

You ask whether, at the request of public school officials, the sheriff may conduct a general search of students at a public school to determine whether drugs exist on the person of any student.

You ask that I assume that information exists to suspect that drugs are being carried on the person of public school students to a degree that warrants investigation to protect the educational environment. The contemplated search method that you describe would be to have the sheriff, at the request of school officials, appear at the school with a drug-sniffing dog. You indicate that the students would be lined up, and the dog would proceed in front of the students to determine whether drugs exist on the person of any student.

The Fourth Amendment to the Constitution of the United States requires that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." "Searches and seizures carried out by school officials are governed by the same Fourth Amendment principles that apply in other contexts."° "To be reasonable under the Fourth Amendment, a search ordinarily must be based on individualized suspicion of wrongdoing.""[A] search conducted in the absence of individualized suspicion would be reasonable only in a narrow class of cases, 'where the privacy interests implicated by a search are minimal and where 'other safeguards' are available to assure that the individual's reasonable expectation of privacy is not 'subject to the discretion of the official in the field.'"°
The Supreme Court of the United States has not yet addressed the issue you present. Cases decided in other courts involving the use of drug-sniffing dogs in schools to detect narcotics on students have resulted in varying conclusions. In *Doe v. Renfrow,* the court held that the sniffing of the air surrounding students' persons by drug-sniffing dogs did not implicate any normal or justifiable expectation of privacy, and that the dog sniffing therefore did not violate the students' Fourth Amendment rights. In the case of *Horton v. Goose Creek Independent School District,* however, the Fifth Circuit held that public school students have a reasonable expectation of privacy in the airspace around their persons, and that the random use by school officials of drug-detecting dogs to sniff students' bodies violated the Fourth Amendment. Similarly, in *Jones v. Latexo Independent School District,* the court held that public school students had a reasonable expectation of privacy in their bodies which was infringed upon by the random sniffing by drug-detecting dogs. In Virginia, a court dealing with the sniffing of a student's hands by a school official found that the sniffing of students' hands by school officials did not infringe upon students' reasonable expectations of privacy. This court cites *Doe v. Renfrow* in support of this finding and distinguishes *Jones,* stating that the *Jones* case suggests that "sniff[s] by school officials instead of canines would not have been a search" for constitutional purposes.

In 1995, the Supreme Court was called upon for the first time to assess the validity of a suspicionless school search. This case arose from a school district's decision to implement a random urinalysis drug-testing program for student athletes in an effort to curb a documented increase in the use of drugs among students. The Court analyzed the reasonableness of the program by balancing the students' legitimate privacy interests against the government's interests in conducting the search. The Court upheld the drug-testing as a reasonable search, finding that the student athletes enjoyed a lessened expectation of privacy when compared to students in general. This case is also significant because it is the Court's first pronouncement that searches by school officials need not be based on individualized suspicion in order to be reasonable and therefore constitutional. The Court notes that "public school children in general ... have a diminished expectation of privacy" and states:

> Taking into account all the factors we have considered ...—the decreased expectation of privacy, the relative unobtrusiveness of the search, and the severity of the need met by the search—we conclude [the policy of random urinalysis drug testing of student athletes] is reasonable and hence constitutional.

Ultimately, the determination of whether the situation you present passes constitutional muster depends on a complete and detailed set of facts. For example, whether the students' right to privacy is implicated by the dog sniffing turns upon exactly how this conduct is undertaken. If such right to privacy is implicated, how reasonable or unreasonable the search is requires a balancing of the students' interest in privacy against "the nature and immediacy of the governmental concern at issue," as well as the efficacy of the means for meeting it. Indeed, the reasonableness of any search necessarily depends
on the facts of each particular case. Accordingly, while I am unable to render any definitive opinion due to a lack of knowledge of all the pertinent and particular facts in this case, it is my general opinion that all such searches need to be viewed through the lens of the decision of the United States Supreme Court in Vernonia School District 47J v. Acton and an assessment of the particular facts relative to whether a strong need for such a search exists and whether such search would be considered relatively unobtrusive.

3DesRoches, 156 F.3d at 575 (quoting New Jersey v. T. L. O., 469 U.S. at 342 n.8 (quoting Delaware v. Prouse, 440 U.S. 648, 655 (1979) (citation omitted))).
5690 F.2d 470, 476-82 (5th Cir. 1982).
8Id.
10Id. at 648-51.
11Id. at 652-53.
12Id. at 656-57.
13Id. at 659 n.2.
14Id. at 664-65.
15Compare Doe v. Renfrow, 475 F. Supp. at 1016-17 (students were instructed to sit quietly in their seats with their hands and purses on their desk tops while dog handler led dog up and down desk aisles for approximately five minutes) with Horton v. Goose Creek, 690 F.2d at 479 (dog sniffing technique involved sniffing around each child and putting dog's nose on child).
18See supra notes 9-14, 16, and accompanying text.

CONSTITUTION OF VIRGINIA: FRANCHISE AND OFFICERS (QUALIFICATIONS OF VOTERS).

Felon's civil rights may be restored by Governor, or any other appropriate authority, including President, other governors, and pardoning boards with such authority. General Assembly is not "other appropriate authority" authorized to restore felon's voting rights in Virginia.

The Honorable Emmett W. Hanger Jr.
Member, Senate of Virginia
August 3, 1999

You ask whether the General Assembly of Virginia is an "other appropriate authority," as that phrase is used in Article II, § 1 of the Constitution of Virginia (1971), entitled to restore the voting rights of felons in Virginia.
You relate that the General Assembly has directed the Joint Subcommittee Studying Election Laws Innovations, Improved Methods to Inform Voters About Ballot Issues and Candidates, and Developments in Virginia's Voter Registration and Election Processes ("subcommittee") to study the restoration of voting rights of felons in Virginia. You indicate that the subcommittee may conclude that it is desirable to recommend adoption of statutes that provide for a clearly defined process and parameters by which voting rights of felons may be restored. You advise that some subcommittee members contend that a constitutional amendment is required in order to permit the General Assembly to enact such statutory provisions. Finally, you advise that you and other subcommittee members believe that the phrase "other appropriate authority" in Article II, § 1 is sufficiently broad to permit the General Assembly to provide for a statutory process to restore the voting rights of felons in Virginia.

Article II, § 1 provides:

No person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor or other appropriate authority.

Opinions of the Attorney General issued in 1974, 1977 and 1980 consider the phrase "or other appropriate authority" contained in Article II, § 1. The 1974 opinion of the Attorney General construes the phrase to mean "the President, other Governors, and pardoning boards which have such power." The 1977 opinion notes that the phrase "was added to the Constitution in 1971. It was inserted to make clear that civil rights may be restored for felons by the President of the United States, other governors, or pardoning boards with such authority." Prior opinions also conclude that: (1) a person convicted of a federal felony who has had his rights restored by the President of the United States may vote in Virginia if otherwise qualified to do so; (2) a person convicted of a felony in another state who has had his rights restored by the Governor of such state may vote in Virginia if otherwise qualified to do so; and (3) a person convicted of a felony in another state whose right to vote has been restored by automatic restoration of rights in such other state may vote in Virginia if otherwise qualified to do so.

The 1977 and 1980 opinions are extensions of the 1974 opinion to a somewhat different set of facts. While the 1974 opinion does not necessarily control the conclusion reached in the 1977 and 1980 opinions, the opinions are consistent with state law and other Attorney General opinions. Moreover, the General Assembly has met annually since the 1974 opinion was issued and has enacted no legislation that would alter the result of that opinion. A standard rule of statutory construction is that the General Assembly is presumed to be aware of the Attorney General's interpretations of state law and, in the absence of legislative change, is presumed to acquiesce in the interpretations. As with the earlier opinions, the failure of the legislature to enact any amendatory legislation that would change the result of these opinions must be viewed as legislative acquiescence in the conclusion.
No information or arguments have been presented that were not considered in the drafting of the 1974, 1977 and 1980 opinions. I must at this point affirm the conclusion reached in the 1974 opinion as representative of the legislature's intent. Consequently, I must also conclude that "[a] felon's civil rights may be restored by the Governor, or any ‘other appropriate authority,’ which would include the President of the United States, other governors, and pardoning boards with such authority." It is my opinion that the General Assembly is not an “other appropriate authority,” as that phrase is used in Article II, § 1.

---

5 Id. at 201.

CONSTITUTION OF VIRGINIA: FRANCHISE AND OFFICERS (QUALIFICATIONS OF VOTERS) — EXECUTIVE.

Circuit courts of Commonwealth are not “other appropriate authority” entitled to restore felon’s civil rights. Restoration of such rights within Commonwealth is linked to clemency power reserved exclusively to Governor. Circuit courts may not be imbued with authority to restore civil rights either by act of General Assembly or by executive order of Governor.

The Honorable Mary Margaret Whipple
Member, Senate of Virginia
November 15, 1999

You inquire on behalf of a joint subcommittee of the General Assembly¹ regarding whether the circuit courts of the Commonwealth constitute an “other appropriate authority” entitled pursuant to Article II, § 1 of the Constitution of Virginia (1971) to restore the civil rights of felons in Virginia. Article II, § 1 provides:

No person who has been convicted of a felony shall be qualified to vote unless his civil rights have been restored by the Governor or other appropriate authority.

You advise that the subcommittee has reviewed a 1999 opinion of the Attorney General affirming the conclusions in a 1974 opinion that “[a] felon's civil rights may be restored by the Governor or any “other appropriate authority,” which would include the President of the United States, other governors, and pardoning boards with such authority.”²
You note that the subcommittee seeks additional advice as a result of its review of the process involved in petitioning the Governor for restoration of civil rights and the number of requests the Governor's office may experience due to the number of felons who may submit such petitions.

The term "civil rights" when used in this context "does not involve the connotations that presently attach to the term, namely the freedom from discrimination and prejudice," but refers to "deprivations result[ing] from felonious criminal activity." Thus, "certain basic rights are lost automatically upon conviction of a felony. The loss of these rights arises by operation of law and is a simple consequence of conviction ... includ[ing] the loss of such rights as suffrage." Indeed, the right to vote "is the right most commonly denied the convicted felon."

The restoration of civil rights is accomplished through varying methods. "In some jurisdictions the restoration of civil rights is simple and automatic and is accomplished as a matter of law." In such jurisdictions, "statutes provide that the rights that were lost when the sentence was imposed are restored when the sentence is completed." In other jurisdictions "civil rights lost upon conviction or sentence are subject to restoration at the discretion of an administrative agency, usually a pardon or parole board, or the court of conviction acting administratively." However, "[t]he best known method by which the rights of convicted persons are restored is the exercise of clemency by the head of a state." The term "clemency" refers to "various forms of leniency extended by branches of the government, most often the executive, to remit the punishment of those who have violated state or federal laws." It is this method which is reflected in Article II, § 1.

Article II, § 1 mandates the automatic loss of voting rights by persons convicted of a felony, the origin of which first appeared in the 1830 Constitution. Similarly, the authority of the Governor to restore the right of suffrage is long-standing and historically rooted. "The phrase 'or other appropriate authority' was added to the Constitution in 1971 ... to make clear that civil rights may be restored for felons by the President of the United States, other governors, or pardoning boards with such authority." Consistent with this intention, prior opinions of the Attorney General conclude that "other appropriate authority" refers to the appropriate authority of other jurisdictions to restore a felon's civil rights and includes the President, governors of other states, and other states' laws entitling statutorily classified individuals to receive automatic restoration of their rights.

In accord with these opinions, I have concluded that the General Assembly is not an "other appropriate authority." Thus, because the General Assembly is not an "other appropriate authority," it is also my opinion that the General Assembly is not authorized to enact a statute implementing a process for restoring the voting rights of felons. Similarly, it is my opinion that the circuit courts of the Commonwealth are not an "other appropriate authority" coming within the purview of Article II, § 1. The restriction contained in § 1 links the restoration of a felon's voting rights with the clemency power of the Governor of this Commonwealth. This constitutional limitation compels the
conclusion that the restoration of a felon's voting rights within this Commonwealth is reserved exclusively to the Governor.

You also ask whether the Governor may, by executive order, authorize circuit courts to restore a felon's civil rights.

Article V, § 1 provides that "[t]he chief executive power of the Commonwealth shall be vested in a Governor." Article V, § 7 further provides that "[t]he Governor shall take care that the laws be faithfully executed."

Prior opinions of the Attorney General note the inherent authority of a Governor to issue executive orders.\(^1\) Examples of situations in which executive orders are appropriate include (1) when the Virginia Code expressly confers such authority on the Governor; (2) when there is a genuine emergency requiring the Governor to issue an order; and (3) when the order is administrative, rather than legislative, in nature.\(^2\) Thus, the Governor may exercise his power as "'chief executive' to ensure that 'the laws be faithfully executed' [a]s long as that exercise of power does not exceed the authority 'bestowed upon him by the constitution and the laws.'"\(^3\) Because I conclude that the circuit courts of the Commonwealth are not an "other appropriate authority" under Article II, § 1, it is my opinion that an executive order in which the restoration of a felon's civil rights is transferred to circuit courts would contravene such constitutional limitation.\(^4\)

Based on the above, it is my opinion that the circuit courts of the Commonwealth are not an "other appropriate authority" as that phrase is used in Article II, § 1 of the Constitution and may not be imbued with such authority either legislatively or through an executive order issued by the Governor.

---


\(^3\)Joseph H. Kelley, Notes, Restoration of Deprived Rights, 10 WM. & MARY L. REV. 924, 925 (1969).

\(^4\)Id.

\(^{10}\)Id. at 925-26.


\(^{12}\)See Kelley, supra note 3, at 930.

\(^{13}\)Id. at 931.

\(^{14}\)Id. (footnote omitted).

\(^{15}\)Id. at 930.

\(^{16}\)Id.


\(^{18}\)See 1 Howard, supra note 2, at 344.

\(^{19}\)See art. III, § 1, art. IV, § 5 (1887); art. II, § 23, art. V, § 73 (1902).

1999 REPORT OF THE ATTORNEY GENERAL

See id. at 202 (regarding restoration of voting rights of person convicted of federal felony).


Supra note 2.


Id. at 4 (quoting art. V, §§ 1, 7; Lewis v. Whittle, 77 Va. 415, 420 (1883), respectively).

Note, however, that no constitutional provision is necessary to authorize the "creation of an advisory board whose counsel the Governor could seek in deciding whether to exercise his powers of executive clemency." Walter A. McFarlane, Clemency and Pardons Symposium, The Clemency Process in Virginia, 27 U. RICH. L. REV. 241, 244 (1993) (quoting 2 HOWARD, supra note 2, at 644).

COUNTIES, CITIES AND TOWNS: BUDGETS, AUDITS AND REPORTS.

YOUTH AND FAMILY SERVICES: DELINQUENCY PREVENTION AND YOUTH DEVELOPMENT ACT.

ELECTIONS: FEDERAL, COMMONWEALTH, AND LOCAL OFFICERS.

CONSTITUTION OF VIRGINIA: LOCAL GOVERNMENT (DEBT).

Board of supervisors elected for four-year term in 1995 may not adopt resolution irrevocably committing its successors in office to expend portion of locality's resources to operate youth services program for fiscal year 2000-2001.

The Honorable John J. Davies
Member, House of Delegates
July 28, 1999

You ask whether a local governing body may adopt a resolution that irrevocably commits its successors to expend a portion of the locality's resources to obtain a grant to operate a program under the Delinquency Prevention and Youth Development Act1 ("youth services program").

You relate that a county board of supervisors has adopted a resolution committing a portion of its resources toward a grant to operate a youth services program. The program will focus on supporting early intervention efforts for those juveniles and their families who are eligible to receive the services of juvenile court services units. You relate that the county must submit a grant application in 1999 to be included in the state budget process and receive funding appropriated by the General Assembly for fiscal year 2000-2001.2 Applications for renewal grants must be submitted annually thereafter. Contingent upon the General Assembly appropriating 75% of the costs for operating the youth services program, the supervisors have resolved to fund 25% of the costs.

Section 24.2-218 of the Code of Virginia requires that county supervisors be elected "at the general election in November 1995, and every four years thereafter for terms of four years." Consequently, the resolution adopted by the county board of supervisors will irrevocably commit the successor board3 to a 25% share of the total funding to operate a youth services program for fiscal year 2000-2001.
Budgets adopted by local governing bodies are for planning and informative purposes and are statutorily distinguished from appropriations. The local governing body may disburse money only pursuant to an appropriation for a contemplated expenditure. Thus, adoption of a budget that contemplates certain expenditures does not automatically result in the expenditure of money for that purpose. Contractual provisions which purport to bind a locality to a fixed obligation to make payments in future years, however, generally are considered to be debts subject to the constitutional restrictions of Article VII, § 10 of the Constitution of Virginia (1971).

Prior opinions of this Office consistently have concluded that a local governing body does not have the power or authority to take actions that irrevocably bind its successors in office, unless such binding action is expressly authorized by statute. For many years Virginia has followed the Dillon Rule of strict construction concerning the powers of local governing bodies, limiting such powers to those conferred expressly by law or by necessary implication from such conferred powers.

Based on these prior opinions, therefore, I must conclude that a local governing body may not adopt a resolution irrevocably committing its successors in office to a 25% share of the total funding required to operate a youth services program for fiscal year 2000-2001.

The Delinquency Prevention and Youth Development Act authorizes the Director of the Department of Juvenile Justice to administer the youth services programs and make grants to localities seeking to operate such programs. See Va. Code Ann. §§ 66-26 to 66-35; § 66-1.

Funding is provided on a fiscal year basis from July 1 through June 30.

The county board of supervisors will be elected at the November 1999 general election.


See § 15.2-2506.


You ask whether the county manager for the County of Henrico has the authority to reduce the operating budget for the county sheriff's office.

You state that, effective July 1, 1997, the county board of supervisors approved an annual operating budget for the sheriff's office in the amount of $20,760,980. The amount included both funds provided by the Commonwealth and funds provided by the county. You agreed that the budgeted amount was adequate to operate your office. On February 25, 1998, the county manager reduced your operating budget by $1,400,000. You state that the reduction was made without consultation with your office and without the knowledge or approval of a majority of the board of supervisors.

You acknowledge that a locality has no statutory obligation to provide funding to a sheriff's office beyond that established by the Compensation Board and that the board of supervisors may reduce or eliminate any local funding provided your office.

It is your position, however, that the county manager lacked the authority to reduce the amount budgeted to your office by the governing body.

The statutes providing for the county manager form of government, under which Henrico County operates, are set out in §§ 15.2-600 through 15.2-642 of the Code of Virginia. Under the county manager form of government, the board of supervisors remains the policy-determining body of the county and has all of the rights and powers conferred on boards of supervisors by general law. Section 15.2-609 requires the board to appoint a county manager as the administrative head of the county. The county manager is responsible to the board for the administration of the affairs of the county which the board has the authority to control.

Section 15.2-638 requires the county manager to annually prepare and submit to the board of supervisors "a budget presenting a financial plan for conducting the county's affairs for the ensuing year." The budget is to be set up and adopted in accordance with general law. The general law provisions regarding a locality's budget are set out in §§ 15.2-2500 through 15.2-2507. Section 15.2-2503 requires the governing body to prepare and approve a budget "for informative and fiscal planning purposes only." Section 15.2-2506 requires publication of a synopsis of the budget and the holding of a public hearing. Section 15.2-2507(A) expressly authorizes any locality to "amend its budget to adjust the aggregate amount to be appropriated during the current fiscal year as shown in the currently adopted budget," although notice and an additional hearing at the board meeting are required if the amendment exceeds the lesser of one percent of the total expenditures or $500,000. After the hearing, "[a]ny local governing body may adopt such amendment at the advertised meeting."
You state that the board of supervisors did not, as required by § 15.2-2507, approve the amendment reducing the operating budget for the sheriff’s office but, rather, that the county manager made the reduction. Neither the general statutes relating to the approval of a locality’s budget nor the statutes applicable to counties operating under the county manager form of government authorize a county manager of his own accord to amend the budget approved by the governing body for funding the office of the sheriff. I am unaware of the existence of any other authority that would have permitted the county manager to take such action.

My conclusion that the county manager lacked the authority to reduce the amount budgeted for your office is based solely on the facts you provide. Different or additional facts could, of course, alter the conclusion.

1You state that the county provided approximately 51% of your office’s 1997-1998 budget, with the remaining 49% provided by the Commonwealth and other noncounty sources. In 1997, the relevant statutes controlling the salary and expenses of the office of sheriff were set out in Title 14.1 of the Code of Virginia. At its 1998 session, the General Assembly repealed Title 14.1 and distributed into other sections of the Code the provisions relating to the costs, fees, salaries and allowances of constitutional officers. See 1998 Va. Acts ch. 872, at 2128. The provisions relating specifically to sheriffs are now codified in Title 15.2. The statutes require the sheriff to file with the Compensation Board “a written request for the expense of his office, stating the amount of salaries requested, and itemizing each item of expense.” Section 15.2-1636.7 (comparable section of § 14.1-50). The sheriff is to file a copy simultaneously with the governing body of the locality. See id. The Compensation Board fixes the salaries and expenses of the office. See § 15.2-1636.8 (comparable section of § 14.1-51). The annual salary of the sheriff is set in the appropriation act. See § 15.2-1609.2(B) (comparable section of § 14.1-73). The Commonwealth pays the salary and expense allowances of sheriffs and deputies. See § 15.2-1609.7 (comparable section of § 14.1-79). A locality, in its discretion, may supplement the amount fixed by the Compensation Board. See § 15.2-1605.1 (comparable section of § 14.1-11.4). For a summary of the statutory funding system for sheriffs’ offices, see 1997 Op. Va. Att’y Gen. 60, 64.


3Section 15.2-604.

4Section 15.2-612.

5Section 15.2-635.

6Section 15.2-638.

7Approval of the budget is not deemed an appropriation, and no money is to be paid out unless and until the governing body makes an appropriation for the expenditure contemplated in the budget. Section 15.2-2506.

8Section 15.2-2507(A).

9You state that the county manager reduced the budget for no county office other than the sheriff’s office and that the reduction had a negative impact on your ability to meet the mandates of your office. You suggest that the county manager’s action constituted an intrusion on your autonomy as an office created by Article VII, § 4 of the Constitution of Virginia (1971). Prior opinions conclude that a locality has no authority to dictate or control the operation of a sheriff’s office. See Op. Va. Att’y Gen.: 1974-1975 at 385, 386-87 (county may not obligate salaries of deputy sheriffs to federal funding program which contains employment limitations because it would restrict sheriff’s power to appoint deputies); 1971-1972 at 367, 367 (neither governing body nor county executive has authority to prohibit sheriff from hiring deputies as approved by Compensation Board). These opinions do not suggest that a locality’s reduction in the operating budget of the office of the sheriff, if properly authorized, constitutes an illegal infringement on a sheriff’s authority to operate his office.
See, e.g., 1986-1987 Op. Va. Att'y Gen., supra note 2, at 87 (under long-standing policy of governing body, city manager may adjust salary of constitutional officer in city budget upon final action of Compensation Board if minutes of city council reflect proper delegation of this authority).

COUNTIES, CITIES AND TOWNS: BUILDINGS, MONUMENTS AND LANDS GENERALLY - PARKS, RECREATION FACILITIES AND PLAYGROUNDS.

MOTOR VEHICLES: POWERS OF LOCAL GOVERNMENTS.

Prohibiting operation of motor vehicles on trails established by locality on land it owns, leases, or receives permission to use for hiking, biking and horseback riding is consistent with statutory purpose of protecting property interests of persons who have permitted locality to use their property. Grant of authority to localities to regulate its system of trails encompasses barring of motor vehicles on such trails. Offenses related to operation of motor vehicle on highways in Commonwealth may not be enforced on greenways. Other driving-related offenses occurring on greenways must be reviewed and prosecuted in light of their governing statutes.

The Honorable A. Victor Thomas
Member, House of Delegates
February 22, 1999

You ask whether a locality may prohibit the operation of motor vehicles on greenways and bicycle paths. You also ask whether statutes related to driving offenses may be enforced on such greenways or paths.

You relate that a county, city and town have entered into a joint agreement to develop a linked system of greenways for pedestrian, bicycle and equestrian use. Some of the greenways will be on publicly owned and maintained lands, such as parks, while others will be on privately owned property. The greenways on private property will be open to the public, may be privately or publicly maintained, and may contain easements.

Section 15.2-1806(A) of the Code of Virginia provides that "[a] locality may establish parks, recreation facilities and playgrounds." Additionally, § 15.2-1806(B) states:

A locality may also establish, conduct and regulate a system of hiking, biking, and horseback riding trails and may set apart for such use any land or buildings owned or leased by it and may obtain licenses or permits for such use on land not owned or leased by it. [Emphasis added.]

In furtherance of the purposes of this subsection, a locality may provide for the protection of persons whose property interests, or personal liability, may be related to or affected by the use of such trails.

It is well-settled that when the language of a statute is clear and unambiguous, it is unnecessary to resort to rules of statutory construction. Section 15.2-1806(B) clearly contemplates the system of pathways about which you inquire. This statute authorizes a locality to use land it owns, leases, acquires or receives permission for the use thereof to establish a system of pathways for the purposes set forth therein, and it authorizes a locality to "conduct" and "regulate" this system.
Regarding whether a locality may prohibit the operation of motor vehicles on such pathways, the Dillon Rule of strict construction provides that local governments have only those powers that the General Assembly has expressly granted, those fairly and necessarily implied from the expressly granted powers, and those powers that are indispensable and essential. Section 15.2-1806(B) expressly grants localities the power to regulate the system of trails. The power to so regulate encompasses the barring of motor vehicles on such paths. Furthermore, § 15.2-1806(B) also specifically authorizes a locality to consider the protection of the persons whose property interests are related to or affected by the use of the paths. Inasmuch as the statute allows for the permitted use of private property in the system of trails, prohibiting the operation of motor vehicles on them is consistent with the legislative intent of this statute to protect the property interests of those persons who have consented to the locality's use of their property.

With respect to the enforcement of driving-related offenses occurring on these paths, the respective statutes governing such offenses are too numerous to address here. To the extent an offense falls within the purview of the traffic regulation statutes in Title 46.2, however, such offense relates to the operation of the vehicle on a "highway." The term "highway" is defined in § 46.2-100 as "the entire width between the boundary lines of every way or place open to the use of the public for purposes of vehicular travel in the Commonwealth." (Emphasis added.) A fundamental principle of statutory construction is that the clear and unambiguous words of a statute must be accorded their plain meaning. Clearly, a pathway on which the operation of motor vehicles is prohibited is not a way or place open to the public for the purposes of vehicular traffic. Thus, such pathways do not meet the § 46.2-100 definition of "highway." Accordingly, the offenses set forth in Title 46.2, which relate to the operation of a motor vehicle on a highway, could not be enforced on the proposed greenway system because, by definition, it is not a highway. For example, two of the offenses about which you specifically inquire, reckless driving and driving while a habitual offender revocation is in effect, relate only to operation of a vehicle on a highway, and, therefore, could not be enforced.

On the other hand, another statute about which you specifically inquire, driving while under the influence, does not require that operation of the motor vehicle occur on a public highway. Therefore, depending on the facts and evidence available, an individual could be prosecuted for a violation of § 18.2-266 for operating a motor vehicle on a greenway while such individual was under the influence of alcohol. Other potential charges must similarly be reviewed in light of their governing statutes.

---

1 You note that such prohibition would except emergency vehicles.
2 I presume that your use of the term "greenway" refers to "a corridor of undeveloped land in or near a city that is designed for recreational use." Merriam Webster's Collegiate Dictionary 512 (10th ed. 1996). Compare VA. Code Ann. § 33.1-152.1 (referring to "greenway corridors" as areas "for resource protection and biodiversity enhancement, with or without public ingress and egress").
4 See § 15.2-1806(A).
You ask whether § 15.2-1542(D) of the Code of Virginia requires the concurrence of the Commonwealth's attorney for the City of Winchester to permit the Winchester city attorney to prosecute criminal cases charging the violation of city ordinances.

Section 15.2-1542(D) provides:

City ... attorneys, if so authorized by their local governing bodies, and with the concurrence of the attorney for the Commonwealth for the locality, may prosecute criminal cases charging either the violation of city ... ordinances, or the commission of misdemeanors within the city ..., notwithstanding the provisions of § 15.2-1627. [Emphasis added.]

The 1988 Session of the General Assembly amended and reenacted § 5 of the charter for the City of Winchester relating to the powers and duties of city council by adding subsection (e) pertaining to the employment of a city attorney.¹ Section 5(e) of the Winchester city charter provides, in part:

Council is hereby empowered to employ a city attorney, and may employ or contract for the services of one or more assistants to the city attorney...
He shall be authorized to represent the city in all legal proceedings, including the prosecution of violations of city ordinances.\textsuperscript{1,11}

"[T]he plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction."\textsuperscript{3} Statutes should not be construed to frustrate their purpose.\textsuperscript{4} In addition, the use of the word "shall" in a statute generally implies that its terms are intended to be mandatory, rather than permissive or directive.\textsuperscript{5} Finally, when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.\textsuperscript{6}

Section 5(e) of the Winchester charter, significantly, does not provide that the city attorney is authorized, by the local governing body, to represent the city in all legal proceedings, including the prosecution of violations of city ordinances.\textsuperscript{7} Rather, it is clearly the General Assembly that authorizes the Winchester city attorney to prosecute violations of the Winchester city ordinances.

It is my opinion, therefore, that in Winchester's charter, the General Assembly has given the Winchester city attorney the same authority over prosecution of misdemeanor city ordinance violations that § 15.2-1627(B) confers on the Commonwealth's attorney over comparable misdemeanor violations of state law. Accordingly, it is my opinion that the Winchester city attorney does not require the concurrence of the Commonwealth's attorney for the City of Winchester to prosecute criminal cases charging the violation of city ordinances.

You ask three questions regarding the ability of a town to provide electric service to its citizens. You relate that most of the town is served by an exclusive franchisee, whose franchise to use public property is scheduled to expire in 2018. You also relate that the town plans to annex two areas within the certificated territory of the franchisee. You further relate that certain areas of the town are undeveloped and have no electric service. You note that a few areas of the town are served by an electric cooperative that has no franchise. You state that the town is dissatisfied with certain aspects of electric services being offered to its citizens and that the town would like to offer its own electric service. You also state that the town does not desire to oust the current providers; rather, the town would like to offer its own service as another option. You further state that the town will rely on contracts with electric utilities to provide the service, such as contracts for the purchase of power in bulk for resale.

You first inquire whether the town is authorized to construct, operate, and maintain electric facilities in the areas of the town in which no electric facilities currently exist.

Section 15.2-2109(A) of the Code of Virginia states:

Any locality may ... establish, maintain, operate, extend and enlarge ... electric plants ... and may acquire ... whatever land may be necessary for acquiring, locating, establishing, maintaining, operating, extending or enlarging ... electric plants ... and the rights-of-way, rails, pipes, poles, conduits or wires connected therewith, or any of the fixtures or appurtenances thereof.

Section 15.2-2109(A) "authorizes all localities to establish and operate ... 'electric plants,"' along with the services necessary for such operation. Thus, § 15.2-2109(A) authorizes a town to construct, maintain, and operate its own electric facilities where no current facilities exist in the town.

You next inquire whether a town may utilize a public utility to act as its agent to construct the electric facilities, to maintain and repair them, and to handle the billing and customer relations regarding its customers.

The long-followed Dillon Rule requires a narrow construction of the powers conferred on and exercised by local governments in Virginia, because such powers are delegated powers. Thus, "municipal corporations have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable." Accordingly, when a statute confers the authority for a locality to enter into a contract with an entity to act as its agent, it may do so. For example, § 15.2-2117 specifically provides that "any locality may contract with any sewerage or water purification company to introduce, build, maintain and operate" sewerage and water purification systems. I can find no similar statute authorizing a public electric utility to act as a
locality's agent in the manner you propose. My answer to this inquiry, therefore, is that a town may not utilize a public electric utility to act as its agent in the manner about which you inquire.

Your final inquiry concerns the ability of a town to provide its own electric service in areas of the town which are served by either an exclusive franchisee or a nonexclusive franchisee electric cooperative.9

Article VII, §§ 8 and 9 of the Constitution of Virginia (1971) empower a municipality to grant or deny a franchise to a public utility.10 Regarding the nonexclusive franchisee electric cooperative, such franchise is not impaired by lawful competition and thus no requirement of compensation would arise without an actual physical taking of its facilities.11 Thus, the Supreme Court of Virginia has held that a municipality has “the right ... to engage in the business in competition with [a nonexclusive franchisee], since it had been given no exclusive franchise. If its business be curtailed or destroyed by the operations of the municipality, it will be by lawful competition from which no legal wrong results.”12 Conversely, such language indicates that an exclusive franchise may be impaired by competition from a municipality and thus may be entitled to compensation.13

In addition, the Supreme Court of Virginia has enunciated that a franchisee may possess certain vested property rights in their service areas.14 Furthermore, the Court, in articulating the options a town has when it does not desire to renew an exclusive franchise, stated that, “in anticipation of the termination of a franchise, a city or town has the power to install its own distribution system and either to make bulk service contracts with a public utility or, if need be, to construct and operate its own plant.”15 Accordingly, in the instant case, where the municipality seeks to operate its own electric service regardless of the term remaining on the franchise, such actions may be subject to constitutional challenge.

The Court has also articulated that

[a] general rule, ... a municipality acts and contracts in connection with the construction or operation of its municipal utility in its proprietary or individual capacity rather than in its legislative or governmental capacity, and is governed, for the most part, by the same rules that control a private individual or business corporation.16

Thus, its acts in this regard are not subject to preferential treatment .17

With respect to your third inquiry, therefore, it is my opinion that a town may install and operate its own electric utility in areas of the town which are not served by an exclusive franchisee, but to do so within certificated territory of an exclusive franchisee is subject to constitutional challenge.

You do not question and thus I do not address the options of the town terminating a franchise or of having a second certificated utility authorized by the State Corporation Commission. See §§ 15.2-2106, 56-265.4, respectively.


1See also § 15.2-2109(B) (locality is not required to hold referendum to provide electric service to its own facilities; may provide services to customers of public utility with consent of public utility).


You do not question and thus I do not address issues regarding the town acquiring existing public utility facilities. See § 15.2-2109(B).


Mumpower v. Housing Authority, 176 Va. 426, 450, 11 S.E.2d 732, 741 (1940) (addressing ability of municipal corporation to sell its excess electricity to outside consumers (quoting Alabama Power Co. v. Ickes, 302 U.S. at 480)).

You do not provide information regarding the franchise agreement; thus, I do not address any provisions of the agreement that may affect your inquiries.

'Potomac Edison Co. v. Town of Luray, 234 Va. at 354, 362 S.E.2d at 681.


Compare Town of Blackstone v. Southside Elec. Coop., 256 Va. 527, 506 S.E.2d 773 (1998) (holding that requirements applicable to any public corporation or authority seeking to take property by condemnation are similarly applicable to town seeking to acquire by condemnation, pursuant to § 56-265.4:2, public utility's facilities in annexed area).

---

COUNTIES, CITIES AND TOWNS: FRANCHISES, PUBLIC PROPERTY, UTILITIES — VIRGINIA WATER AND WASTE AUTHORITIES ACT.

CONSTITUTION OF VIRGINIA: LOCAL GOVERNMENT.

Term requirements and notice and bid restrictions generally placed on transfers of city-owned property are not applicable to transfer of such property to water authority. Colonial Heights may grant public easement to Appomattox River Water Authority of which city is member.

The Honorable M. Kirkland Cox
Member, House of Delegates
October 12, 1999

You ask whether Article VII, § 9 of the Constitution of Virginia (1971) and §§ 15.2-2100 through 15.2-2105 of the *Code of Virginia* are applicable to the
conveyance of an easement from the City of Colonial Heights to the Appomattox River Water Authority ("Authority") of which the city is a member.

You relate that the Authority is created pursuant to §§ 15.2-5102 through 15.2-5124, and the city is a member of the Authority. You further relate that the Authority desires to install a water transmission main in the city along a city street right-of-way. You state that the city is agreeable to this installation and would like to grant an easement to the Authority to accomplish the installation. You inquire whether the City of Colonial Heights may grant such easement to the Authority without going through the procedures set forth in §§ 15.2-2100 through 15.2-2105 and Article VII, § 9.

Article VII, § 9 places restrictions on the rights of a city or town to create franchises, leases, or other rights to use public property, including its streets and avenues. In addition to limiting the term of such franchises, § 9 imposes the following procedural requirement:

Before granting any such franchise or privilege for a term in excess of five years, except for a trunk railway, the city or town shall, after due advertisement, publicly receive bids therefor.

Sections 15.2-2100 through 15.2-2105 implement the provisions of Article VII, § 9 and detail the procedures for advertising and receiving bids accordingly.

Generally, the grant of a public easement of any description in any manner not permitted to the general public is limited to forty years in duration. The purpose of this restriction, found in Article VII, § 9 and § 15.2-2100, is to prevent "the permanent dedication of publicly owned property to private use." Additionally, the notice and bid provisions of Article VII, § 9 and §§ 15.2-2101 through 15.2-2105 are intended to "prevent the hasty or clandestine disposition of municipally owned real property by a city or town council."

The language of these sections does not restrict their application based on the identity or nature of the grantee. Thus, a 1989 opinion of the Attorney General concludes that "[i]n the absence of an express exception, a city or town council is required to comply with the requirements of §§ 15.2-2101 through 15.1-2105 and the limitation on the ... term imposed by [§ 15.2-2100]." Conversely, however, if a statute authorizes a city or town to convey municipal property to an independent political subdivision for such consideration and with such conditions as the municipal council may determine, the 1989 opinion stipulates that such statutes indicate that the General Assembly has construed these requirements as inapplicable.

Section 15.2-5148 provides that

[a]ny unit, notwithstanding any contrary provision of law, may transfer jurisdiction over or lease, lend, grant or convey to an authority, upon the request of the authority and upon such terms and conditions to which the governing body and authority may agree, such real or personal property as may be necessary or desirable in connection
with the acquisition, construction, improvement, operation or maintenance of a stormwater control system or water or waste system by the authority, including public roads and other property already devoted to public use.

This provision expressly provides for the grant of the easement in question upon such terms and conditions as the city may determine. This statute thus evidences the intent of the General Assembly that the restrictions generally placed on transfers of city-owned property are not applicable to the transfer of such property to a water authority.

Accordingly, it is my opinion that the restrictions articulated in Article VII, § 9 and §§ 15.2-2100 through 15.2-2105 are not applicable to the grant by the City of Colonial Heights of a public easement to the Authority of which the city is a member.

1These sections provide for the creation, dissolution, and functions of certain authorities.
2See § 15.2-5102(A) (providing that one or more localities may by ordinance, resolution, or agreement "create a water authority").
3Article VII, § 9 also requires an affirmative vote of three fourths of the members elected to a city or town governing body before a city or town may sell any rights "in and to its waterfront, wharf property, public landings, wharves, docks, streets, avenues, parks, bridges, or other public places, or its gas, water, or electric works."
4The franchises, leases or rights may not exceed 40 years or, for air rights and easements for columns of support, 60 years. Art. VII, § 9.
7Id. (citing 2 AE. DICK HOWARD, COMMENTARIES ON THE CONSTITUTION OF VIRGINIA 854-55 (1974).
8See id.
9Id. (citing §§ 15.1-307 to 15.1-310, predecessor statutes to §§ 15.2-2100 to 15.2-2102).
10See id.
11"Unit," as used in § 15.2-5148, means "locality." Section 15.2-5101.

COUNTIES, CITIES AND TOWNS: INDUSTRIAL DEVELOPMENT AND REVENUE BOND ACT.

Appalachian School of Law is nonstock, nonprofit corporation located in Buchanan County. Act permits industrial development authorities to make loans to corporations to promote development of facilities that provide graduate education in Commonwealth. Buchanan County Industrial Development Authority has legal authority to make loan to Appalachian School of Law to enable completion of law library.

The Honorable Jackie T. Stump
Member, House of Delegates
January 18, 1999

You ask whether the Industrial Development Authority of Buchanan County may make a loan to the Appalachian School of Law, which is located in Buchanan County.
You advise that the Appalachian School of Law was organized in 1995 as a Virginia nonstock, nonprofit corporation and that the first class of students matriculated in 1997.\(^1\) You also advise that the purpose of the loan will be to enable the school to complete its law library. You indicate that completion of the law library is an essential step in the process of securing accreditation from the American Bar Association.

The Industrial Development and Revenue Bond Act, §§ 15.2-4900 through 15.2-4920 of the Code of Virginia (the "Act"), authorizes localities to create industrial development authorities.\(^2\) One of the purposes of the General Assembly in authorizing the creation of industrial development authorities is to enable such authorities to "make loans ... to promote industry and develop trade by inducing manufacturing, industrial, governmental, nonprofit and commercial enterprises and institutions of higher education to locate in or remain in this Commonwealth."\(^3\) Section 15.2-4901 explicitly states that it is the intent of the legislature and the policy of the Commonwealth to authorize industrial development authorities to exercise the powers granted by the Act "with respect to facilities for private, accredited and nonprofit institutions of collegial education in the Commonwealth whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education." The Act defines "facilities" to include

- facilities for private, accredited and nonprofit institutions of collegiate, elementary, or secondary education in the Commonwealth whose primary purpose is to provide collegiate, elementary, secondary, or graduate education and not to provide religious training or theological education, such facilities being for use as academic or administration buildings or any other structure or application usual and customary to a college, elementary or secondary school campus other than chapels and their like.\(^4\)

Section 15.2-4905(13) expressly grants an industrial development authority the power "[t]o make loans ... to any person, partnership, association, corporation, business, or governmental entity in furtherance of the purposes of [the Act] including for the purposes of promoting economic development."\(^5\) Finally, § 15.2-4901 provides that the Act is to be liberally construed in conformity with the stated intentions of the legislature.

It is clear from the language of §§ 15.2-4901 and 15.2-4902\(^6\) that one of the legislatively approved purposes of an industrial development authority is to promote the development of facilities that provide graduate education in the Commonwealth. It is likewise clear from the language of § 15.2-4905(13)\(^7\) that an authority may make a loan to a corporation in furtherance of any of the purposes of the Act. Accordingly, it is my opinion that, subject to compliance with the conditions specified in the Act, the Buchanan County Industrial Development Authority has the legal authority to make a loan to the Appalachian School of Law to enable the school to complete its law library.

---

\(^{1}\) You state that the school is exempt from federal income tax under § 501(c)(3) of the Internal Revenue Code.

\(^{2}\) See § 15.2-4901.
Section 15.2-4902 defines "authority facilities" as "facilities".

The loans are to be made "only from revenues of the authority which have not been pledged or assigned for the payment of any of the authority's bonds." Section 15.2-4905(13). Section 15.2-4902 defines "loans" as "any loans made by the authority in furtherance of the purposes of [the Act] from the proceeds of the issuance and sale of the authority's bonds and from any of its revenues or other moneys available to it as provided herein." You state that the source of the funds for the loan to the Appalachian School of Law will be a loan to the county industrial development authority from the Virginia Coalfield Economic Development Authority. Section 15.2-4905(12) authorizes an authority to borrow money from political subdivisions of the Commonwealth "in order to make loans in furtherance of the purposes of [the Act]."

"The primary goal of statutory interpretation is to ascertain and give effect to the intent of the legislature. 


COUNTIES, CITIES AND TOWNS: INDUSTRIAL DEVELOPMENT AND REVENUE BOND ACT.

TAXATION: RETAIL SALES AND USE TAX.

Without express or implied language in Act that may be interpreted to authorize such transaction, industrial development authority may not be designated as general contractor for construction of manufacturing plant to enable manufacturer to construct plant without paying state sales and use tax on construction materials.

The Honorable Harry J. Parrish
Member, House of Delegates
January 7, 1999

You ask whether an industrial development authority has the statutory power to enter into a contract with a private manufacturer whereby the authority acts as general contractor in the construction of the manufacturer's plant.

You forward a copy of a tax ruling issued by the Department of Taxation which concludes that, under the facts there presented, the construction materials purchased by an industrial development authority that serves as the general contractor for a manufacturer in the construction of the manufacturer's plant would not be subject to the sales and use tax imposed by §§ 58.1-603 and 58.1-604 of the Code of Virginia. Although you do not question the correctness of the Tax Department's ruling, you question the authority of an industrial development authority to enter into such a contract.

Industrial development authorities are created under the Industrial Development and Revenue Bond Act, Chapter 49 of Title 15.2 (the "Act"). The express legislative intent in authorizing the creation of industrial development authorities is "so that such authorities may acquire, own, lease, and dispose of properties and make loans" in furtherance
of one of the purposes of an industrial development authority.\textsuperscript{3} Included within the purposes of an industrial development authority are the promotion of industry and the development of trade.\textsuperscript{4}

Section 15.2-4905 of the Act grants authorities certain powers, together with all powers incidental to or necessary for the performance of the express powers. An industrial development authority has the power to acquire, to improve or equip, to lease, and to convey “authority facilities.”\textsuperscript{5} Section 15.2-4902 defines “authority facilities” to include “facilities for commercial enterprises ... constructed or installed by or for the authority pursuant to the terms of this chapter.” An authority may also issue its bonds for the purpose of carrying out its powers\textsuperscript{6} and may make loans or grants from the authority’s revenues to individuals or business entities for the purpose of promoting economic development.\textsuperscript{7}

Whether a transaction in which an industrial development authority is engaged comes within any of the express or implied powers of § 15.2-4905 will depend on the facts of the particular transaction. It is my opinion, however, that § 15.2-4905 neither expressly nor by implication authorizes a transaction that consists solely of an authority’s being designated as the general contractor in the construction of a manufacturing plant in order to enable the manufacturer to construct the plant without the payment of the state sales and use tax on the construction materials.\textsuperscript{8} Accordingly, without specific language in § 15.2-4905 that reasonably can be interpreted to authorize a transaction, in which the purpose is to eliminate the payment of sales and use taxes, I am unable to conclude that the General Assembly intended to encompass such transactions within the Act.\textsuperscript{9}

\textsuperscript{1}See Va. Tax Rep. (CCH) § 202-849, at 14,011 (Apr. 12, 1995). The ruling states the following facts. The manufacturer, as owner of the project, would pay the cost of constructing the facility. \textit{Id.} at 14,012. The manufacturer would enter into a contract with the local industrial development authority for the authority to serve as general contractor and to contract with subcontractors. \textit{Id.} The manufacturer would serve as construction manager or contract with a third party to serve as construction manager. \textit{Id.} While the manufacturer would be involved directly or indirectly in many aspects of managing and supervising the construction of the facility, all materials used in constructing the facility would be purchased directly by and billed to the authority on its credit pursuant to official authority purchase orders using authority funds. \textit{Id.} The industrial development authority would furnish these materials to the subcontractors for use in construction. \textit{Id.} The authority would contract with subcontractors and suppliers, and its credit would be bound in the performance of those contracts. \textit{Id.} The manufacturer would pay funds to the authority as and when the authority presents draw requests, and the authority would pay the subcontractors and suppliers. \textit{Id.} at 14,013. Based on these facts, the Department ruled that, because an industrial development authority is a political subdivision of the Commonwealth pursuant to § 15.2-4903, the purchases by the authority would be exempt from the sales and use tax pursuant to the exemptions for purchases by political subdivisions under §§ 58.1-609.1(4) and § 58.1-610(B). \textit{Id.} However, in its ruling the Department made clear that such ruling was “not intended to address the authority of the IDA to engage in the activities described.” \textit{Id.} at 14,014.

\textsuperscript{2}Sections 15.2-4900 to 15.2-4920.

\textsuperscript{3}Section 15.2-4901.

\textsuperscript{4}\textit{Id.}

\textsuperscript{5}Section 15.2-4905(4)-(6).

\textsuperscript{6}Section 15.2-4905(7).
COUNTIES, CITIES AND TOWNS: POLICE AND PUBLIC ORDER.

ADMINISTRATION OF GOVERNMENT GENERALLY: STATE AND LOCAL GOVERNMENT CONFLICT OF INTERESTS ACT.

CRIMINAL PROCEDURE: BAIL AND RECOGNIZANCES.

Off-duty employment of deputy sheriffs requiring use of their police powers must be authorized by, and consistent with, local ordinance and regulation.

The Honorable Steve M. Draper
Sheriff for the City of Martinsville
June 3, 1999

You ask whether a deputy sheriff may be employed in his off-duty hours by a professional bondsman to seek and arrest persons on a bondsman capias and to return the persons to the court for trial.¹

Section 15.2-1712 of the Code of Virginia provides that a locality may adopt an ordinance permitting law-enforcement officers and deputy sheriffs to engage in off-duty employment "which may occasionally require the use of their police powers in the performance of such employment." The ordinance may be adopted notwithstanding any provisions in the State and Local Government Conflict of Interests Act² that would otherwise prohibit the employment.³ The ordinance may include "reasonable rules" applicable to the employment or may delegate the promulgation of such rules to the local chief of police or local sheriff.⁴

Under general principles of statutory construction, a statute specifying the method by which something shall be done indicates a legislative intent that it not be done otherwise.⁵

Section 15.2-1712 specifies that deputy sheriffs may engage in off-duty employment requiring the use of their police powers as authorized by local ordinance and regulations. Accordingly, it is my opinion that a deputy sheriff may not engage in such employment unless the locality has adopted an ordinance permitting the employment. Whether a particular employment is consistent with a local ordinance will require an analysis and interpretation of the ordinance and any regulations promulgated under the ordinance. This Office has a long-standing policy of not rendering opinions interpreting local ordinances or regulations.⁶

¹A surety in a recognizance may arrest his principal or obtain a capias which may be executed by the surety, his authorized agent or any sheriff, sergeant or police officer. VA. CODE ANN. § 19.2-149.
Section 2.1-639.4(1) generally prohibits an officer or employee of state or local government from accepting any remuneration for services performed within the scope of his official duties, except the compensation paid by his employer. Opinions regarding possible violations of the Act by a local government officer or employee are to be rendered by the Commonwealth's attorney. Section 2.1-639.23(B). Accordingly, you should direct any questions regarding the Conflict of Interests Act to the Commonwealth's attorney. An officer or employee may seek review by the Attorney General of an opinion rendered by the Commonwealth's attorney. Id.

Section 15.2-1712.


COUNTIES, CITIES AND TOWNS: POLICE AND PUBLIC ORDER — CRIMINAL JUSTICE TRAINING ACADEMIES.

COMMISSIONS, BOARDS AND INSTITUTIONS: DEPARTMENT OF CRIMINAL JUSTICE SERVICES.

1998 Appropriation Act grants Criminal Justice Services Board discretion in determining distribution of funds to state-supported regional criminal justice training academies. Although Board is no longer required to impose specific portion of financial responsibility for operating academies on participating localities, it is not precluded from determining such to be reasonable requirement. Board has discretion to determine whether in-kind services or contributions by entities other than participating localities would satisfy any obligation placed on localities to share in funding of academy's operation.

The Honorable Stephen O. Simpson
Sheriff for Loudoun County
July 6, 1999

You ask whether, for the biennium beginning July 1, 1998, the Department of Criminal Justice Services (the "Department") is authorized to consider the in-kind services provided by the Washington Metropolitan Area Transit Authority and the Metropolitan Washington Airports Authority to the Northern Virginia Criminal Justice Academy when the Department calculates the amount of funding for the Academy.

You refer to a 1984 opinion of the Attorney General which concludes that, in determining the amount of funds to be distributed to regional training academies, the Department is not to consider in-kind services provided to such academies by entities similar to the Authorities. Your question actually involves the 1984 opinion of the Attorney General and an opinion issued in 1982, which interpret the language of the 1984-1986 Appropriation Act and the 1982-1984 Appropriation Act.

Section 1-111, Item 530 of the 1982-1984 Appropriation Act allocates funds to the Department to expend for assistance to the regional training academies. Item 530 contains the following limitation on use of the funds:

[F]unding for Law Enforcement Training and Education provides assistance for 60% of the total costs of the Regional Training Academies; the remaining 40% shall be provided by the participating localities.
The 1984-1986 Appropriation Act and the 1986-1988 Appropriation Act contain similar language.\(^6\)

In 1982, the Attorney General issued an opinion on whether localities could satisfy a portion of their forty percent contribution through "in-kind" contributions to the cost of operating an academy.\(^7\) The opinion concludes that the forty percent share required of localities means forty percent of the actual amount of money to be expended in the operation of an academy and would not include "in-kind" contributions.\(^8\)

In 1984, the Attorney General issued an opinion on whether a portion of the localities' forty percent contribution could be made by colleges, universities, private companies, state agencies, and multistate authorities.\(^9\) The opinion concludes that "the term 'participating localities' include[s] only cities, counties, and towns, or regional authorities created by them, and not other sources such as State agencies, educational institutions or multi-state entities."\(^10\) This conclusion is based on the view that the General Assembly intended to place the responsibility for funding a portion of the academies on the participating localities as a condition to receiving state funds.\(^11\)

The 1988-1990 Appropriation Act and the 1990-1992 Appropriation Act contain the same sixty-forty percent requirement and also require the Criminal Justice Services Board to "adopt such rules as may reasonably be required for the establishment, operations and service boundaries of state supported regional criminal justice training academies."\(^12\)

No subsequent appropriation for criminal justice training academies contains the requirement that participating localities fund forty percent of the cost of operating the academies.\(^13\) Rather, each subsequent appropriation act, including the 1998 Appropriation Act, contains the following language:

\[
\text{The Criminal Justice Services Board shall adopt such rules as may reasonably be required for the distribution of funds and for the establishment, operation and service boundaries of state supported regional criminal justice training academies.}^{14}\]

It is clear from this language that the General Assembly has granted the Criminal Justice Services Board the discretion to determine how the funds are to be distributed. The Board is no longer required to impose a specific portion of the financial responsibility for operation of the academies on the participating localities. It is my opinion that the Board is not, however, precluded from doing so should it determine such imposition to be reasonably required in connection with distributing the appropriated funds. It also would be within the Board's discretion to determine whether in-kind services or contributions by entities other than the participating localities would satisfy any obligation placed on localities to share in the funding of an academy's operation.

COUNTIES, CITIES AND TOWNS: PUBLIC RECREATIONAL FACILITIES AUTHORITIES ACT.

WORKERS' COMPENSATION: INSURANCE AND SELF-INSURANCE.

Public recreational facilities authority has statutory authority to purchase insurance for construction project through owner-controlled insurance program which provides for workers' compensation general and excess liability, professional liability, pollution liability, force majeure/debt service guarantee, and contractor default (in lieu of surety coverage). Such insurance coverage satisfies statutory obligation to provide workers' compensation insurance and payment and performance bonds. Public recreational facilities authority that contracts with independent contractor to perform work within authority's trade, business or occupation is "statutory employer" of employees employed by construction contractors and subcontractors. Sole remedy for employees is provided by Workers' Compensation Act.

The Honorable Eric Cantor
Member, House of Delegates
June 18, 1999

You inquire regarding the authority of a public recreational facilities authority to purchase insurance for its projects through an owner-controlled insurance program ("OCI program").

You provide the following facts relative to your inquiry. The Greater Richmond Convention Center Authority (the "Authority") is a duly authorized public recreational facilities authority created pursuant to the Public Recreational Facilities Authorities Act (the "Authorities Act"). The Authority is a political subdivision of the Commonwealth exercising public and essential governmental functions to provide for the public health and welfare. The localities participating in the Authority are the city of Richmond and counties of Chesterfield, Hanover and Henrico.

Pursuant to the Authorities Act, the Authority plans to purchase and expand the Richmond Centre, which is a convention center facility located in Richmond. The expansion will increase the square footage of the Richmond Centre to approximately 605,000

---

1999 REPORT OF THE ATTORNEY GENERAL
square feet, at a projected cost of approximately $169 million. The Authority will operate and manage the Richmond Centre after completion of its expansion.

The Authority will incur substantial expenses to secure insurance coverage against construction-related losses and claims, as well as coverage for its operation of the expanded Richmond Centre. In such large construction projects, contractors and subcontractors typically obtain their own workers' compensation and commercial general liability insurance policies. Every contractor includes, as part of its bid on the project, the cost of such insurance policies and a significant markup added to the actual cost of the policies. The owner of the construction project typically subsidizes these insurance costs.

The Authority desires to depart from the typical manner in which insurance is purchased on large construction projects and use an OCI program to obtain all insurance coverage necessary for the expansion and operation of the Richmond Centre. Owners of large construction projects have used OCI programs to produce significant savings on insurance costs while providing improved insurance coverage.

An OCI program is a master program that provides broad and uniform insurance coverage with high liability limits. Under an OCI program, the owner of the construction project purchases comprehensive insurance that covers the owner, contractors, subcontractors and all other parties involved in the construction activities. The owner may achieve a substantial cost savings from the use of an OCI program resulting in lower administrative costs, credits for volume insurance purchasing, coordinated safety and claims programs, and elimination of contractor policy cost markups.

OCI programs have been used primarily for large construction projects, such as the Richmond Centre expansion. Coverage under an OCI program typically includes workers' compensation, primary and excess commercial general liability, professional liability, pollution liability, and force majeure/debt service guarantees. Many disadvantaged and minority contractors and subcontractors frequently are unable to provide adequate amounts of these coverages. The use of an OCI program can increase the participation of such contractors in the overall construction project by relieving them of the responsibility for procuring individual insurance coverages.

The Authority believes that the use of an OCI program for the expansion and operation of the Richmond Centre will allow the Authority leverage to obtain for its contractors, at a substantially lower cost, the best insurance coverages and the highest quality claim services than could be obtained using the traditional approach to procuring construction insurance.

You first inquire whether a public recreational facilities authority, such as the Authority, has the statutory authority to purchase insurance through an OCI program.

Section 15.2-5601 of the Code of Virginia, a portion of the Authorities Act defines the term "project" to mean "any one or more of the following: auditorium, ... coliseum, convention center." The term "cost" is defined to mean, "as applied to any project, all or any part of the cost of acquisition, construction, alteration, enlargement, reconstruction and remodeling of a project or portion thereof, including the cost of ... insurance."
The General Assembly authorizes and empowers authorities, such as the Authority, "[t]o acquire, purchase, lease as lessee, construct, reconstruct, improve, extend, operate and maintain projects," "[t]o enter into contracts with ... any person providing for or relating to any project," "[t]o make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under [the Authorities Act]," and "[t]o do all acts and things necessary or convenient to carry out the powers granted by [the Authorities Act]." Additionally, the General Assembly mandates that the Authorities Act "shall be liberally construed to effect [its] purposes."

Where the language of a statute is plain and unambiguous, the legislature should be assumed to have intended to mean what it plainly has expressed, and statutory construction is unnecessary. Therefore, it is clear that the General Assembly has granted to public recreational facilities authorities, such as the Authority, the statutory authority to purchase insurance for projects, such as the proposed Richmond Centre expansion.

In determining whether the authority to exercise a statutorily created power in a particular manner may be implied from a statute, an examination must initially be made as to whether the statute contains any guidance on the manner in which the power is to be exercised. The Authorities Act is silent as to the method by which public recreational facilities authorities, such as the Authority, may purchase insurance.

For many years, Virginia has followed the Dillon Rule of strict construction concerning the powers of local governing bodies, limiting such powers to those conferred expressly by law or by necessary implication from such conferred powers. In the facts you present, the Dillon Rule is applicable to determine, in the first instance, from express words or by implication, whether a public recreation facilities authority may purchase insurance coverage for the project. This initial determination, however, does not end the inquiry. If the authority to purchase insurance coverage does exist, a determination must then be made whether the particular authority is being exercised properly—i.e., the "reasonable selection of method" rule may be applied to decide "whether there may be implied the authority to execute the power in the particular manner chosen." The "reasonable selection of method" rule "permits local public bodies to exercise discretionary authority where a grant of power is silent upon its mode or manner of execution" before the rule comes into play.

Under the "reasonable selection of method" rule, the Authority’s use of an OCI program is within its discretionary authority since the Authorities Act is silent on the manner in which the Authority is to purchase insurance. It is my view that the Authority is entitled to some deference since the use of an OCI program, as you describe it, is designed to ensure that higher minority participation in the construction project will be achieved, better insurance coverages will be obtained, and significant cost savings will inure to the benefit of the constituents of the Authority’s jurisdictions and, eventually, to the taxpayers of the Commonwealth.

The Authority is authorized by the General Assembly to purchase insurance for construction projects. The Authorities Act, however, is silent as to the methods by which such insurance is to be obtained by the Authority. The provisions of the Authorities Act
allowing the Authority to take all necessary and convenient actions in exercising its enumerated powers under the Act must be liberally construed. Therefore, I am of the opinion that a public recreational facilities authority has the statutory authority to purchase insurance through an OCI program.

You next ask whether the participation of private contractors and subcontractors in an OCI program that provides comprehensive insurance and a separate surety OCI program that provides workers' compensation insurance and surety bond coverage will satisfy the obligations in §§ 11-46.3 and 11-58 of the Virginia Public Procurement Act to provide workers' compensation insurance coverage and payment and performance bonds.

You represent that an OCI program may provide for workers' compensation, general and excess liability, professional liability, pollution liability, force majeure/debt service guarantee, and contractor default (in lieu of surety) coverage. You advise, however, that contractors are required by statute to provide some of these insurance coverages and will be reluctant to participate in an OCI program unless the coverage they receive under the program will satisfy their statutory obligations.

Section 11-46.3(A) prohibits a contractor from performing any work on a government construction project until such contractor "has obtained, and continues to maintain for the duration of such work, such workers' compensation coverage as may be required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2." Furthermore, such contractor must provide evidence of such coverage to the governmental entity "prior to award of contract."

Employers are required to ensure the payment of workers' compensation claims by securing their liability with "an insurer authorized to transact the business of workers' compensation insurance in [Virginia];" by receiving permission from the Workers' Compensation Commission to be self-insured; or by "[b]eing a member ... of a group self-insurance association licensed by the State Corporation Commission." You represent that every contractor performing construction work on the Richmond Centre will be required to participate in the OCI program. Therefore, the use of the OCI program will ensure that each contractor and subcontractor will satisfy the statutory obligation to provide and maintain workers' compensation insurance.

Section 11-58(A) requires that when a "public construction contract exceeding $100,000 [is] awarded to any prime contractor, such contractor shall furnish" both a performance bond and a payment bond to the public body. Each such bond is required to be in the amount of the construction contract. You represent that surety OCI programs operate in the same manner as do OCI programs on large construction projects. Therefore, you advise that a prime contractor participating in a surety OCI program will be issued a payment and performance bond that may be used to satisfy the aforementioned statutory obligation.

Consequently, the coverages provided to contractors under the OCI program that you describe, as well as a separate surety OCI program, will, in my opinion, permit the
contractors to satisfy the statutory requirements to provide workers' compensation insurance and payment and performance bonds.

Your final inquiry is whether a public recreational facilities authority is a "statutory employer" within the meaning of the Virginia Workers' Compensation Act when it constructs and operates a convention center.

Section 65.2-302(A), a portion of the Workers' Compensation Act, defines the term "statutory employer" as follows:

> When any person (referred to in this section as "owner") undertakes to perform or execute any work which is a part of his trade, business or occupation and contracts with any other person (referred to in this section as "subcontractor") for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay to any worker employed in the work any compensation under [the Act] which he would have been liable to pay if the worker had been immediately employed by him.

Statutory employees of "owners" are limited under the Workers' Compensation Act to bringing a claim against an "owner" for injuries received while performing work for such owner. A political subdivision is an "owner" within the meaning of § 65.2-302(A). Therefore, the issue to be determined is whether the work the political subdivision has contracted with an independent contractor to perform is within the "trade, business or occupation" of the political subdivision.

The appropriate test applied to governmental entities to determine their "trade, business or occupation" does not focus simply on what they do, but on what they are supposed to do. "In other words, any activity which a government entity is authorized or required to do is considered its trade, business or occupation."

The Authority clearly is acting within its "trade, business or occupation" when contracting for the Richmond Centre expansion. As made clear in the Authorities Act, the Authority is authorized to construct a convention center. Therefore, I am of the opinion that the Authority is the "statutory employer" of all employees who are employed by the construction contractors and subcontractors working on the Richmond Centre expansion. As such, I am also of the opinion that the sole remedy for such employees is provided by the Workers' Compensation Act.

---

1Tit. 15.2, ch. 56, Va. Code Ann. §§ 15.2-5600 to 15.2-5616.
2See § 15.2-5604.
3See § 15.2-5602 (allowing localities to create authority "by ordinance or resolution").
4See § 15.2-5604(3).
5Section 15.2-5601.
6Section 15.2-5604(3).
7Section 15.2-5604(7).
8Section 15.2-5604(10).
Section 15.2-5604(11).

Section 15.2-5615.


Virginia courts historically have resolved questions concerning implied legislative authority by analyzing the legislative intent and have consistently refused to imply powers that the General Assembly clearly did not intend to convey. See Commonwealth v. Arlington County Bd., 217 Va. 558, 577, 232 S.E.2d 30, 42 (1977).


Id. at 574, 232 S.E.2d at 40.

See § 15.2-5601 (defining "cost").

See §§ 15.2-5604(11), 15.2-5615.

Section 11-46.3 provides:

A. No contractor shall perform any work on a construction project of a department, agency or institution of the Commonwealth unless he (i) has obtained, and continues to maintain for the duration of such work, such workers' compensation coverage as may be required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 and (ii) provides prior to the award of contract on a form furnished by the department, agency or institution of the Commonwealth evidence of such coverage.

B. The Department of General Services shall provide the form to such departments, agencies, or institutions. Failure of a department, agency or institution to provide such form prior to the award of contract shall waive the requirements of clause (ii) of subsection A.

C. No subcontractor shall perform any work on a construction project of a department, agency or institution of the Commonwealth unless he has obtained, and continues to maintain for the duration of such work, such workers' compensation coverage as may be required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2.

D. The provisions of this section shall apply to localities on and after January 1, 1994, and the Department of General Services shall furnish the forms to localities.

Section 11-58 provides:

A. Upon the award of any public construction contract exceeding $100,000 awarded to any prime contractor, such contractor shall furnish to the public body the following bonds:

1. A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.

2. A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the prosecution of the work provided for in such contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

B. Each of such bonds shall be executed by one or more surety companies selected by the contractor which are legally authorized to do business in Virginia.

C. If the public body is the Commonwealth of Virginia, or any agency or institution thereof, such bonds shall be payable to the Commonwealth of Virginia, naming also the agency or institution thereof. Bonds required for the contracts of other public bodies shall be payable to such public body.

D. Each of the bonds shall be filed with the public body which awarded the contract, or a designated office or official thereof.

E. Nothing in this section shall preclude a public body from requiring payment or performance bonds for construction contracts below $100,000.
"F. Nothing in this section shall preclude such contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract."

Sections 11-35 to 11-80.

Section 11-46.3(C) contains the same provision for subcontractors.

Section 11-46.3(A).

Section 65.2-801(A)(1).

Section 11-46.3(A)(2).

Section 65.2-801(A)(3).

Section 11-58(A)(1).

Section 11-58(A)(2).

Section 11-58(A)(1), (2).

Sections 65.2-100 to 65.2-1310.


See id. at 383, 355 S.E.2d at 599-600.


See § 15.2-5604(3).

Section 65.2-302(A) imposes liability on the Authority for its "statutory employees" as if those employees had been employed directly by the Authority; however, the Authority may rely on the workers' compensation insurance coverage obtained through the OCI program to insure against such liability.

COUNTIES, CITIES AND TOWNS: URBAN COUNTY EXECUTIVE FORM OF GOVERNMENT.

ADMINISTRATION OF GOVERNMENT GENERALLY: STATE AND LOCAL GOVERNMENT CONFLICT.

ELECTIONS: CAMPAIGN FINANCE DISCLOSURE ACT.

Purpose of disclosure of business or financial relationship at hearing held to consider application for special exception, variance or zoning is to establish public record of economic interests that may affect judgment of governmental officials in performance of their duties. Strict compliance with requirement to disclose such relationship between county official who has power to approve certain land use changes and applicant requesting changes; $200 threshold amount triggers financial relationship that requires disclosure.

Mr. David P. Bobzien
County Attorney for Fairfax County
August 16, 1999

You ask whether § 15.2-852 of the Code of Virginia requires a local elected official to treat as a campaign contribution the entire entry fee received from each participant in a political fund-raising event or whether the official may deduct the portion of the fee covering his costs in sponsoring the event. You indicate that individuals and firms involved in land use applications may attend the event.
Section 15.2-852 applies whenever the board of supervisors, the planning commission, or the board of zoning appeals holds a hearing on an application for a special exception or variance or an amendment to a zoning ordinance other than a comprehensive zoning plan or ordinance applicable throughout the county.\(^1\) Section 15.2-852(A) provides that, prior to or at the hearing, each member of the body conducting the proceeding is to publicly disclose "any business or financial relationship" the member has or has had within the preceding twelve-month period with certain persons involved in the application.\(^5\) The statute broadly defines the term "business or financial relationship" to include

the receipt by the member, or by any person, firm, corporation or committee in his behalf from the applicant in the case or from the title owner, contract purchaser or lessee of the subject land, or from any of the other persons above specified, during the twelve-month period prior to the hearing in such case, of any gift or donation having a value of $200 or more.\(^3\)

A prior opinion of the Attorney General concludes that the "gift or donation" language in the statute is sufficiently broad to encompass political contributions and that, therefore, the disclosure requirements of § 15.2-852 are in addition to any reporting requirements imposed by the Campaign Finance Disclosure Act.\(^4\) The opinion recognizes, however, that the disclosure requirements of § 15.2-852 serve a different purpose from the reporting requirements of the Act.\(^5\) The purpose of the Campaign Finance Disclosure Act is to provide a public record of campaign contributions to candidates for public office; the purpose of § 15.2-852 is to disclose a "business or financial relationship" at the time and at the place that an application for a special exception, variance or zoning amendment is being considered.\(^6\)

The purpose of § 15.2-852 is thus substantially the same as the reporting requirements under the State and Local Government Conflict of Interests Act:\(^7\) to establish a record of economic interests which may affect the judgment of governmental officers and employees in the performance of their official duties.\(^8\) A 1989 opinion concludes that, in determining the value of a complimentary ticket to a fund-raising event under the Act, only the value of the meal or refreshments provided at the event need be considered since any profit from the event would be given to the candidate, political committee or other entity which sponsored the event.\(^9\) Thus, unless the value of the meal or refreshments exceeds the threshold amount set out in the statute, no disclosure is required.\(^10\) Although based on a different factual setting, the 1989 opinion may be read as authority for the proposition that, for reporting purposes, the value of a ticket to a political fund-raising event may be divided between the expenses associated with the event and the profit from the event. I am unable to conclude, however, that the General Assembly intended this result in the enactment of § 15.2-852.

Section 15.2-852 requires generally the disclosure of any business or financial relationship between a county official who has the power to approve certain land use changes and an applicant requesting the changes. The "gift or donation" language of § 15.2-852 has a narrower purpose: the public disclosure of a particular type of financial transaction
between the county official and the persons who will benefit from approval of the application. Under the statute, this type of financial transaction constitutes a "financial relationship" between the official and the applicant. The General Assembly has set $200 as the threshold amount that triggers a financial relationship and thus requires disclosure. In my view, no language in the statute supports the conclusion that, although an applicant may pay a county official more than the threshold amount for a ticket to a fund-raising event held to benefit the official, a "financial relationship" is not established if the county official's actual profit from the sale of the ticket falls below $200.

I point out also that, while knowing violations of both § 15.2-852 and the disclosure requirements of the State and Local Government Conflict of Interests Act carry criminal penalties, a local official may avoid prosecution under the Act if the official acts in reliance on a written opinion of the Commonwealth's attorney; a state official likewise may rely on a written opinion of the Attorney General. The General Assembly has not expressly authorized either the Commonwealth's attorney or the Attorney General to provide local officials subject to § 15.2-852 this protection. It is, therefore, advisable for local officials engaged in transactions within § 15.2-852 to strictly comply with the statute's disclosure requirements.

1Section 15.2-852 applies only in a county with the urban county executive form of government.
2The persons include the applicant, the title owner, contract purchaser or lessee of the land, any trust beneficiary with an interest in the land, and the agent, attorney or real estate broker of any of the above. Section 15.2-852(A).
3Section 15.2-852(A) (emphasis added).
6See id.
7Sections 2.1-639.1 to 2.1-639.24. Section 15.2-852 is not superseded by the State and Local Government Conflicts of Interest Act. See § 2.1-639.1 (Act supersedes "all general and special acts," with exception of § 15.1-73.4, predecessor statute to § 15.2-852, which "shall remain in full force and effect").
8See § 2.1-639.1.
10See id.
11See § 15.2-852(A).
12See §§ 15.2-852(C), 2.1-639.17.
13See § 2.1-639.18(A), (B).

---

COURTS NOT OF RECORD: JUVENILE AND DOMESTIC RELATIONS COURTS.

Preliminary protective order issued to protect welfare of child in any matter before court remains part of case over which court's jurisdiction has been invoked. Disposition of adult case during which court issued order to protect child from abuse or neglect does not terminate preliminary protective order.
You ask several questions regarding the issuance of preliminary protective orders for the protection of a child under §16.1-253(A) of the Code of Virginia when the court has jurisdiction in an adult criminal or civil case.

Section 16.1-253(A) authorizes the juvenile and domestic relations district court to issue a preliminary protective order for the benefit of a child in "any matter before the court." Section 16.1-253(A) permits issuance of the order "after a hearing," while §16.1-253(B) permits issuance of the order "ex parte," with a hearing to be provided within "five business days after the issuance of the order." You ask specifically about §16.1-253(A), which provides, in part:

Upon the motion of any person or upon the court's own motion, the court may issue a preliminary protective order, after a hearing, if necessary to protect a child's life, health, safety or normal development pending the final determination of any matter before the court.

You ask first whether, if the court issues a preliminary protective order under §16.1-253(A) in an adult criminal or civil case within the court's jurisdiction, the order remains a part of the adult case or whether it constitutes an independent case. Section 16.1-260(A) provides that, subject to certain stated exceptions, "all matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition." Section 16.1-252 authorizes the court, upon petition, to issue a preliminary removal order in cases of alleged abuse or neglect of a child. In addition, §16.1-253.1 authorizes victims of "family abuse," including children, to file a petition seeking a preliminary protective order. Section 16.1-253, however, does not require the filing of a petition. Rather, §16.1-253(A) permits the issuance of a preliminary protective order for the protection of a child upon a "motion" made by "any person" or by the court in "any matter" already within the jurisdiction of the court. No language in §16.1-253 suggests that a motion for a preliminary protective order made in a matter already before the court or the issuance of the order operates to commence an independent action. It is my opinion that a preliminary protective order issued under §16.1-253 remains a part of the case over which the court has jurisdiction when it issues the order.

You ask also whether, because a preliminary protective order is issued under §16.1-253(A) "pending the final determination of any matter before the court," disposition of the adult case terminates the protective order. Read alone, "pending the final determination of any matter before the court" would appear to limit the duration of a preliminary protective order issued under §16.1-253(A) in an adult civil or criminal case to the period in which the adult case is pending final determination. It is a fundamental rule of statutory construction, however, that in ascertaining and giving effect to the intent of the legislature, a statute is to be considered as a whole and in conjunction with other statutes bearing upon the same subject matter.
Subsections C, D, E and G of § 16.1-253 set out the procedures for the “hearing required by this section.” Although the argument can be made that these subsections apply only to the hearing required under subsection B following the court’s ex parte issuance of a preliminary protective order, subsection A also requires a hearing before issuance of the order. Thus, the language “hearing required by this section” must be read to encompass both subsections A and B.

Section 16.1-253(C) requires twenty-four hour notice prior to the hearing to the parents, legal custodian of the child, or any family or household member “to whom the protective order may be directed.” Section 16.1-253(D) requires that “[a]ll parties to the hearing ... be informed of their right to counsel.” Section 16.1-253(E) provides that any person to whom notice was given has the right to examine witnesses and present evidence at the hearing. Finally, § 16.1-253(G) provides:

If at the preliminary protective order hearing held pursuant to this section the court makes a finding of abuse or neglect and a preliminary protective order is issued, a dispositional hearing shall be held pursuant to § 16.1-278.2. The dispositional hearing shall be scheduled at the time of the hearing pursuant to this section, and shall be held within seventy-five days of this hearing, ... All parties present at the hearing shall be given notice of the date and time scheduled for the dispositional hearing; parties who are not present shall be summoned to appear as provided in § 16.1-263.

Reading § 16.1-253 as a whole and in conjunction with the other statutes relating to the court’s authority to protect the welfare of a child, it is my opinion that, should the court at the hearing held under § 16.1-253(A) find abuse or neglect, the preliminary protective order does not terminate upon disposition of the adult case at which the order was issued. Rather, the court is to schedule a dispositional hearing pursuant to § 16.1-278.2.11 Section 16.1-278.2 details the procedure for the dispositional hearing and the orders of disposition that the court may make to protect the welfare of the child. Section 16.1-278.2(C) expressly provides that “[a]ny preliminary protective orders entered on behalf of the child shall be reviewed at the dispositional hearing and may be incorporated, as appropriate, in the dispositional order.”12

1The order may be issued under § 16.1-253(A) “if necessary to protect a child’s life, health, safety or normal development.”

2“Ex parte” means “done for, in behalf of, or on the application of, one party only.” BLACK’S LAW DICTIONARY (6th ed. 1990).

3The order may be issued under § 16.1-253(B) upon evidence establishing “that the child would be subjected to an imminent threat to life or health to the extent that delay for the provision of an adversary hearing would be likely to result in serious or irremediable injury to the child’s life or health.”

4Section 16.1-241 sets out the “cases, matters and proceedings” within the jurisdiction of the juvenile and domestic relations district courts.

5I assume that the person against whom the order is issued is a party in the matter before the court or is otherwise within the jurisdiction of the court. See § 16.1-253(H) (order may not issue under statute “against a person over whom the court does not have jurisdiction”); see also § 16.1-253(C) (notice of hearing is to be provided person “to whom the protective order may be directed”).
Because I conclude that the preliminary protective order does not constitute an independent case, it is unnecessary to address your second question regarding the presentation of evidence on appeal to the circuit court when the juvenile and domestic relations district court issues the order upon its own motion.


See Gallagher v. Commonwealth, 205 Va. 666, 139 S.E.2d 37 (1964) (word "operates," as defined in motor vehicle laws, is not limited to movement of vehicles, in order to convict defendant under criminal laws of driving or operating motor vehicle while intoxicated); Prillaman v. Commonwealth, 199 Va. 401, 406, 100 S.E.2d 4, 7 (1957) (provisions in statute which are omitted in another statute relating to same subject are applicable to proceeding under other statute, when not inconsistent with its purposes); see also Op. Va. Att’y Gen.: 1998 at 117, 118-19; 1993 at 173, 174.

Section 16.1-253(C).

Id.

Section 16.1-278.2(A) states that the dispositional hearing is to be held "[w]ithin seventy-five days of ... a hearing on a preliminary protective order held pursuant to § 16.1-253." Under certain circumstances, § 16.1-253(F) requires the court to hold an adjudicatory hearing in addition to the dispositional hearing.

This conclusion also is consistent with the liberal construction mandate of § 16.1-227. Section 16.1-227 states that the Juvenile and Domestic Relations District Court Law is to be "construed liberally and as remedial in character, and the powers hereby conferred are intended to be general to effect the beneficial purposes herein set forth." Section 16.1-253 evidences a legislative intent to establish a mechanism enabling the court to consider the safety and health of a child in connection with any matter in which the court’s jurisdiction has been invoked. To conclude that the legislature intended to permit the court to issue an order protecting a child from abuse or neglect only for the duration of the matter before the court would not in my view best effect the beneficial purpose of the statute.

CRIMES AND OFFENSES GENERALLY: CRIMES AGAINST THE ADMINISTRATION OF JUSTICE.

Requirement that employees, other than criminal defendants, not suffer any adverse employment action resulting from their compliance with summons or subpoena to serve on jury or appear in court of law includes cases heard in juvenile, state/federal, and out-of-state courts.

The Honorable Andrew R. McRoberts
County Attorney for Culpeper County
August 9, 1999

You ask whether § 18.2-465.1 of the Code of Virginia, which prohibits an employer from discharging or taking any adverse personnel action against an employee who is serving on jury duty or who is summoned or subpoenaed to appear in a "court of law," applies to proceedings in juvenile and domestic relations district courts, other state courts, federal courts, and out-of-state courts.

Section 18.2-465.1 provides:

Any person who is summoned to serve on jury duty or any person, except a defendant in a criminal case, who is summoned or subpoenaed to appear in a court of law when a case is to be heard shall neither be discharged from employment, nor have any adverse personnel action taken against him, nor shall be required to use sick leave or vacation time, as a result of his absence from employment due to such jury duty or court appearance, upon giving reasonable notice to his employer of such court
appearance or summons. Any employer violating the provisions of this section shall be guilty of a Class 4 misdemeanor.

When originally enacted in 1981, § 18.2-465.1 prohibited the discharge from employment of a person who was summoned to serve on jury duty or a requirement that he use sick leave or vacation time for jury duty, provided that he gave reasonable notice to his employer of his summons. Subsequently, this statute was amended to expand the prohibition to include "any adverse personnel action" and to include employees "summoned or subpoenaed to appear in a court of law when a case is to be heard."

The primary object of statutory construction is to ascertain and give effect to the intent of the General Assembly. The 1988 amendment to § 18.2-465.1 expanding the coverage of the statute from employees serving on jury duty to include employees, other than criminal defendants, who are summoned or subpoenaed to appear in a court of law, operates to enlarge the number of employees potentially protected by the statute. Although § 18.2-465.1 is a penal statute and must be strictly construed, the construction of it as it relates to employees must be interpreted in light of the intent of the statute to offer them greater protection.

"In determining legislative intent from the statutory language, words should be given their ordinary meaning." Indeed, words in a statute are to be given their common meaning unless a contrary legislative intent is manifest. Given its common and ordinary meaning, the phrase "court of law" refers to "a court that hears cases and decides them on the basis of statutes or the common law." The inclusion of juvenile and domestic relations district courts, other state courts, federal courts, and out-of-state courts within such definition is consistent with the intent of § 18.2-465.1 to ensure that employees (other than criminal defendants) who are summoned and subpoenaed for a court appearance will not be discharged or have any other adverse personnel action taken against them as a result of their compliance with such summons or subpoena.

Accordingly, it is my opinion that § 18.2-465.1 is applicable to juvenile and domestic relations district courts, other state courts, federal courts, and out-of-state courts.

---

CRIMES AND OFFENSES GENERALLY: CRIMES AGAINST THE PERSON – ASSAULTS AND BODILY WOUNDINGS.

Prosecution of unlawful hazing is not limited to activities that occur only on campuses at Virginia schools, colleges or universities.

The Honorable Charles D. Griffith Jr.  
Commonwealth's Attorney for the City of Norfolk  
September 10, 1999

You ask whether § 18.2-56 of the Code of Virginia limits prosecution of unlawful hazing activities to those activities that occur only on the campus of schools, colleges or universities.

You relate that an individual received injuries during a hazing incident at a private residence in the City of Virginia Beach. The individuals involved in the incident were students at Norfolk State University. You note that § 18.2-56 makes it "unlawful to haze, or otherwise mistreat so as to cause bodily injury, any student at any school, college, or university." You conclude that § 18.2-56 limits the class of students who may be the victims of hazing solely to those "at any school, college, or university." Without such a limitation, students at settings other than a school would be entitled to claim they were victims of hazing. You ask whether § 18.2-56 restricts prosecutions of hazing to those that occur to students on the campus of schools, colleges, or universities.

Section 18.2-56 provides:

It shall be unlawful to haze, or otherwise mistreat so as to cause bodily injury, any student at any school, college, or university.

Any person found guilty thereof shall be guilty of a Class 1 misdemeanor, unless the injury would be such as to constitute a felony, and in that event the punishment shall be inflicted as is otherwise provided by law for the punishment of such felony.

Any person receiving bodily injury by hazing or mistreatment shall have a right to sue, civilly, the person or persons guilty thereof, whether adults or infants.

The president, or other presiding official of any school, college or university, receiving appropriations from the state treasury shall, upon satisfactory proof of the guilt of any student found guilty of hazing or mistreating another student so as to cause bodily injury, expel such student so found guilty, and shall make report thereof to the attorney for the Commonwealth of the county or city in which such school, college or university is, who shall present the same to the grand jury of such city or county convened next after such report is made to him.

"The ascertainment of legislative intention involves appraisal of the subject matter, purposes, objects and effects of the statute, in addition to its express terms." Words used in a statute are to be given their common meanings unless a contrary legislative intent is
manifest. The General Assembly has not defined the term "haze" as used in § 18.2-56. Consequently, the words used in the statute must be given their ordinary meaning within the statutory context. The term "haze" generally means "to intimidate by physical punishment"; "to harass ... by exacting unnecessary, disagreeable, or difficult work"; "to harass or try to embarrass or disconcert by banter, ridicule, or criticism"; "to subject ... to treatment intended to put in ridiculous or disconcerting positions."

One must look to the entire statute to ascertain the intent of the General Assembly. The last paragraph of § 18.2-56 requires "[t]he president, or other presiding official of any school, college or university [in the Commonwealth], receiving appropriations from the state treasury" to expel "any student found guilty of hazing or mistreating another student so as to cause bodily injury" upon receipt of satisfactory proof of guilt. Furthermore, such official is also required to report such expelling to the Commonwealth's attorney for "the county or city in which such school, college or university is." The General Assembly does not use restrictive language in directing such official to expel a student who is guilty of hazing or mistreating another student and to report the matter to the Commonwealth's attorney for the locality in which the institution is located. Under well-accepted principles of statutory construction, when a statute contains a specific grant of authority, the authority exists only to the extent specifically granted in the statute.

Section 18.2-56 is clearly a penal statute. "[A] penal statute is to be strictly construed against the state and in favor of the liberty of a citizen." "Such statutes cannot be extended by implication or construction, or be made to embrace cases which are not within their letter and spirit." Penal statutes are not to be so strictly construed, however, as to defeat the obvious intention of the General Assembly. The clear intent of the General Assembly is to declare unlawful the hazing of students attending schools, colleges or universities "so as to cause bodily injury." The common meanings of the words used in § 18.2-56 reflect an intent by the General Assembly to prevent the intimidation by physical injury of any student attending schools, colleges and universities in the Commonwealth. It is clear, therefore, that the phrase "at any school, college, or university" modifies the term "student," and not the location where such activity takes place.

Consequently, I must conclude that § 18.2-56 does not limit prosecution of unlawful hazing activities to those activities that occur only on the campus at schools, colleges or universities in Virginia.
CRIMINAL PROCEDURE: ARREST.

COMMISSIONS, BOARDS AND INSTITUTIONS: DEPARTMENT OF CRIMINAL JUSTICE SERVICES - PRIVATE SECURITY SERVICES BUSINESSES.

No authority for licensed armed security officer under private contract to advise citizen of his right to receive summons and be released from custody, prior to officer's arresting, taking into custody and transporting citizen to magistrate for issuance of warrant.

The Honorable Walter A. Stosch
Member, Senate of Virginia
February 26, 1999

You ask whether a licensed armed security officer has the power to arrest, take into custody, and transport a citizen from premises the officer patrols pursuant to private contract to a magistrate for the issuance of a warrant, without first advising the citizen of his right to receive a summons pursuant to § 19.2-74 of the Code of Virginia.

You refer to the portion of § 9-183.8, which states that, "[f]or the purposes of § 19.2-74, a registered armed security officer of a private security services business shall be considered an arresting officer." You also refer to § 19.2-74(A. 1), which provides that the arresting officer detaining a person who has committed a misdemeanor offense in the officer's presence "shall take the name and address of such person and issue a summons" and, upon the person's rendering his written promise to appear in court, the officer "shall forthwith release him from custody." Finally, you refer to the language of § 19.2-74(B) requiring the chief law-enforcement officer of the locality, "[o]n application," to supply each officer with summons forms, "for which such officer shall account." You observe that it appears that these statutory provisions require a licensed armed security officer to inform a citizen of the officer's obligation to issue a summons and then release the citizen as opposed to making an arrest, taking the citizen into custody, transporting the citizen against his will to the magistrate, and asking that the magistrate issue a summons.
Section 9-183.8 provides:

A registered armed security officer of a private security services business while at a location which the business is contracted to protect shall have the power to effect an arrest for an offense occurring (i) in his presence on such premises or (ii) in the presence of a merchant, agent, or employee of the merchant the private security business has contracted to protect, if the merchant, agent, or employee had probable cause to believe that the person arrested had shoplifted or committed willful concealment of goods as contemplated by § 18.2-106. For the purposes of § 19.2-74, a registered armed security officer of a private security services business shall be considered an arresting officer.

Section 19.2-74 deals specifically with arrests for violations of certain specified offenses, misdemeanors, and offenses for which a summons may be issued, except as provided in Title 46.2 or §§ 18.2-266, 18.2-388 and 18.2-407. A 1976 opinion of the Attorney General concludes that "§ 19.2-74 gives an arresting officer wide discretion in deciding whether to issue a summons or obtain a warrant." Section 19.2-74 does not, however, contain any language suggesting that the citizen being arrested has a right either to be advised or to be issued a summons.

In responding to the specific inquiry "whether a person arrested without a warrant for a Class 1 or 2 misdemeanor must be released on a summons if the person discontinues the unlawful act, will honor the summons, and will not cause harm to himself or others," a 1991 opinion concludes:

Section 19.2-74 plainly defines the conditions precedent to the release of a person on a summons following a warrantless arrest. When making an arrest for a specified offense, the officer must take the person's name and address and issue a summons. "Upon the giving by such person of his written promise to appear," the officer "shall" release the arrested person. If the person fails or refuses to discontinue the unlawful act, the officer "may" proceed to take the person before a magistrate. If the person reasonably believes the person will disregard the summons or will harm anyone, however, the officer "shall" proceed to take the person before a magistrate. It is my opinion, therefore, that the person must be released on summons if the person gives a written promise to appear and the officer does not believe the person will either fail to appear or harm anyone. If the person fails or refuses to discontinue the unlawful act, the officer has discretion either to proceed by summons or to take the arrestee before a magistrate.

There are several rules of statutory construction in interpreting the provisions of § 19.2-74 that must be applied to your specific request. Generally, a statute's plain meaning and intent should govern. Additionally, the use of the word "shall" in a statute indicates that the General Assembly intended its terms to be mandatory. Under well-accepted principles of statutory construction, when the language of a statute is
plain and unambiguous and its meaning is clear and definite, it must be given effect. It is equally well-settled that when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.

By the plain language used in § 9-183.8, a registered armed security officer of a private security services business is an arresting officer for violations of certain offenses specified in § 19.2-74—misdemeanors and offenses for which a summons may be issued, except for those offenses set forth in Title 46.2, or in §§ 18.2-266, 18.2-388 and 18.2-407. Consistent with the 1991 opinion of the Attorney General, when making an arrest for those specified offenses, the registered armed security officer must take the person’s name and address and issue a summons. Furthermore, “[u]pon the giving by such person of his written promise to appear, the [registered armed security] officer ‘shall’ release the arrested person.”

The General Assembly has not amended § 19.2-74 in any manner to indicate that it disagrees with the construction placed on the statute by the Attorney General. “[T]he General Assembly is presumed to have knowledge of the Attorney General’s interpretation of statutes and the General Assembly’s failure to make corrective amendments evinces legislative acquiescence in the Attorney General’s interpretation.” I must conclude, therefore, in accord with the prior opinions, that § 19.2-74 requires only that a registered armed security officer, as an arresting officer, take the citizen’s name and address and issue a summons. Furthermore, it is my opinion that the officer must release the person if he has rendered a written promise to appear in court and if the officer does not believe the person will either fail to appear or harm anyone. If the person fails or refuses to discontinue the unlawful act, however, the officer has discretion to proceed by summons or take the arrestee before a magistrate.

Section 19.2-74 is a specific grant of authority to arresting officers to arrest for violations of certain specified offenses. Consequently, the authority granted to arresting officers for such arrests exists only to the extent specifically granted in § 19.2-74. The General Assembly does not require by plain and unambiguous language that an arresting officer advise a citizen being arrested of a right to receive a summons. Therefore, I am of the opinion that, under the conditions specified in § 19.2-74, a licensed armed security officer has the power to arrest, take into custody, and transport a citizen from the premises he patrols pursuant to private contract to a magistrate for the issuance of a warrant, without first advising the citizen that he may be issued a summons.

The provisions of § 19.2-74 pertinent to this opinion are:

"A. 1. Whenever any person is detained by or in the custody of an arresting officer for any violation committed in such officer’s presence which offense is a violation of any county, city or town ordinance or of any provision of this Code punishable as a Class 1 or Class 2 misdemeanor or any other misdemeanor for which he may receive a jail sentence, except as otherwise provided in Title 46.2, or § 18.2-266, or an arrest on a warrant charging an offense for which a summons may be issued, and when specifically authorized by the judicial officer issuing the warrant, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving by such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody. However, if any such
person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of § 19.2-82.

"Anything in this section to the contrary notwithstanding, if any person is believed by the arresting officer to be likely to disregard a summons issued under the provisions of this subsection, or if any person is reasonably believed by the arresting officer to be likely to cause harm to himself or to any other person, a magistrate or other issuing authority having jurisdiction shall proceed according to the provisions of § 19.2-82.

"2. Whenever any person is detained by or is in the custody of an arresting officer for a violation of any county, city, or town ordinance or of any provision of this Code, punishable as a Class 3 or Class 4 misdemeanor or any other misdemeanor for which he cannot receive a jail sentence, except as otherwise provided in Title 46.2, or to the offense of public drunkenness as defined in § 18.2-388, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving of such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of § 19.2-82.

"3. Any person so summoned shall not be held in custody after the issuance of such summons for the purpose of complying with the requirements of Chapter 23 (§ 19.2-387 et seq.) of this title. Reports to the Central Criminal Records Exchange concerning such persons shall be made after a disposition of guilt is entered as provided for in § 19.2-390.

Any person refusing to give such written promise to appear under the provisions of this section shall be taken immediately by the arresting or other police officer before a magistrate or other issuing authority having jurisdiction, who shall proceed according to provisions of § 19.2-82.

"B. Special policemen of the counties as provided in § 15.1-144, special policemen or conservators of the peace appointed under Chapter 2 (§ 19.2-12 et seq.) of this title and special policemen appointed by authority of a city's charter may issue summons pursuant to this section, if such officers are in uniform, or displaying a badge of office. On application, the chief law-enforcement officer of the county or city shall supply each officer with a supply of summons forms, for which such officer shall account pursuant to regulation of such chief law-enforcement officer."

1Id. at 129 (quoting § 19.2-74(A. 1), (2)) (citations omitted).
10Id.
sufficient to justify independent determination that inspection program is based on reasonable legislative or administrative standards that are applied in neutral and nondiscriminatory manner. Circuit court judge has exclusive jurisdiction to determine whether, in any given situation, computer model may be used to form basis for probable cause to issue administrative search warrant.

The Honorable I. Vincent Behm Jr.
Member, House of Delegates
January 5, 1999

You inquire regarding the basis for establishing probable cause for issuance of an administrative search warrant to inspect deteriorating buildings so identified by a computer model. You specifically ask whether a computer model that identifies, by use of a point system, specific risk factors for detecting the extent of a building’s deterioration is a valid basis upon which to form probable cause to issue an administrative search warrant to inspect the building. You next inquire regarding the identity of the official who may issue an administrative search warrant and the standards to be applied for its issuance. Finally, you represent that a computer model will be designed to select for inspection dwelling units having the highest degree of risk of deterioration, using a point system for risk factors designated as “primary” and “secondary.” You ask whether such a computer model may be used to validate the probable cause required to issue an administrative search warrant.

You first ask whether computer models that use a point system to identify risk factors for building deterioration are valid instruments by which to form a basis for probable cause to issue an administrative search warrant for inspection purposes. A 1986 opinion of the Attorney General considers the issue of what constitutes “probable cause” for the issuance of an administrative search warrant and concludes:

“Probable cause” in the criminal sense is not required. For purposes of an administrative search, probable cause justifying the issuance of a warrant may be based, not only upon specific evidence of an existing violation, but also upon a showing that “reasonable legislative or administrative standards for conducting an ... inspection are satisfied with respect to a particular [establishment].” Camara v. Municipal Court, 387 U.S. 523, 538 (1967). More specifically, the “warrant application must provide the judicial officer with factual allegations sufficient to justify an independent determination that the inspection program is based on reasonable standards and that the standards are being applied ... in a neutral and nondiscriminatory manner.” Mosher Steel v. Teig, 229 Va. 95, 103, 327 S.E.2d 87, 93 (1985).[3]

In the case of Camara v. Municipal Court, the Supreme Court of the United States provides examples of the factors upon which reasonable legislative or administrative standards may be based. Such factors include “the passage of time, the nature of the building (e.g., a multi-family apartment house), or the condition of the entire area.” In accord with the prior opinion of the Attorney General and the Court’s opinion in
Camara, I am of the opinion that, as a generalized proposition, computer models that assign points to identify specific risk factors for building deterioration, such as those that are based on the passage of time, the nature of the building, or the condition of the entire area, may be used to form the basis for probable cause to issue an administrative search warrant for inspection purposes.

You next inquire regarding the identity of the official who issues this type of search warrant and the standards to be applied for its issuance.

A 1979 opinion of the Attorney General notes that §§ 19.2-393 through 19.2-397 of the Code of Virginia “at least to some degree reflect the legislature’s general approach as to obtaining administrative search warrants, and that the procedure they set forth may legitimately be regarded as the functional equivalent of a warrant.” That opinion concludes that “until such time as the legislature sees fit to enact legislation allowing administrative searches in situations other than that found in § 19.2-393, officials seeking to undertake investigatory ... searches should seek court-approved inspection warrants under the mechanism established by [§§ 19.2-393 through 19.2-397].”

Chapter 24 of Title 19.2, §§ 19.2-393 through 19.2-397, governs inspection warrants. Section 19.2-393 defines an “inspection warrant” as “an order in writing, made in the name of the Commonwealth, signed by any judge of the circuit court whose territorial jurisdiction encompasses the property or premises to be inspected or entered.” Section 19.2-394 authorizes the issuance of an inspection warrant for “any administrative search authorized by state or local law or regulation.” The General Assembly has not amended § 19.2-393 in any manner to indicate that it disagrees with the construction placed on the statute by the Attorney General. The General Assembly is presumed to have knowledge of the Attorney General’s published interpretations of a statute, and its failure to make corrective amendments evinces legislative acquiescence in the interpretation. I must conclude, therefore, in accord with the prior opinions, that for administrative warrants for searches in situations other than those mentioned in § 19.2-393, officials undertaking investigatory searches should seek court-approved inspection warrants under the mechanism established in Chapter 24.

The 1986 opinion, a portion of which is quoted above, also considers the procedure for obtaining an administrative warrant, and concludes that in obtaining such warrant, “the local official should follow the procedure outlined by the Supreme Court of Virginia in the Mosher Steel decision.” I am in agreement with this conclusion in the 1986 opinion, and, therefore, it is also my opinion that the “warrant application must provide the judicial officer with factual allegations sufficient to justify an independent determination that the inspection program is based on reasonable standards and that the standards are being applied ... in a neutral and nondiscriminatory manner.”

Finally, you represent that a computer model will be designed to select for inspection dwelling units with the highest degree of risk of deterioration based on a point system to identify specific risk factors designated as “primary” and “secondary.” You ask whether it is valid to use such a computer model to establish the probable cause required to issue an administrative search warrant.
For many years, Attorneys General have concluded that § 2.1-118, the authorizing statute for official opinions of the Attorney General, does not contemplate that such an opinion be rendered on matters that do not interpret questions of law. This Office historically has declined to render official opinions on matters solely of a purely local concern, and has limited responses to opinion requests to matters concerning interpretation of federal or state law, rule or regulation. In addition, Attorneys General consistently have declined to render official opinions pursuant to § 2.1-118 when the request (1) does not involve a question of law, (2) requires the interpretation of a matter reserved to another entity, (3) involves a matter currently in litigation, and (4) involves a matter of purely local concern or procedure.

The General Assembly has acquiesced in the conclusion of the Attorney General that administrative warrants are to be sought from the "judge of the circuit court whose territorial jurisdiction encompasses the property or premises to be inspected or entered." In addition, the General Assembly has given exclusive jurisdiction to such judge to determine whether probable cause exists for the issuance of such a warrant. The circuit court judge, therefore, must determine whether, in a particular case, such a computer model may be used to form the basis for probable cause to issue an administrative warrant. Consequently, consistent with the historical practice of Attorneys General, I am unable to comment on whether such a computer program would serve as a valid basis to establish probable cause for the issuance of an administrative search warrant in any given factual situation.

1Dwelling units assessed points by the computer model under the "primary" risk factors will be considered for inspection and will be assessed points under the "secondary" risk factors. The number of dwelling units subject to annual inspection will equal the city-wide deterioration rate, or 2% of the city's dwelling units, whichever is less. The city-wide deterioration rate will be established on an annual basis from the percentage of dwelling units in the city exhibiting major exterior deterioration. The computer model will select for inspection dwelling units having the highest degree of risk of deterioration based on the following risk factors:

1. Primary risk factors:
   (a) Exterior conditions - 10 points for major deterioration;
   (b) Violations related to property maintenance within the past 5 years - 2, 5, and 8 points for 1, 2, and 3 or more violations, respectively;
   (c) Boarded-up buildings - 15 points.

2. Secondary risk factors (points are assigned only to units assessed points under primary risk factors):
   (a) Deterioration - 4 points for property located in a neighborhood with deterioration at or above the city average, and 6 points for minor exterior deterioration;
   (b) Single-family lot width - 2 points for lot width 31-to-49 feet, and 4 points for lot width less than 31 feet;
   (c) Dwelling type - 2 points for manufactured/mobile homes, 3 points for duplex/2-family dwellings, 3 points for multifamily, and 8 points for rooming houses;
   (d) Age of dwelling unit - 2 points if 15-to-20 years old, 3 points if 21-to-25 years old, 4 points if 26 years and older;
   (e) Assessed value of dwelling unit - (i) single-family - 1 point if between $80-$90,000, 2 points if between $70-$79,999, 3 points if between $50-$69,999, and 4 points if under $50,000; (ii) multifamily - 1 point if between $35-$40,000, 2 points if between $30-$34,999, 3 points if between $25-$29,999, and 4 points if under $25,000.
You ask whether, if the attorney for an accused requests a copy of a certificate of analysis in a case that has not been filed, certified or otherwise docketed in your court, you may satisfy the requirements of § 19.2-187(ii) of the Code of Virginia by so notifying the attorney or whether you must keep the request active and respond to it when and if a case is subsequently filed.

Section 19.2-187 relates to the admission into evidence of a "certificate of analysis of a person performing an analysis or examination, performed in any laboratory operated by the Division of Consolidated Laboratory Services or the Division of Forensic Science or performed by [certain federal bureaus or laboratories]." Section 19.2-187 provides that, in a hearing or trial of a criminal offense, such a certificate duly attested by the person performing the analysis or examination shall be admissible in evidence as evidence of the facts therein stated and the results of the analysis or examination referred to therein, provided (i) the certificate of analysis is filed with the clerk of the court hearing the case at least seven days prior to the hearing or trial and
(ii) a copy of such certificate is mailed or delivered by the clerk or attorney for the Commonwealth to counsel of record for the accused at least seven days prior to the hearing or trial upon request made by such counsel to the clerk with notice of the request to the attorney for the Commonwealth.

The Supreme Court of Virginia has held that, because § 19.2-187 makes admissible evidence which otherwise might be subject to a valid hearsay objection, it is to be "construed strictly against the Commonwealth and in favor of the accused." In addition, the Court of Appeals of Virginia has stated repeatedly that "[a] certificate of analysis is not admissible if the Commonwealth fails strictly to comply with the provisions of Code § 19.2-187," including the mail or delivery requirement in clause (ii) of the section. The Court of Appeals has reached different conclusions, however, in applying this standard to particular facts.

In the case of Woodward v. Commonwealth, the defendant's attorney wrote to the clerk two months before the trial, requesting a copy of the "forthcoming certificate of analysis." The certificate had not been filed at the time of the request but was filed twenty-six days later. Neither the clerk nor the Commonwealth's attorney mailed or delivered a copy of the certificate to the defendant's attorney. The court rejected the Commonwealth's argument that, because no certificate had been filed when the request was received, the Commonwealth need not comply with the mailing requirement. The court concluded: "[T]he statute contains no such limitation, and we have no authority to impose it." The ruling in Woodward indicates that the mailing and delivery requirement must be satisfied even when the request for the certificate is received prematurely. Arguably, this analysis would apply to the facts you present in which the request is received before the case is docketed in the court.

In the case of Cregger v. Commonwealth, a divided panel of the Court of Appeals reached a different conclusion based on a different set of facts. The Commonwealth's attorney failed to comply with defendant attorney's request for a copy of a certificate made prior to the defendant's trial in the district court. The district court nevertheless admitted the certificate into evidence. Although defendant's attorney did not renew his request on appeal of the case to the circuit court, the attorney objected in the circuit court to introduction of the certificate into evidence, arguing that the Commonwealth failed to comply with § 19.2-187. The Court of Appeals reasoned that the appeal to the circuit court constituted a proceeding de novo, thus annulling the judgment of the district court as though there had been no prior trial and requiring the state and the accused to start over again. Since defendant's attorney submitted no request pursuant to the circuit court proceeding, the Commonwealth had no obligation to provide defendant's counsel a copy of the certificate. The Court of Appeals construed the language in § 19.2-187 as imposing obligations on a clerk or Commonwealth's attorney only in connection with a specific hearing or trial "pending in a particular tribunal," stating that "[t]he statute clearly does not contemplate a conjectural hearing or trial in an unknown forum." The argument can be made that, under the facts you present, a
clerk would be under no obligation to retain and later comply with a request for a copy of a certificate if there is no case pending in the court at the time the request is received.

The facts in both Woodward and Cregger are distinguishable from the facts you present. In Woodward, it appears that the case was pending in the court at the time the request was received, although the certificate of analysis had not yet been filed. Cregger is distinguishable because the request was filed in the district court and no request was ever submitted to the circuit court clerk or the Commonwealth's attorney in connection with the circuit court proceeding.

It is my opinion that, although both cases are factually distinguishable from the facts you present, your circumstances may more readily be compared to those presented in Woodward. Accordingly, under the strict construction analysis applied to § 19.2-187 and the ruling in Woodward that the mailing obligation applies to prematurely filed requests, a court could determine that a certificate of analysis offered in evidence at a trial is inadmissible if the clerk merely notified the attorney when the request was filed that the case was not on the court's docket. Thus, it is my opinion that, in those cases in which counsel for the accused has made a case-specific request for a certificate of analysis and the case has not yet been docketed in the court, the preferable procedure would be for the clerk to respond to the request when and if the case is docketed in the court.15

1Gray v. Commonwealth, 220 Va. 943, 945, 265 S.E.2d 705, 706 (1980) (certificate filed with clerk less than seven days before trial is not admissible, although defendant's counsel had copy of certificate one month before trial).
416 Va. App. at 674, 432 S.E.2d at 511.
5Id.
6Id.
7Id. at 675, 432 S.E.2d at 512.
8Id. The court held that admitting the certificate was harmless error in determining the defendant's guilt but that it could have affected his sentence. Id. at 675-76, 432 S.E.2d at 512-13. The court thus vacated the sentence and remanded the proceeding to the trial court for resentencing. Id. at 678, 432 S.E.2d at 514.
10Id. at 89, 486 S.E.2d at 554.
11Id.
12Id. at 89, 486 S.E.2d at 555.
13Id. at 91, 486 S.E.2d at 556.
14Id. at 90, 486 S.E.2d at 555. Judge Elder dissented on the grounds that the majority opinion was inconsistent with a long line of cases requiring that § 19.2-187 be strictly construed against the Commonwealth. Id. at 91-92, 486 S.E.2d at 556. Judge Elder expressed his view that the statute does not require defense counsel ever to renew a request for a copy of a certificate of analysis. Id. at 94, 486 S.E.2d at 557.
15Section 19.2-187 provides that either the clerk or the Commonwealth's attorney is to mail or deliver the certificate to counsel for the accused. As amended in 1999, § 19.2-187 states that counsel for the accused is to present the request to the clerk with notice of the request to the Commonwealth's attorney. See 1999 Va. Acts ch. 296.
DOMESTIC RELATIONS: UNIFORM INTERSTATE FAMILY SUPPORT ACT.

State tribunal that issues child support order is only body that may modify order so long as obligor, obligee or child remains resident of issuing state, unless all parties consent to modification. Virginia tribunal may modify registered foreign order if obligor, obligee or child no longer resides in issuing state, person seeking modification is nonresident, and Virginia court has jurisdiction over respondent; or child is subject to personal jurisdiction of Virginia tribunal and all parties in issuing tribunal have consented in writing for Virginia tribunal to modify and assume continuing, exclusive jurisdiction over order. If all parties reside in Commonwealth and child does not reside in issuing state, Virginia tribunal has jurisdiction to enforce and modify issuing state’s child support order in proceeding to register order.

The Honorable Robert S. Bloxom
Member, House of Delegates
November 29, 1999

You ask under what circumstances a juvenile and domestic relations district court may modify a child support order issued in another state when the support enforcement agency of the issuing state moves the district court for enforcement of the order but does not seek modification of the order.

In an attempt to standardize the handling of interstate child support orders, all states have enacted procedures similar to the Uniform Interstate Family Support Act, §§ 20-88.32 through 20-88.82 of the Code of Virginia (the “Act”). The purposes of the Act are to ensure both that child support orders issued in one state be enforced in other states and that there be only one controlling child support order between the parties, although the parties may live in different states. To accomplish the enforcement goal, the Act provides that “[a] support order ... issued by a tribunal of another state may be registered in this Commonwealth for enforcement” and that, upon registration, the support order is enforceable in Virginia in the same manner as support orders issued in Virginia. Section 20-88.68(C) provides, however, that “[e]xcept as otherwise provided in [the Act], a tribunal of this Commonwealth shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.” (Emphasis added.) This restriction is consistent with the goal that there be only one controlling child support order between the parties. Thus, registering an order for enforcement does not give the court the authority to modify such order.

Whether a court has the authority to modify an order is determined by reference to the concept of “continuing, exclusive jurisdiction” over a child support order. It is the intent of the Act that the tribunal that issued the child support order have continuing, exclusive jurisdiction to modify the order unless and until continuing, exclusive jurisdiction is transferred to a tribunal of another state. Section 20-88.39(A) provides:

A tribunal of this Commonwealth issuing a support order consistent with the law of this Commonwealth has continuing, exclusive jurisdiction over a child support order:

1. As long as this Commonwealth remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or
2. Until all of the parties who are individuals have filed written consent with a tribunal of this Commonwealth for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

Section 20-88.39(D) provides:

A tribunal of this Commonwealth shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to a law substantially similar to [the Act].

Under these provisions, a state tribunal that issues a support order is the only body that may modify the order so long as the obligor, obligee or child remains a resident of the issuing state, unless all of the parties consent.

Once a state loses exclusive, continuing jurisdiction over a support order, another state does not automatically acquire exclusive, continuing jurisdiction over the order. Should the issuing state no longer be the residence of either the obligor, obligee or child, a Virginia tribunal would have the authority to modify the child support order in accordance with the procedure set out in §§ 20-88.74 through 20-88.77:2 for registering and modifying a foreign order in the Commonwealth. Section 20-88.74 requires a party or support enforcement agency seeking to modify a child support order issued in another state to register the order in the Commonwealth. Section 20-88.75 provides that, while a tribunal of the Commonwealth may enforce a foreign order registered for modification, the tribunal may modify the order only if the requirements of § 20-88.76 are met. Section 20-88.76 provides, in part:

A. After a child support order issued in another state has been registered in this Commonwealth, the responding tribunal of this Commonwealth may modify that order only if § 20-88.77.1 does not apply and after notice and hearing it finds that:

1. The following requirements are met:

a. The child, the individual obligee, and the obligor do not reside in the issuing state;

b. A petitioner who is a nonresident of this Commonwealth seeks modification; and

c. The respondent is subject to the personal jurisdiction of the tribunal of this Commonwealth; or

2. The child or a party who is an individual is subject to the personal jurisdiction of the tribunal of this Commonwealth and all of the individual parties have filed written consents in the issuing tribunal for a tribunal of this Commonwealth to modify the support order and assume continuing, exclusive jurisdiction over the order.
Once a tribunal of the Commonwealth issues an order modifying the child support order, the Commonwealth tribunal has continuing, exclusive jurisdiction over the order.6

Under these requirements, a court in the Commonwealth would need to determine first that the obligor, obligee and the child are no longer residents of the issuing jurisdiction and that, accordingly, the issuing jurisdiction no longer has exclusive, continuing jurisdiction over the order. It would then have to determine that the person seeking the modification is not a resident of the Commonwealth.7 Finally, it would have to determine that the court has personal jurisdiction over the respondent.8 It is my opinion that if these requirements are met, a juvenile and domestic relations district court would have the authority to modify a child support order registered in the Commonwealth.

Section 20-88.76 contains one exception. The requirements of the statute need not be met for a tribunal in the Commonwealth to modify an order issued in another state if § 20-88.77:1 applies. Section 20-88.77:1(A) provides:

If all of the parties who are individuals reside in this Commonwealth and the child does not reside in the issuing state, a tribunal of this Commonwealth has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

Under this procedure, the issuing state has lost continuing, exclusive jurisdiction because neither the obligor, obligee or the child resides in the issuing state. Because both the obligor and obligee reside in the Commonwealth, the possibility that the person seeking modification will choose a favorable forum is no longer a concern.

---

6 Although you indicate that a support enforcement agency of the issuing state moves the court for enforcement of the order, I assume that one of the individuals subject to the support order seeks modification of the order.

7 Section 20-88.66.

8 Section 20-88.68(B). The order may be registered by filing the order "in the juvenile and domestic relations district court or with the Division of Child Support Enforcement of the Department of Social Services." Section 20-88.32 (defining "register").

9 "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage. § 20-88.32.

10 Section 20-88.39.

11 See § 20-88.76(D). This is consistent with the intent expressed in § 20-88.39 that only one state have jurisdiction to modify a child support order at any one time, with the issuing state having jurisdiction until jurisdiction is transferred to another state for that state to modify the order. Once the second state modifies the order, the issuing state loses jurisdiction. See id.

12 The purpose of this requirement is obviously to prevent the person seeking modification to choose the local court at the possible disadvantage to the other party.

13 This requirement contemplates generally that the person seeking modification of the support order will bring the action in the jurisdiction in which the other party resides.
DRAINAGE, SOIL CONSERVATION, ETC.: SANITARY DISTRICTS.

Only specified number of qualified voters of proposed district may petition circuit court for establishment of sanitary district. County may not request circuit court to designate entire county to be sanitary district.

The Honorable Harry J. Parrish
Member, House of Delegates
March 15, 1999

You ask whether a county may request a circuit court to designate the entire county to be a sanitary district.

You express concern that should a county be permitted to request a circuit court to designate the entire county to be a sanitary district, the county government, through its agent, the sanitary district, would be able to bypass certain statutory requirements placed on local governing bodies but not on sanitary districts. You advise further that you have found no statute prohibiting the size of a sanitary district, except in § 21-113 of the Code of Virginia, which provides that the circuit court shall, by order, prescribe the metes and bounds of the district so established by the court.

Chapter 2 of Title 21 provides for the creation of sanitary districts within localities and sets forth the powers of the governing body with respect to any such sanitary district that is created. Section 21-113, a portion of Chapter 2, provides for the creation of sanitary districts by petition:

The circuit court of any county in this Commonwealth, ... upon the petition of 50 qualified voters of a proposed district, or if the proposed district contains less than 100 qualified voters upon petition of fifty percent of the qualified voters of the proposed district, may make an order creating a sanitary district or districts in and for the county, which order shall prescribe the metes and bounds of the district.

Section 21-114, also a portion of Chapter 2, provides for a hearing on the petition requesting the sanitary district:

Upon the filing of the petition the court shall fix a day for a hearing on the question of the proposed sanitary district which hearing shall embrace a consideration of whether the property embraced in the proposed district will or will not be benefited by the establishment thereof; all interested persons, who reside in or who own real property in (i) a proposed district ... shall have the right to appear and show cause why the property under consideration should or should not be included in the proposed district ...; notice of such hearing shall be given by publication once a week for three consecutive weeks in some newspaper of general circulation within the county to be designated by the court .... At least ten days shall intervene between the completion of the publication and the date set for the hearing, ... and no such district shall be created until the notice has been given and the hearing had. [Emphasis added.]
Consistent with the plain meaning and intent of the language contained in Chapter 2 of Title 21, only a specified number of the "qualified voters of a proposed district" may petition the circuit court for the establishment of a sanitary district. Therefore, I am of the opinion that a county may not request a circuit court to designate the entire county to be a sanitary district.

1Sections 21-112.22 to 21-140.3 (entitled "Sanitary Districts").
2See, e.g., § 21-118 (providing for powers and duties of governing body after entry of order creating sanitary district in county).


Section 21-113.

EDUCATION: POWERS AND DUTIES OF SCHOOL BOARDS — SCHOOL BOARDS; SELECTION, ETC.

CONSTITUTION OF VIRGINIA: EDUCATION (SCHOOL BOARDS).

Authority for school board to provide insurance coverage for school division is silent as to manner and mode by which such policies may be purchased and serviced. "Reasonable selection of method" rule allows school board discretionary authority to issue agent-of-record letter to insurance company requesting that specific insurance agent be designated agent of record on its policies of insurance.

The Honorable S. Vance Wilkins Jr.
Member, House of Delegates
July 7, 1999

You ask whether a county school board may issue an agent-of-record letter to an insurance company requesting that the company designate a specific local insurance agent to service all policies of insurance issued by the company to the school board.

You relate that an insurance company has advised that if the county school board will issue a letter stating its desire that the company offer a renewal bid for the board's insurance coverage exclusively through the local insurance agent, the company will honor the request. The purpose of an agent-of-record letter is to notify the incumbent agent of the transfer of contractual rights to an existing insurance policy to another agent as of a certain date. In addition, such notification assists the insurance company in avoiding any involvement in disputes between agents. Agents of record receive
commission on the insurance policies they service and have a right to renew those policies. You believe that an insured has the absolute right to select an insurance agent under an existing policy of insurance.

You also advise that the local insurance agent is a former member of the county school board and, in such capacity, did not participate in the board’s bidding process. The county school board has been insured by the insurance company, and its policies of insurance have been serviced through another insurance agent. No longer a school board member, the local insurance agent desires that the board, through an agent-of-record letter issued to the insurance company, designate him as the agent to service the board’s existing insurance policies.

Prior opinions of the Attorney General conclude that the State and Local Government Conflict of Interests Act does not apply to officers and employees who leave state and local government employment, and, further, that counties have no statutory authority to adopt ordinances restricting the postemployment activities of its officers and employees. Furthermore, a 1996 opinion notes that the Virginia Public Procurement Act prohibits former public employees having responsibility for a procurement transaction from accepting employment with a “bidder, offeror or contractor” for a period of one year following cessation of public employment. The facts you provide, however, do not suggest that the local insurance agent is affected by this restriction.

You also advise that it has been suggested that the county school board may violate the Dillon Rule should the board issue an agent-of-record letter designating the local insurance agent to service its insurance policies in the event the insurance company is awarded a renewal contract for the provision of insurance.

For many years, Virginia has followed the Dillon Rule of strict construction concerning the powers of local governing bodies, limiting such powers to those conferred expressly by law or by necessary implication from such conferred powers. In the facts you present, the Dillon Rule is applicable to determine, in the first instance, from express words or by implication, whether a school board has authority to purchase insurance coverage. This initial determination, however, does not end the inquiry. If the authority to purchase insurance coverage does exist, a determination must then be made whether that particular authority is being exercised properly—i.e., the “reasonable selection of method” rule may be applied to decide “whether there may be implied the authority to execute the power in the particular manner chosen.” The “reasonable selection of method” rule “permits local public bodies to exercise discretionary authority where a grant of power is silent upon its mode or manner of execution” “before the rule comes into play.” Under the “reasonable selection of method” rule, the school board would be entitled to some deference should the board exercise its discretionary authority to issue an agent-of-record letter, because Virginia law is silent on the manner and mode by which school boards may purchase insurance and have their insurance policies serviced by an agent.

Article VIII, § 7 of the Constitution of Virginia (1971) vests “[t]he supervision of schools in each school division … in a school board, to be composed of members selected in the manner, for the term, possessing the qualifications, and to the number
provided by law." Section 22.1-79 of the Code of Virginia details the powers and duties of a school board. Section 22.1-71 confers upon the school board "all the powers and ... duties, obligations and responsibilities imposed upon school boards by law." Furthermore, § 22.1-84 permits school boards to "provide for insurance on school properties against loss by fire and against such other losses as it deems necessary." Since the board is authorized to obtain insurance coverage for the school division, and is vested with all the powers, duties, obligations and responsibilities imposed by law, a logical and necessary implied power flowing from these specific grants of authority is to do all things reasonably associated with the exercise of such powers. The issuance of an agent-of-record letter to an insurance company for the purposes of designating an agent to service specific policies of insurance is clearly associated with and, by implication, contained within the authority of the school board to obtain insurance.

It is well-settled that "[i]f the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it." Consequently, I must conclude that the county school board has authority to issue an agent-of-record letter to an insurance company requesting that a local insurance agent be designated the agent of record on its policies of insurance.

1For the purposes of this opinion, I shall assume that such bid is submitted as a result of an invitation to bid or request for proposals in compliance with the Virginia Public Procurement Act. See Va. Code Ann. §§ 11-35 to 11-80.
2The insurance company specifies the language to be included in an agent-of-record letter.
3Tit. 2.1, ch. 40.1, §§ 2.1-639.1 to 2.1-639.24.
8Id. at 574, 232 S.E.2d at 40-41.
9See also § 22.1-28 (parallel statute to Article VIII, § 7).

EDUCATION: SCHOOL BOARDS; SELECTION, ETC.

Change from appointed to elected school board in City of Petersburg. Members elected at large to replace 9-member appointed board in city comprised of seven established election districts. Preclearance by U.S. Department of Justice under Voting Rights Act. Election of school board from single-member election districts would require authorization from General Assembly.

The Honorable Jay W. DeBoer
Member, House of Delegates
October 29, 1999
You ask whether the City of Petersburg may elect the members of its school board in a manner that conforms with both state law and the federal Voting Rights Act of 1965.

You advise that, at the November 1998 general election, the voters of the City of Petersburg approved a referendum to change from an appointed to an elected school board, as authorized by § 22.1-57.2 of the Code of Virginia. The present school board is comprised of nine members appointed by the city council. The appointed members represent three school districts, which are not similar to election districts. The city council appoints three school board members each June, one from each school district, for a three-year term. This procedure is in accordance with the statutory provisions relating to appointed school board members in cities constituting school divisions.¹

You advise also that the Petersburg city council is comprised of seven members elected from seven wards, or election districts. You state that the seven wards have been precleared by the United States Department of Justice in accordance with § 5 of the Voting Rights Act.² The council members serve staggered terms, with each member elected for a four-year term.

Section 22.1-57.3 establishes the procedure for the election of school board members following approval at the referendum. Section 22.1-57.3(A) requires that elections of school board members in a city are to be held to coincide with the elections for members of the city council at the regular general election in May. Section 22.1-57.3(B) requires that “[t]he initial elected [school] board shall consist of the same number of members as the appointed school board it replaces, and the members shall be elected ... on the same basis as the school board previously was appointed,” either from the established city election districts, at large, or a combination of the two. Section 22.1-57.3(B) further provides:

If the appointed school board being replaced has not been appointed either on an at-large basis or on the basis of the established county or municipal election districts, or a combination thereof, the members shall be elected at large unless the governing body of the county, city, or town provides for the election of school board members on the basis of the established county or municipal election districts.

This provision applies only in part to the situation existing in the City of Petersburg. Because the appointed school board was not appointed at large, or on the basis of established municipal election districts, or a combination of the two, the members of the school board are to be elected at large unless the city council provides for election on the basis of the established municipal election districts. Section 22.1-57.3(B) also requires, however, that the initial elected school board consist of the same number of members as the appointed school board being replaced. Thus, because the appointed school board consists of nine members and the city has only seven established election districts, the city council would be unable to provide for the election of school board members on the basis of the established election districts.³ It is accordingly my opinion that, under § 22.1-57.3, the nine members of the City of Petersburg school board are to be elected at large.
As you are aware, the holding of the referendum and the implementation of the potential change must be precleared by the United States Department of Justice under § 5 of the Voting Rights Act. I cannot predict whether such at-large elections of the members of the school board would be deemed to be consistent with the requirements of the Voting Rights Act. Should the Department of Justice require that the city elect its school board from single-member election districts, it would be necessary for the city to request that the General Assembly enact legislation authorizing the city to implement the plan in this manner.

1See §§ 22.1-48 to 22.1-50. Section 22.1-49 authorizes "[t]he school board of a city ... to prescribe the number and boundaries of the school districts." Under this provision, the City of Petersburg has prescribed three school districts. Section 22.1-50 requires that the school board "shall consist of three members for each [school] district."


3It is my opinion that the city does not have the authority under state law to decrease the size of the school board by abolishing two of the seats on the board. This authority exists only in instances in which a county, pursuant to § 22.1-44, has appointed two additional at-large members to a county school board. Prior opinions of the Attorney General conclude that the optional authority granted to boards of supervisors to create at-large seats includes the implied authority to abolish those seats. See Op. Va. Att'y Gen.: 1995 at 158, 159; id. at 155, 156; 1984-1985 at 275. 275.

4See Op. Va. Att'y Gen.: 1992 at 113, 119 n.3; 1990 at 82, 84. Preclearance may be obtained either by submission of the plan to the United States District Court for the District of Columbia or by submission to the United States Department of Justice. The city attorney is generally the person who would submit the city plan for preclearance. For purposes of this opinion, I assume that the changes either have not yet been submitted or that the Department of Justice has not yet approved the changes.

5The District Court recognized that the at-large system has certain advantages over a ward system. See City of Petersburg, Virginia v. United States, 354 F. Supp. at 1027.

6In Citizens Committee, etc. v. City of Lynchburg, Va., 528 F.2d 816, 818 (4th Cir. 1975), the court refused to invalidate the city annexation itself as having a dilutive effect on voting within the prohibitions of § 5 of the Voting Rights Act, stating that there were "no sound reasons why state and local laws cannot be amended to devise a ward system ... that will meet the requirement of the Act."
may inquire into the citizenship or visa status of the student. Next, you ask whether documentation may be required to verify the student's status. Finally, you ask whether students holding visas under certain of the nonimmigrant categories prescribed by federal law are unable, due to their status, to satisfy Virginia's residency requirements for the purpose of attending public schools free of charge.

Article VIII, § 1 of the Constitution of Virginia (1971) provides that "[t]he General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth." Section 22.1-3 of the Code of Virginia delineates those students for whom free public schooling must be provided:

The public schools in each school division shall be free to each person of school age who resides within the school division. Every person of school age shall be deemed to reside in a school division:

1. When the person is living with a natural parent, or a parent by legal adoption;

2. When the parents of such person are dead and the person is living with a person in loco parentis who actually resides within the school division;

3. When the parents of such person are unable to care for the person and the person is living, not solely for school purposes, with another person who resides in the school division and is the court-appointed guardian, or has legal custody, of the person;

4. When the person is living with a parent, guardian, or person in loco parentis in a temporary shelter in the school division, not solely for school purposes; or

5. When the person is living in the school division not solely for school purposes, as an emancipated minor.

In 1982, the Supreme Court of the United States established in Plyler v. Doe that children who are illegal aliens may not be presumptively excluded from free public schooling. A 1979 opinion of the Attorney General concludes that the citizen or visa status of an alien student does not affect his eligibility for tuition-free education. Whether such student is entitled to tuition-free education in a particular school division "turns on his residence." With respect to the question of attending public schools tuition-free, "[r]esidence of a child is determined by the child's residence with a legal guardian, such as a natural or adoptive parent, a court-appointed guardian or, in the case of parental death, a person in loco parentis." Furthermore, § 22.1-3 "establishes a legislative presumption that a child residing with a natural parent is entitled to free admission to the schools of that locality in which the natural parent lives." Thus, "children who have established bona fide residence, not necessarily 'domicile,' in [a] county are also entitled to attend the schools of the county." "Residence for the purpose of free admission to local public
schools must be *bona fide* residence and not merely superficial residence solely for the purpose of attending school."

The federal Immigration and Nationality Act\(^6\) requires most foreign visitors to apply for a visa before entering the United States. Visas issued in the B, C, or D categories are among the nonimmigrant visas issued for the specific purpose of the foreign nationals' temporary visit.\(^7\) Specifically, the B visa allows foreign businessmen to enter the United States for a brief period (generally, no more than six months per year) in order to conduct limited business activities.\(^8\) The B visa also allows foreign visitors to enter for a temporary visit for pleasure or tourism purposes.\(^9\) C visas are issued for foreign nationals temporarily in the United States while in transit to another destination.\(^10\) D visas generally are issued for foreign crewmen serving on board a vessel or aircraft, who intend to land in the United States temporarily and solely in pursuit of their duties and to depart with the vessel or aircraft on which they arrived or on another vessel or aircraft.\(^11\)

As with legal or illegal aliens, although visa holders may be required, "as others are required, to establish that they are *bona fide* residents of a jurisdiction before qualifying for free public schooling in that jurisdiction,"\(^12\) their visa status does not presumptively exclude them or their children. Thus, so long as a student is "a *bona fide* resident ... and if his residence was not contrived for the primary purpose of securing his attendance at [a] political subdivision's public school system, he is entitled to tuition-free education there,"\(^13\) regardless of his citizenship or his B, C, or D visa status.

Whereas proof of domicile is part of the residency requirements for certain matters,\(^14\) residency for attending public schools is prescribed in § 22.1-3 and determined in reference to the legal guardianship of the student. The intent to remain in a place of abode for a certain period of time is not a necessary condition of residency under that section.\(^15\) Thus, inquiring into a student's citizenship or his B, C, or D visa status for the purpose of determining residency pursuant to § 22.1-3 is unwarranted.

Accordingly, it is my opinion that a local school board is not permitted to inquire into a student applicant's citizenship or his B, C, or D visa status, nor may it require documentation to verify such status, for the purpose of ascertaining whether such applicant is a resident of the school district.\(^16\)

\[^{16}\] Id. at 292.
EDUCATIONAL INSTITUTIONS: TUITION ASSISTANCE GRANT ACT.

Act is program of financial aid, and not tuition subsidy, granted to individual student recipients at nonsectarian private institutions of higher education in Virginia.

Dr. William B. Allen
Director, Council of Higher Education
July 26, 1999

You ask whether the Tuition Assistance Grant ("TAG") program is a financial aid program or whether it is a tuition subsidy similar to the full-time equivalent appropriations that reduce the tuition of Virginia residents attending the Commonwealth's public institutions of higher education. For the purposes of this opinion, I shall assume that you are referring to language respecting the appropriations made by the General Assembly from the general fund to public institutions of higher education which are based on the number of full-time equivalent students attending such institutions.1

Article 1, Chapter 4.1 of Title 23, §§ 23-38.11 through 23-38.19 of the Code of Virginia, a portion of the Tuition Assistance Grant Act (the "TAG Act"), establishes

a program of tuition assistance in the form of grants ... to or on behalf of bona fide residents of Virginia who attend private, accredited and non-profit institutions of collegiate education in the Commonwealth whose primary purpose is to provide collegiate, graduate, or professional education and not to provide religious training or theological education.2

This program is administered by the State Council of Higher Education.3
The Supreme Court of Virginia has declared that the TAG Act provides "financial aid in the form of conditional grants ... to students in nonsectarian private institutions" and "has as a purpose the appropriation of money from the General Fund for financial aid to undergraduate students at institutions of higher education in Virginia." Additionally, the TAG Act itself refers to the aid given in the Act as "financial aid" received by the student.

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the legislature. Where the language of a statute is plain and unambiguous, it is presumed that the legislature intended what it plainly expressed, and no room is left for statutory interpretation. The language of the TAG Act is plain and unambiguous. It clearly provides for a program of financial aid to individual student recipients rather than a tuition subsidy to private institutions of higher education.

Accordingly, it is my opinion that the TAG program is a program of financial aid and not a program providing a tuition subsidy to private institutions of collegiate education.

---

2Section 23-38.12.
3See § 23-38.13.
6See § 23-38.17.
9The language in § 23-38.14, referring to the "annual average appropriation per full-time equivalent student ... from the general fund of the state treasury for operating costs at two- and four-year public institutions of collegiate education," provides a measurement by which a ceiling may be imposed for the amount of tuition assistance allowable per year, per recipient under TAG.
You ask whether turning hunting dogs loose while fox hunting violates a county ordinance that prohibits the running at large of dogs during certain months of the year.

The Office of the Attorney General historically has declined to render official opinions on whether particular facts constitute a violation of a statute or opinions interpreting local ordinances. The basis for this policy is that the application of the law to a specific set of facts is reserved to the Commonwealth's attorney, the grand jury, or the trier of fact and that the interpretation of an ordinance is a matter of local concern for determination by local government officials. One issue presented in your request, however, is whether an ordinance enacted in accordance with the authority granted localities pursuant to § 3.1-796.93 of the Code of Virginia and which tracks the language of that section is preempted by § 29.1-516. Because this issue involves a potential conflict between two state statutes, it is an appropriate issue for a legal opinion of the Attorney General.

Section 3.1-796.93 provides:

The governing bodies of the counties, cities and towns of this Commonwealth are hereby authorized to prohibit the running at large of all or any category of dogs in all or any designated portion of such county, city or town during such months as they may designate. Governing bodies may also require that dogs be confined, restricted or penned up during such periods. For the purpose of this section, a dog shall be deemed to run at large while roaming, running or self-hunting off the property of its owner or custodian and not under its owner's or custodian's immediate control. Any person who permits his dog to run at large, or remain unconfined, unrestricted or not penned up shall be deemed to have violated the provisions of this section.

Pursuant to this authority, Cumberland County has adopted an ordinance prohibiting the running at large of all dogs throughout the county "during the period of March 1 to November 1 inclusive of each year." The ordinance contains the identical language set out in § 3.1-796.93 as to when a dog shall be deemed to run at large. You ask whether the ordinance is enforceable if it restricts a person's right under § 29.1-516 to fox hunt with dogs.

Section 29.1-516 contains provisions regarding the killing and hunting of the game animals listed. As to the hunting of foxes, § 29.1-516 provides:

There shall be a continuous open season for hunting with dogs only. The hunting or pursuit of foxes shall mean the actual following of the dogs while in pursuit of a fox or foxes or managing the dog or dogs while the fox or foxes are being hunted or pursued.
A 1993 opinion of the Attorney General, which considers both the language of Title 29.1 and prior Attorney General opinions, recognizes that the intent of the Title is to establish a statewide system of game management with the hunting of game regulated at the state, rather than local, level. The opinion thus concludes that a locality may not adopt ordinances that alter the state-established game management practices. The 1993 opinion also recognizes, however, that the exclusive state authority over hunting and game management must be interpreted consistently with express powers granted localities in other provisions of the Code.

In accordance with the reasoning of the 1993 opinion, the continuous open season on hunting foxes with dogs established in § 29.1-516 must be interpreted in light of the clear statutory authority granted localities in § 3.1-796.93 to adopt ordinances prohibiting the running at large of dogs. Although the ordinance may not conflict with the state law embodied in Title 29.1 or other provisions of the Code, the ordinance and the statutes must be harmonized if possible.

As to land located within the county that is either owned by the Board of Game and Inland Fisheries or owned by others but controlled by the Board, § 29.1-508 authorizes the Board to regulate the methods of taking game on such lands. No provision of Title 29.1, however, permits hunters to go onto private land to hunt foxes with dogs. In fact, § 18.2-132 provides that going onto the land of another to hunt without the landowner's consent constitutes a Class 3 misdemeanor. Section 18.2-136 does permit fox hunters to follow their dogs onto prohibited land to retrieve the dogs when a chase begins on other land. With the exception of land owned or controlled by the Board and the exception provided in § 18.2-136, it is my view that an ordinance enacted under § 3.1-796.93 is not incompatible with § 29.1-516.

The definition of "running at large" in § 3.1-796.93 does not prohibit dogs from running, roaming or self-hunting on the property of their owner or custodian or from running, roaming or self-hunting off the property of their owner if the dogs are under their owner's or custodian's immediate control. Moreover, the statute expressly uses the term "self-hunting," as opposed to hunting under the direction of a person. In contrast, hunting foxes with dogs under § 29.1-516 is defined as "the actual following of the dogs while in pursuit of a fox or foxes or managing the dog or dogs while the fox or foxes are being hunted or pursued." These two definitions indicate a legislative intent to encompass different situations, one in which a dog is freely roaming outside of its custodian's control and one in which the animal is engaged in conduct directed by and under the control or management of its custodian. The statutes, therefore, are not inconsistent but may be harmonized.

Accordingly, it is my opinion that an ordinance prohibiting dogs running at large, as defined in § 3.1-796.93, does not prohibit fox hunting with dogs, as defined in § 29.1-516, on any land with the landowner's consent. Section 29.1-516 does not operate to permit fox hunting with dogs on prohibited land, although § 18.2-136 provides that fox hunters engaged in a chase that originated on permitted land may follow their dogs onto prohibited land. They may do so only for the purpose of retrieving
their dogs, not for the purpose of crossing over prohibited land to continue the chase. If fox hunters fail to retrieve their dogs from the prohibited land, the dogs may be deemed to be running at large. Whether a particular set of facts would constitute a violation of a local ordinance prohibiting dogs running at large, in light of § 18.2-136, is an issue for determination by the local Commonwealth's attorney and the trier of fact.

3CUMBERLAND COUNTY, VA., CODE art. 2, § 3-10 (1996). While the ordinance states that permitting a dog to "remain unconfined, unrestricted or not penned up" during the specified period constitutes a violation of the ordinance, the body of the ordinance contains no language, consistent with the second sentence of § 3.1-796.93, requiring that dogs be confined, restricted or penned up. Accordingly, this opinion considers only the prohibition against dogs "running at large." I note also that an ordinance prohibiting dogs from running at large is different from an ordinance adopted by a city pursuant to § 3.1-796.95 requiring that dogs be kept on leashes or otherwise restrained within the confines of the city.
4The open season for hunting foxes with guns is from November 1 through January 31. See 4 VAC 15-110-20 (Law. Co-op. 1996).
6Id. at 159.
7Id.
9Section 29.1-508 authorizes the Board of Game and Inland Fisheries "to adopt rules and regulations to prescribe and enforce the seasons, bag limits and methods of taking fish and game on lands and waters owned by the Board and on lands owned by others but controlled by the Board."
10Section 3.1-796.66 broadly defines "owner" to include "any person who: (i) has a right of property in an animal, (ii) keeps or harbors an animal, (iii) has an animal in his care, or (iv) acts as a custodian of an animal."

HEALTH: DISEASE PREVENTION AND CONTROL — REGULATION OF MEDICAL CARE FACILITIES.

Paramedic of local fire department is not 'licensed institutional health care provider' authorized to obtain access to immunization records maintained in state health department database system, should such system be established in future. Term designates those facilities, and not persons, licensed to provide health care.

The Honorable Phillip Hamilton
Member, House of Delegates
January 12, 1999

You ask whether the language "licensed institutional health care provider" in § 32.1-46 of the Code of Virginia authorizes paramedics of local fire departments to obtain access to immunization records maintained on the state health department's immunization data base.

Section 32.1-46 requires parents, guardians or persons standing in loco parentis of each child within the Commonwealth to cause the child to be immunized against certain diseases. Section 32.1-46(E) provides:
For the purpose of protecting the public health by ensuring that each child receives age-appropriate immunizations, any physician, licensed institutional health care provider, local or district health department, and the Department of Health may share immunization and child locator information, including, but not limited to, the month, day, and year of each administered immunization; the child’s name, address, telephone number, birth date, and social security number; and the parents’ names. The immunization information; the child’s name, address, telephone number, birth date, and social security number; and the parents’ names shall be confidential and shall only be shared for the purposes set out in this subsection.

A recent opinion of the Attorney General considers whether § 32.1-46 authorizes the transfer of immunization information about individual children to a state health department immunization information system without parental consent.¹ The opinion notes that § 32.1-46 does not expressly authorize the health department to establish an immunization information system and that the health department does not currently have such a system in operation.² Should the health department establish such a system in the future, it is my opinion that § 32.1-46(E), as presently enacted, does not authorize a paramedic of a local fire department to obtain access to the immunization information on the system.

Section 32.1-46(E) authorizes the sharing of immunization and child locator information only by “physician[s], licensed institutional health care provider[s], local or district health department[s], and the Department of Health.” No statute defines “licensed institutional health care provider.” The term “health care provider,” as defined in various sections of the Code, encompasses both persons licensed to provide health care and facilities licensed to provide health care.³ No statutes, however, provide for the licensing of a person as an “institutional” health care provider. Since the term “licensed institutional health care provider” cannot refer to a person, it is my opinion that the term is intended to designate those facilities that would satisfy the definition of licensed “health care provider.”⁴

¹For the purposes of this opinion, I assume that your use of the term “paramedic” is to mean “an emergency medical care attendant or technician.” See § 32.1-111.1 (defining “emergency medical services personnel”); § 8.01-225 (defining “emergency medical care attendant or technician”).

²“In loco parentis” means “[i]n the place of a parent; instead of a parent; charged, factitiously, with a parent’s rights, duties, and responsibilities.” BLACK’S LAW DICTIONARY 787 (6th ed. 1990).


⁴Id.

⁵See, e.g., §§ 8.01-581.1, 32.1-45.1, 32.1-276.3, 38.2-4300. See also § 32.1-102.1 (defining “medical care facility”); § 32.1-249 (defining “institution”).

⁶See §§ 32.1-123 to 32.1-137 (“Hospital and Nursing Home Licensure and Inspection”).
HEALTH: DISEASE PREVENTION AND CONTROL — REGULATION OF MEDICAL CARE FACILITIES.


Absence of statutory language requiring parental consent to transfer immunization information about individual children is not sufficient to override obligation of physician or health care provider to maintain confidentiality of patient medical records. Statutes mandating establishment of information systems containing medical records data and reporting of patient information also provide mechanisms for regulating such systems and protecting confidentiality of information.

The Honorable Marian Van Landingham
Member, House of Delegates
January 11, 1999

You ask whether § 32.1-46 of the Code of Virginia allows the transfer of immunization information about individual children from hospital and doctor records to the state health department immunization information system and between health professionals without requiring signed permission from each child's parent.

Section 32.1-46(A) requires "[t]he parent, guardian or person standing in loco parentis of each child within this Commonwealth [to] cause such child to be immunized" against certain diseases.¹ The vaccines may be administered by a physician or free of charge at the appropriate local health department.² The physician or local health department is to provide the person presenting the child for immunization a certificate stating the diseases for which the child has been immunized, the number of doses given, the date of the immunization, and any further immunizations needed.³ Section 32.1-46(E) provides:

For the purpose of protecting the public health by ensuring that each child receives age-appropriate immunizations, any physician, licensed institutional health care provider, local or district health department, and the Department of Health may share immunization and child locator information, including, but not limited to, the month, day, and year of each administered immunization; the child's name, address, telephone number, birth date, and social security number; and the parents' names. The immunization information; the child's name, address, telephone number, birth date, and social security number; and the parents' names shall be confidential and shall only be shared for the purposes set out in this subsection.

Prior to a 1996 amendment, § 32.1-46(E) stated that the information could be transferred "with written parental consent."⁴ The 1996 amendment deleted this language, in addition to adding language regarding the purpose for the transfer of information.⁵ A presumption generally arises that when the General Assembly adds new provisions to existing legislation, it intends to change the existing law.⁶ I am unable to conclude, however, that, because the General Assembly deleted from § 32.1-46(E) the express requirement of written parental consent, the remaining language of § 32.1-46 constitutes sufficient legislative authority for the transfer of immunization information to the state health department immunization information system without such consent.
I note that § 32.1-46 neither mandates that physicians or licensed institutional health care providers submit immunization information to the state health department nor expressly authorizes the department to establish an immunization information system. In contrast, other statutes in Title 32.1 expressly authorize the establishment of systems containing information from individual patient's medical records. These statutes not only impose a mandatory requirement on physicians, medical service providers or hospitals to submit the necessary information but also contain mechanisms or procedures for regulating the system and protecting the confidentiality of the information.

In a recent decision, the Supreme Court of Virginia held, in the absence of a statutory command to the contrary, or absent a serious danger to the patient or others, a health care provider owes a duty to the patient not to disclose information gained from the patient during the course of treatment without the patient's authorization, and [a] violation of this duty gives rise to an action in tort.

In light of this decision and the general language of § 32.1-46, as compared to the specific language of other statutes mandating reporting of patient information and establishing information systems containing medical records data, it is my opinion that simply the absence of language in § 32.1-46 requiring parental consent is not alone sufficient to override the obligation of a physician or health care provider to maintain the confidentiality of a patient's medical records.

The diseases include diphtheria, tetanus, whooping cough, poliomyelitis, Haemophilus influenzae type b, measles (rubella), German measles (rubella), mumps, and, for children born on or after January 1, 1994, hepatitis B. Section 32.1-46(A). The immunizations are required at different ages. Id.

The statute does not apply if (1) a parent or guardian objects to the immunization on religious grounds, unless the State Board of Health declares an emergency or epidemic, or (2) a physician licensed in Virginia provides a statement declaring that one or more of the immunizing agents would be detrimental to the health of the child. Section 32.1-46(D).

The Privacy Protection Act of 1976, §§ 2.1-377 to 2.1-386, requires government agencies that maintain information systems containing "personal information" to adhere to certain principles that ensure safeguards for personal privacy. Section 2.1-378(B). Section 2.1-379(2) of the Act defines "personal information" to include an individual's "medical history." Section 2.1-382 provides that "data subjects," those individuals about whom personal information is indexed or may be located in an information system (see § 2.1-379(3)), are to be provided certain information regarding whether they may refuse to supply the information. Social security numbers also constitute personal information that may trigger...

10See Fairfax Hospital v. Curtis, 254 Va. 437, 442, 492 S.E.2d 642, 645 (1997) (emphasis added). While § 32.1-46 provides that the physicians or entities "may" share the immunization information, it imposes no statutory command on a health care provider. The statute also contains no language limiting the disclosure of the information to situations constituting "a serious danger to the patient or others." I cannot, of course, predict how the Court might rule in a situation involving the disclosure of the immunization information specified in § 32.1-46 or whether the Court would apply the same standard to the immunization information as applied to other information regarding a patient's treatment.

11Section 32.1-127.1:03 establishes a patient's right of privacy in the content of the patient's medical record. Section 32.1-127.1:03(B) broadly defines "record" to include "any ... material maintained by a provider in the course of providing health services to a patient concerning the patient and the services provided." Section 32.1-127.1:03(D) contains 24 exceptions from the prohibition against a provider's disclosure of the records of a patient. Subsection (D)(6) authorizes disclosure "as required or authorized by any other provision of law including contagious disease [and] public safety ... reporting requirements." Subsection (D)(6) lists statutes imposing such reporting requirements, and, although expressly stating that the list is not limited to the statutes specified, the list does not include § 32.1-46. While I do not interpret § 32.1-127.1:03 as prohibiting the disclosure of immunization information, neither does it indicate a clear legislative intent to exclude immunization information from the patient consent requirements imposed by the statute.

HEALTH: ENVIRONMENTAL HEALTH SERVICES - SEWAGE DISPOSAL.

CONSTITUTION OF VIRGINIA: BILL OF RIGHTS.

COUNTRIES, CITIES AND TOWNS: GENERAL POWERS AND PROCEDURES OF COUNTIES — PLANNING, SUBDIVISION OF LAND AND ZONING — FRANCHISES, PUBLIC PROPERTY, UTILITIES

STATE WATERS, PORTS AND HARBORS: STATE WATER CONTROL LAW.

Department of Health must consider land use concerns expressed by county board of supervisors regarding Department's processing of application for reissuance of permit to allow storage of sludge at existing facility within county. Local ordinance regulating alternative on-site sewage systems may not subject such systems to restrictions more stringent than those prescribed by state law or regulation. Analysis of "taking" in relation to Department's denial of permit.

The Honorable Walter A. Stosch
Member, Senate of Virginia
June 2, 1999

You inquire regarding the processing of a permit application by the State Department of Health ("Department") for a sludge storage facility located in Goochland County. You ask whether the Department is required to consider the land use concerns expressed by the county board of supervisors. If such permit application is denied by the Department, you also ask whether such denial constitutes a "taking" under either the Fifth Amendment to the Constitution of the United States or Article I, § 11 of the Constitution of Virginia (1971).

You relate that the Department is considering the reissuance of a permit to allow the storage of sludge at an existing facility in Goochland County. The storage facility has been operating for ten years under a permit that initially was issued by the Department
on March 17, 1989. There has been significant residential growth in the immediate area of the sludge storage facility since that date. You also advise that the county's comprehensive plan and the growth management plan anticipate and encourage the continued residential development of the general area surrounding the storage facility. In June 1998, the county board of supervisors adopted an ordinance banning the deposit or land application of sludge within the county.

You also advise that the board of supervisors has adopted a formal resolution opposing the issuance of a new permit based on what you describe as traditional land use planning concepts. The resolution expresses the board's sentiment that the sludge storage facility is no longer compatible with the county comprehensive plan and county growth management plan. You relate that pursuant to § 32.1-164.2 of the Code of Virginia, the board of supervisors has forwarded a copy of its resolution to the Department to formally provide its comments against the continued operation of the sludge storage facility in an area that is considered to be a prime area for future residential development.

The General Assembly has delegated the principal responsibility for regulating and managing sewage treatment and disposal in Virginia to the State Board of Health in conjunction with the State Water Control Board. Specifically, § 32.1-164 provides:

A. The [State] Board [of Health] shall have supervision and control over the safe and sanitary collection, conveyance, transportation, treatment, and disposal of sewage, all sewerage systems, and treatment works as they affect the public health and welfare. In discharging [this] responsibility ... the Board shall exercise due diligence to protect the quality of both surface water and ground water. The regulation of sewage, as it may affect the public health, shall be primarily the responsibility of the Board and, in cases to which the provisions of Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1[1] are applicable, the joint responsibility of the Board and the State Water Control Board in accordance with such chapter....

B. The regulations of the [State] Board [of Health] shall govern the collection, conveyance, transportation, treatment and disposal of sewage.[3] Such regulations shall be designed to protect the public health and promote the public welfare ....

Article 1, Chapter 6 of Title 32.1[4] provides comprehensive statutory regulation for sewage treatment and disposal. Section 32.1-164 grants the State Board of Health broad authority to regulate many areas, including without limitation, the development of standards governing disposal of sewage on or in soils, criteria for determining the demonstrated ability of alternative on-site systems, and standards and criteria for alternative discharging sewage systems. Additionally, § 32.1-166.1 establishes a review board to hear "administrative appeals of denials of onsite sewage disposal system permits."[5]

"[T]he primary objective of statutory construction is to ascertain and give effect to legislative intent." Section 32.1-164.2 expressly provides that the State Board of Health must notify local governing bodies where sewage disposal is to occur of "pertinent
details of the proposal and establish a date for a public meeting to discuss technical issues relating to the proposal.” Moreover, the Board’s regulations provide that “[c]onformance to local land use zoning and planning should be resolved between the local government and the facility owner or permit holder.”

Consistent with the prior opinions of the Attorney General, therefore, it is my view that the Department must consider the land use concerns expressed by the county board of supervisors, such as the local ordinance and resolution you mention.

Local ordinances adopted under the broad police power authority of § 15.2-1200, however, must not be inconsistent with state law. Thus, while the state and the county may share some jurisdiction in this area, the power of the State Water Control Board and the State Board of Health is paramount, and any local ordinance must not operate in a conflicting manner. Therefore, regardless of whether there are statutes which may be interpreted to enable a locality to adopt an ordinance regulating alternative on-site sewage systems, systems falling within the purview of state regulation may not be prohibited or subjected to restrictions more stringent than those prescribed by regulation.

You next ask whether the Department’s denial of a permit would constitute a “taking” under either the Fifth Amendment to the United States Constitution or Article I, § 11 of the Virginia Constitution.

The Fifth Amendment to the Constitution of the United States prohibits the taking of private property for public use, “without just compensation.” Article I, § 11 of the Constitution of Virginia contains a similar prohibition. The Supreme Court of the United States long ago held that not every governmental regulation resulting in a diminution of property values constitutes a “taking” compensable under the Fifth Amendment. The Supreme Court also has long acknowledged that some regulations go too far in restricting property uses, and thereby constitute a taking. These early cases establish the extremes. Analysis of specific taking claims, however, has proven difficult.

The Virginia law of takings, like the federal law, is imprecise in its borders and definitions....

** **

The most important distinction in Virginia law, as in federal law, is that between eminent domain, in which private property is taken or damaged, and the exercise of the police power of the State, in which the use of the property is simply regulated for the public interest. The former is compensable; the latter is not.

In recent cases, the Supreme Court of the United States has focused its takings analysis on the economic viability of the uses remaining to the property owner being regulated. The application of land use controls is a taking only if the ordinance or regulation “does not substantially advance legitimate state interests, or denies an owner economically viable use of his land.” The Supreme Court of Virginia has reached similar conclusions:
All citizens hold property subject to the proper exercise of the police power for the common good. Even where such an exercise results in substantial diminution of property values, an owner has no right to compensation therefor. In *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978), the Supreme Court held that no taking occurs in these circumstances unless the regulation interferes with all reasonable beneficial uses of the property, taken as a whole.\(^\text{17}\)

More recently, the Supreme Court of Virginia has held that a zoning ordinance does not constitute a taking unless the owner is "deprived of all economically viable uses of its property."\(^\text{18}\)

In *Penn Central Transportation Co. v. New York City*, the Supreme Court of the United States held that "whether a particular restriction will be rendered invalid by the government's failure to pay for any losses proximately caused by it depends largely 'upon the particular circumstances [in that] case.'"\(^\text{19}\)

In engaging in these essentially ad hoc, factual inquiries, the Court's decisions have identified several factors that have particular significance. The economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations are, of course, relevant considerations. So, too, is the character of the governmental action. A "taking" may more readily be found when the interference with property can be characterized as a physical invasion by government than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good.\(^\text{20}\)

Therefore, resolution of the inquiry regarding whether the denial of the permit application by the Department constitutes a "taking" under either the Fifth Amendment to the United States Constitution or Article I, § 11 of the Virginia Constitution depends largely upon the particular facts and circumstances of the matter. You have provided no such facts upon which to base such a conclusion. Accordingly, I must respectfully decline to render an opinion on whether the Department's denial of such a permit application would constitute a "taking."\(^\text{21}\)

\(^1\)Section 32.1-164.2 provides: "Whenever the [State] Board [of Health] receives an application for land disposal of treated sewage, stabilized sewage sludges or stabilized septage, the Board shall notify the local governing bodies where disposal is to take place of pertinent details of the proposal and establish a date for a public meeting to discuss technical issues relating to the proposal. The Board shall give notice of the date, time and place of the public meeting and a description of the proposal by publication in a newspaper of general circulation in the ... county where land disposal is to take place. Public notice of the scheduled meeting must occur no fewer than seven nor more than fourteen days prior to the meeting. The Board shall not consider the application for land disposal to be complete until the public meeting has been held and comment has been received from the local governing body, or until thirty days have lapsed from the date of the public meeting. This section shall not apply to applications for septic tank permits."

\(^2\)Chapter 3.1 of Title 62.1, §§ 62.1-44.2 to 62.1-44.34:28, embodies the State Water Control Law.

Sections 32.1-163 to 32.1-166 (entitled "Sewage Disposal").

Section 32.1-164(B)(4), (10)-(13).

Section 32.1-166.6.


"Article I, § 11 actually requires just compensation for private property "taken or damaged" for public use. (Emphasis added.) While this appears to be a stricter standard than the federal constitutional requirement, the Virginia provision has, in fact, been applied similarly to the federal one, preserving a distinction between compensable "takings" and valid noncompensable restrictions on the use of property imposed through the state's or locality's exercise of its police power. See I A.E. DICK HOWARD, COMMENTARIES ON THE CONSTITUTION OF VIRGINIA 218-23 (1974).

"See Mugler v. Kansas, 123 U.S. 623 (1887) (state is not required to compensate brewery owner for damage to property value resulting from prohibition law). Local zoning regulations and similar restrictions on land use, even when they diminish land values, likewise have long been upheld. See Euclid v. Ambler Co., 272 U.S. 365 (1926).

"Penna. Coal Co. v. Mahon, 260 U.S. 393 (1922) (state law barring subsurface coal mining to prevent subsidence under public buildings is invalid exercise of police power to accomplish what state could only achieve by exercise of eminent domain—compensating owner of mineral rights).

"I A.E. DICK HOWARD, supra note 12, at 218, 219.


"Id. (citations omitted).


---

HEALTH: REGULATION OF MEDICAL CARE FACILITIES.

RULES OF SUPREME COURT OF VIRGINIA: CRIMINAL PRACTICE AND PROCEDURE (SUBPOENA).

CIVIL REMEDIES AND PROCEDURE: EVIDENCE - MEDICAL EVIDENCE.

COURTS NOT OF RECORD: JURISDICTION AND PROCEDURE, CRIMINAL MATTERS — JUVENILE AND DOMESTIC RELATIONS COURTS.

CONSTITUTION OF VIRGINIA: JUDICIARY.

Patient medical records may not be disclosed in response to subpoena duces tecum except in compliance with statutory Notice to Provider/Patient provisions.
You ask whether, in connection with a criminal proceeding, a health care provider is to release a patient's medical records in response to a subpoena duces tecum issued in accordance with the Rules of Supreme Court of Virginia or whether the party requesting the subpoena also must comply with the notice provisions of § 32.1-127.1:03 of the Code of Virginia.

Part 3A of the Rules of Supreme Court of Virginia governs criminal proceedings in circuit courts and juvenile and domestic relations district courts, in addition to proceedings before certain magistrates. Rule 3A:12(b) provides:

Upon notice to the adverse party and on affidavit by the party applying for the subpoena that the requested writings or objects are material to the proceedings and are in the possession of a person not a party to the action, the judge or the clerk may issue a subpoena duces tecum for the production of writings or objects described in the subpoena.

Section 32.1-127.1:03 recognizes a patient's right of privacy in the content of his medical records and governs the disclosure of the records. Subsection A of § 32.1-127.1:03 states:

Except when permitted by this section or by another provision of state or federal law, no provider, or other person working in a health care setting, may disclose the records of a patient.

Subsection D of § 32.1-127.1:03 sets out twenty-four instances in which a provider may disclose a patient's records. The only instance applicable to disclosure pursuant to a subpoena duces tecum is contained in subdivision 2, which permits disclosure "[i]n compliance with a subpoena issued in accord with subsection H of this section, pursuant to court order upon good cause shown or in compliance with a subpoena issued pursuant to subsection C of § 8.01-413." Subsection H of § 32.1-127.1:03 imposes conditions on the issuance of a subpoena duces tecum for the medical records of a party or of a nonparty witness. These conditions include: (i) providing a copy of the request to opposing counsel or the opposing party if the party is pro se, or to the nonparty witness; (ii) delivering to a pro se party or a nonparty witness a Notice to Patient, informing the patient of his right to file a motion to quash with the clerk of court; and (iii) delivering to the provider a Notice to Providers, informing the provider that if he receives notice of a motion to quash or if the provider himself files a motion to quash, the provider is to send the records to the clerk of court in a sealed envelope.

While the broad and comprehensive language of § 32.1-127.1:03 indicates a clear legislative intent to encompass all disclosures of a patient's medical records, the statute expressly does not override other provisions of state law that would permit the release of medical records. Thus, the records may be disclosed if permitted by § 32.1-127.1:03 or if permitted by "another provision of state ... law."
An argument can be made that Rule 3A:12(b) constitutes "another provision of state law..." that permits disclosure and that, therefore, § 32.1-127.1:03 has no application to a subpoena duces tecum for medical records issued under the rule. I do not accept this argument for several reasons. First, such a position would violate the accepted principle of statutory construction that, when statutes provide different procedures on the same subject matter and it is not clear which of the two statutes applies, the more specific statute prevails over the more general.7 Section 32.1-127.1:03 deals specifically with the release of medical records, and § 32.1-127.1:03(D)(2) deals specifically with the release of medical records pursuant to subpoenas.

Secondly, § 32.1-127.1:03 expressly recognizes the patient’s right to privacy in the content of his medical records and protects this right by granting the patient access to the court prior to the involuntary disclosure of his medical records to a third party. Although Rule 3A:12(b) conditions issuance of a subpoena on notice to the adverse party and an affidavit stating that the records are "material to the proceedings," the rule does not require that the court consider the effect of disclosure on the patient’s right to privacy.

In light of the specificity of § 32.1-127.1:03 and the purpose underlying enactment of the statute, I cannot conclude that the General Assembly intended to except from operation of the statute subpoenas issued for medical records under Rule 3A:12(b). Accordingly, it is my opinion that, unless the records are issued "pursuant to court order upon good cause shown or in compliance with a subpoena issued pursuant to subsection C of § 8.01-413," a subpoena duces tecum for medical records in a criminal proceeding must comply with the notice provisions of § 32.1-127.1:03(H).

A subpoena issued in a criminal proceeding under Rule 3A:12(b) does not constitute "a subpoena issued pursuant to subsection C of § 8.01-413."9 Section 8.01-413(B) requires that, with certain exceptions, a health care provider must release copies of a patient’s medical records to the patient or his attorney upon written request. If the provider does not respond to the request within the fifteen days specified in § 8.01-413(B), § 8.01-413(C) authorizes the patient or his attorney to obtain a subpoena for release of the records.10 Section 8.01-413(C) applies only in instances in which the patient requests copies of his own medical records.11

Since § 8.01-413(C) does not apply to subpoenas by persons other than the patient or his attorney,12 a subpoena for medical records issued in a criminal proceeding must comply with § 32.1-127.1:03(H), unless the subpoena constitutes a "court order upon good cause shown."13 I do not view a subpoena issued under Rule 3A:12(b) as constituting a "court order upon good cause shown" for purposes of § 32.1-127.1:03(D)(2), although the judge or clerk may issue the subpoena only upon receipt of an affidavit stating that the records are "material to the proceedings." It is clear that the General Assembly intended to permit the court to issue an order requiring the disclosure of medical records without complying with the notice requirements of § 32.1-127.1:03(H). It is unlikely, however, that the General Assembly intended a subpoena issued upon an affidavit stating that the records are "material to the proceedings" to constitute a court order for "good cause shown."14
In conclusion, it is my opinion that, because no language in § 32.1-127.1:03 clearly excludes subpoenas duces tecum for medical records in a criminal proceeding, the disclosure of such records is subject to the conditions imposed by the statute. Thus, absent the issuance of a "court order upon good cause shown," the records may be disclosed only in compliance with a subpoena issued in accord with § 32.1-127.1:03(H). As required by Rule 3A:12(b), the records also must be "material to the proceedings." 1

1See Va. Const. art. VI, § 5 (1971) (authorizing Supreme Court to make rules governing practice and procedures used in courts of Commonwealth; rules are not to conflict with general law established by General Assembly); see also § 8.01-3 (Supreme Court may prepare system of rules of practice to be used in all courts of Commonwealth).


4Section 32.1-127.1:03(H)(1)-(2). Section 32.1-127.1:03(H)(4) provides that if the request is for the records of a pro se party or a nonparty witness, the request is to direct the provider not to provide the records for 10 days.

5Section 32.1-127.1:03(A).

6Id.


8Section 32.1-127.1:03(D)(2).

9Id.

10Section 8.01-413(D) limits the scope of subsections B and C. The medical records need be disclosed under § 8.01-413 only if the patient is "a party to a cause of action" and if the request is made by a patient or his attorney "in anticipation of litigation or in the course of litigation." Section 8.01-413(D).

11Subsections B and C of § 8.01-413 require that the request for the records and the request for the subpoena "comply with" or be in "the manner specified in § 32.1-127.1:03." A reasonable reading of this language is that the requests are to contain the information specified in § 32.1-127.1:03(E) and, if to be released to the patient's attorney, the consent form set out in § 32.1-127.1:03(G). Since the patient himself or his attorney is requesting the record, it would be illogical to require that such requests contain the Notice to Patient form set out in § 32.1-127.1:03(H)(1).

12In a 1995 opinion, the Attorney General concludes that § 8.01-413 authorizes a medical facility to charge a Commonwealth's attorney for copying and retrieving items specified in § 8.01-413 in response to a subpoena for medical records. See 1995 Op. Va. Att'y Gen. 22, 23. The opinion deals with the payment of a provider's costs for copying medical records in response to a subpoena issued in a criminal case. While the opinion concludes that § 8.01-413 requires the payment of the provider's costs in all cases, including criminal cases, the opinion should not be read as concluding that § 8.01-413(C) requires a health care provider generally to disclose a patient's medical records to a prosecutor in a criminal proceeding.

13Another possible exclusion from the notice requirements of § 32.1-127.1:03(H) is the statement in subsection E that "[p]rocedures set forth in this section shall apply only to requests for records not specifically governed by other provisions of this Code, federal law or federal or state regulation." Section 32.1-127.1:03(E) details the information that a request for copies of medical records is to include and the actions that the provider must take in response to the request. While it would appear that the exclusion contained in subsection E would apply only to the "[p]rocedures set forth in this section," the language refers to "[p]rocedures set forth in this section." (Emphasis added.) Regardless of whether the General Assembly intended the exclusion in subsection E to apply to all of § 32.1-127.1:03, including the
notice requirements of subsection H, it is my opinion that no other provision of the Code specifically
governs requests for medical records in a criminal proceeding pursuant to a subpoena duces tecum and
that, accordingly, the exclusion in subsection E does not apply.

"Section 32.1-127.1:03(D)(2).

"This conclusion is consistent with the accepted principle that statutes dealing with the same subject
matter are to be construed together to produce a result that gives effect to all acts of the legislature. See
Prillaman v. Commonwealth, 199 Va. 401, 405-06, 100 S.E.2d 4, 7-8 (1957); Commonwealth v.
190-91.

HEALTH: VITAL RECORDS.
MOTOR VEHICLES: LICENSURE OF DRIVERS.

Applicants for marriage licenses must include their social security numbers or other control
numbers issued by Department of Motor Vehicles on applications. Circuit court clerk must
refuse to issue marriage license to individual who refuses to provide either number. Clerk may
not deny marriage license to nonresident foreign national for whom no statutory basis exists for
issuing such numbers. Parties are required to furnish such social security number or control
numbers as they actually may have at time application for marriage license is made.

The Honorable Michael M. Foreman
Clerk, Circuit Court of the City of Winchester
February 26, 1999

You ask whether, under the 1997 amendment to § 32.1-267 of the Code of Virginia, a
person's social security number is a protected number and if a clerk of court must refuse
to issue a marriage license to an applicant who refuses to provide such a number. You
also question whether, if the social security number is required, the clerk may no longer
issue a license to a foreign citizen who does not have a social security number.

Section 7 of the Federal Privacy Act of 1974 provides:

(a)(1) It shall be unlawful for any Federal, State or local government
agency to deny to any individual any right, benefit, or privilege provided
by law because of such individual's refusal to disclose his social security
account number.

(2) the provisions of paragraph (1) of this subsection shall not apply
with respect to—

(A) any disclosure which is required by Federal statute[.]"\n
Under § 7(b) of the Federal Privacy Act, the individual must be informed whether dis-
closure of his social security number "is mandatory or voluntary, by what statutory or
other authority such number is solicited, and what uses will be made of it."\n
Section 2.1-385 of Virginia's Privacy Protection Act of 1976 makes it unlawful for any
agency, "[o]n or after July 1, 1977,"
to require an individual to disclose or furnish his social security account number not previously disclosed or furnished, for any purpose in connection with any activity, or to refuse any service, privilege or right to an individual wholly or partly because such individual does not disclose or furnish such number, unless the disclosure or furnishing of such number is specifically required by federal or state law. [Emphasis added.]

Federal law mandates that each state enact laws requiring the recording of social security numbers on applications for marriage licenses. In compliance with this mandate, the 1997 Session of the General Assembly amended § 32.1-267(B) to require that the parties applying for a marriage license "include their social security numbers or other control numbers issued by the Department of Motor Vehicles pursuant to § 46.2-342." Section 46.2-342(A)(1) preserves the rights of individuals who do not wish to release their social security numbers by allowing the Commissioner of the Department of Motor Vehicles to assign a control number to the driver's license of any person who (1) has no social security number or (2) has requested that his social security number not appear on the license.

Circuit court clerks have authority under § 32.1-267(B) to request that social security numbers or other control numbers issued by the Department of Motor Vehicles be included on marriage license applications. Under the Federal Privacy Act, an individual must be informed that disclosure of his social security number is mandatory, that § 32.1-267(B) authorizes solicitation of the number, and what use(s) will be made of the number. If an applicant refuses to provide a social security or control number, the clerk shall not issue a marriage license, because the applicant has not complied with the requirements of § 32.1-267(B).

This does not mean, however, that an applicant who does not have either a social security number or a Department of Motor Vehicles control number may not be issued a marriage license. In my opinion, the requirement in § 32.1-267(B) that applicants for marriage licenses "include their social security numbers or other control numbers issued by the Department" means that they are to furnish such numbers as they may have. The apparent purpose of the statute is to bring Virginia law into compliance with the federal mandate that states enact laws requiring recordation of applicants' social security numbers on marriage license applications. Section 32.1-267(B) does not deny the right of marriage to those who have no such numbers, nor does the statute contemplate that applicants must obtain such a number before applying for a marriage license.

There certainly are circumstances in which an individual, especially a foreign national not residing in Virginia, could not obtain such a number. For example, § 46.2-345(A) directs the Department of Motor Vehicles to issue special identification cards "[o]n the application of any person who is a resident of the Commonwealth," provided certain conditions are met. (Emphasis added.) This statutory language clearly authorizes the Department to issue special identification cards to residents only. Thus, there is no statutory basis for the Department to issue a control number to a person to whom the Department has not issued a special identification card or driver's license. To require a nonresident
foreign national with no social security number to furnish a control number before obtaining a marriage license would effectively preclude him or her from marrying in Virginia. Such a result would substantially alter long-established rights pertaining to marriage in Virginia, not only for foreign nationals, but also for Virginians to whom they may be betrothed. In my opinion, the intention of the 1997 Session of the General Assembly in amending § 32.1-267(B) was to require the parties to furnish such social security or control numbers as they actually may have at the time application for a marriage license is made.

Therefore, I am of the opinion that clerks of court must refuse to issue a marriage license to an individual who has, but refuses to provide, either a social security number or a control number issued by the Department of Motor Vehicles. There is no obligation, however, to provide a number that does not exist, and, consequently, the refusal to provide a nonexistent number should not be construed so as to permit the clerk to deny the marriage license.

2Id.
3Every state must enact laws requiring that the social security number of "any applicant for a ... marriage license be recorded on the application." 42 U.S.C.A. § 666(a)(13)(A) (West Supp. 1998).
41997 Va. Acts ch. 898, at 2429, 2431; see id. ch. 794, at 1942, 1943.
6Compare 42 U.S.C.A. § 666(a)(13) with § 32.1-267(B).

HOUSING: VIRGINIA FAIR HOUSING LAW.

COUNTIES, CITIES AND TOWNS: URBAN COUNTY EXECUTIVE FORM OF GOVERNMENT - HUMAN RIGHTS.

Localities with fair housing law ordinances in effect on January 1, 1991, may continue to enforce and amend such ordinances; authority for localities with no such ordinance in effect on that date to enact ordinance in conformance with Virginia Fair Housing Law before September 30, 1992. Express authority for localities to submit amended ordinances to HUD for determination of substantial equivalency.

Mr. David P. Bobzien
County Attorney for Fairfax County
August 16, 1999

You ask whether Fairfax County has the authority under § 36-96.21 of the Code of Virginia to amend its human rights ordinance in conformity with the Virginia Fair Housing Law in order for the ordinance to be deemed by the United States Department of Housing and Urban Development ("HUD") to be substantially equivalent to the federal Fair Housing Act.

You state that Fairfax County has in effect a human rights ordinance that includes provisions protecting persons against unfair housing practices. You explain that, at the time the county enacted the ordinance, the Virginia Fair Housing Law was set out in Chapter 5 of Title 36, §§ 36-86 through 36-96. Section 36-96 authorized localities to enact
ordinances in accordance with the provisions of Chapter 5. In 1991, the General Assembly amended the Fair Housing Law by repealing Chapter 5 and enacting a new chapter numbered Chapter 5.1. As amended in 1991, the Virginia Fair Housing Law no longer grants general authority to localities to enact fair housing law ordinances in accordance with the chapter. Section 36-96.21 of Chapter 5.1 provides, however, that localities with ordinances in effect on January 1, 1991, may continue to enforce and amend the ordinances and that localities may enact ordinances in accordance with the chapter prior to September 30, 1992. Section 36-96.21 provides:

A. Any county, city or town which has any ordinance in effect on January 1, 1991, enacted under the Virginia Fair Housing Law (§ 36-86 et seq.), the Virginia Human Rights Act (§ 2.1-714 et seq.), or any other applicable state law may continue to enforce such ordinance and may amend the ordinance, provided the amendment is not inconsistent with this chapter. Nothing herein shall be construed to prohibit any county, city or town under this subsection from submitting amended ordinances to the U.S. Department of Housing and Urban Development for substantial equivalency pursuant to Title VIII, Civil Rights Act of 1968 (42 U.S.C. §§ 3604—3606), as amended.

B. The governing body of any county, city or town may enact ordinances in accordance with the provisions of this chapter provided that (i) such ordinances conform to this chapter and are enacted prior to September 30, 1992, and (ii) such amended ordinances are submitted to the U.S. Department of Housing and Urban Development for a determination of substantial equivalency pursuant to Title VIII, Civil Rights Act of 1968 (42 U.S.C. §§ 3604—3606), as amended.

You state that the county's human rights ordinance was in effect on January 1, 1991, and that on numerous occasions since the 1970s, the county has submitted its ordinance to HUD for a determination of substantial equivalency. You hesitate to conclude, however, that § 36-96.21 clearly authorizes the county to continue to enforce and amend its ordinance and to submit the amendments to HUD. Rather, you present two opinions with your request. In your first opinion, you argue that, because the county's ordinance was adopted prior to January 1, 1991, § 36-96.21(A) authorizes the county to amend the ordinance to obtain a substantial equivalency determination from HUD. In your second opinion, you argue that § 36-96.21(B) permits amendments only until September 30, 1992, and that any subsequent amendments may be made only pursuant to authority found in some enabling legislation other than the Virginia Fair Housing Law. This argument views § 36-96.21 not as a continuing grant of authority to amend existing local ordinances, but rather as limiting the amendments a locality may make to those that are consistent with the Virginia Fair Housing Law and that were enacted prior to September 30, 1992.

The primary purpose of statutory construction is to ascertain and give effect to the intent of the legislature. It is clear that, by including no corollary provision to § 36-96
in Chapter 5.1, the General Assembly intended to remove from localities the general authority to enact fair housing law ordinances in accordance with the chapter. It is equally clear that, by enacting § 36-96.21(A), the General Assembly intended to permit localities with such fair housing law ordinances in effect on January 1, 1991, to continue to enforce and amend the ordinances. Moreover, § 36-96.21(A) contains express authority for the localities to submit the amended ordinances to HUD.

I do not interpret § 36-96.21(B) as limiting the amendment authority granted under § 36-96.21(A) to amendments enacted prior to September 30, 1992. Had the General Assembly intended this result, it could easily have provided in § 36-96.21(A) that such amendments must be enacted prior to September 30, 1992. The apparent effect of § 36-96.21(B) is to permit localities that did not have a fair housing law ordinance in effect on January 1, 1991, and thus were not encompassed within § 36-96.21(A), to have until September 30, 1992, to enact such an ordinance.

It is my opinion that based on the clear language of § 36-96.21(A), Fairfax County may amend its ordinance and submit the amended ordinance to HUD for a determination of substantial equivalency. This conclusion assumes that the county had in effect on January 1, 1991, a fair housing ordinance in accordance with the provisions of the Virginia Fair Housing Law.

1Tit. 36, ch. 5.1, §§ 36-96.1 to 36-96.23.
2Section 36-96 provided: "The governing body of any county, city or town may enact ordinances in accordance with the provisions of this chapter; provided that no such ordinance shall permit the doing of any act which would be a discriminatory or unlawful housing practice under this chapter." 1975 Va. Acts ch. 345, at 573.
4The 1991 amendments authorized new ordinances only until July 1, 1992. See 1991 Va. Acts, supra, at 988 (amending § 36-96.21(B)). A 1996 amendment extended this date to September 30, 1992, and added language requiring that the statute not be construed to prohibit the submission of amendments to HUD. See 1996 Va. Acts chs. 173, 369, at 333, 645, respectively (amending § 36-96.21(A), (B)).
5You explain that, in response to a November 1998 submission of its ordinance, HUD pointed out several changes needed in the ordinance. The board of supervisors is considering amending its human rights ordinance to conform the language of the ordinance to the language in the Virginia Fair Housing Law, which has been deemed by HUD to be substantially equivalent to the federal Fair Housing Act.
6Section 2.1-118 requires that any request by a county attorney for an opinion from the Attorney General "shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions."
8You refer to the county ordinance as a human rights ordinance rather than a fair housing ordinance. You state, however, that the housing provisions of the county ordinance were enacted in conformity with and under the authority granted by the Virginia Fair Housing Law. While the title given the ordinance is not controlling, I note that human rights ordinances enacted solely under § 15.2-853, or its predecessor statute, § 15.1-783.1, are distinguishable from ordinances enacted under the Fair Housing Law. While such ordinances may contain provisions prohibiting discrimination in housing and real estate transactions, human rights ordinances are not subject to the enforcement provisions authorized under the Virginia Fair Housing Law. Compare §§ 15.2-853 and 15.2-854 with §§ 36-96.8 to 36-96.20.
MENTAL HEALTH GENERALLY: ADMISSIONS AND DISPOSITIONS IN GENERAL.

COURTS NOT OF RECORD: JUVENILE AND DOMESTIC RELATIONS COURTS — PSYCHIATRIC INPATIENT TREATMENT OF MINORS ACT — INTAKE, PETITION AND NOTICE.

Act controls involuntary commitment of minors in need of psychiatric treatment. Magistrate may issue temporary detention order for juvenile believed to be in need of treatment for mental illness without petition being filed in juvenile court and without intervention of juvenile intake officer; may not issue emergency custody order if person believed to be in need of such treatment is minor.

The Honorable D. Gregory Baker
Judge, Juvenile and Domestic Relations Court for Lee and Scott Counties
August 16, 1999

You ask whether, in instances in which a juvenile is believed to be in need of treatment for mental illness, a magistrate should issue a temporary detention order ("TDO") under § 37.1-67.1 of the Code of Virginia without a juvenile court service unit intake officer first filing the petition generally filed in the juvenile and domestic relations district court (the "juvenile court").

Section 16.1-260(A) provides that "[a]ll matters alleged to be within the jurisdiction of the [juvenile] court shall be commenced by the filing of a petition" and that "the processing of petitions shall be the responsibility of the [juvenile] intake officer." The involuntary commitment process for juveniles believed to be mentally ill and in need of hospitalization is within the jurisdiction of the juvenile court pursuant to The Psychiatric Inpatient Treatment of Minors Act, §§ 16.1-335 through 16.1-348.

Section 16.1-337 provides that "[a] minor may be admitted to a mental health facility for inpatient treatment only ... in accordance with an order of involuntary commitment entered pursuant to §§ 16.1-341 through 16.1-345." Section 16.1-341(A) provides that a petition for involuntary commitment of a minor may be filed with the juvenile court by a parent or "any responsible adult." The court is to hold a hearing on the petition within seventy-two hours of the filing of the petition. Prior to the hearing, the court is to direct the local community services board to arrange for an evaluation of the minor. Sections 16.1-343 through 16.1-345 set out the procedures for the commitment hearing and the criteria for the juvenile court to consider in issuing orders of involuntary commitment.

In addition to the hearing and disposition provisions, § 16.1-340 provides for the emergency admission of minors for inpatient treatment:

A minor may be taken into custody and admitted for inpatient treatment pursuant to the procedures specified in § 37.1-67.1. If the minor is admitted to a willing facility in accordance with § 37.1-67.1, the temporary detention order shall be effective until the juvenile and domestic relations district court schedules a hearing. The juvenile and domestic relations district court shall schedule a hearing pursuant to § 16.1-341 no sooner than twenty-four hours and no later than seventy-
two hours from the time of the issuance of the temporary detention order.\(^6\)

Sections 37.1-67.01 through 37.1-90 control the involuntary commitment process in Virginia for adults who are mentally ill and in need of hospitalization. Section 37.1-67.1 authorizes any magistrate, "upon the sworn petition of any responsible person or upon his own motion," to issue a TDO if it appears "that the person is mentally ill and in need of hospitalization" and "is incapable of volunteering or unwilling to volunteer for treatment." Subject to several exceptions, the order may be issued only after an in-person evaluation by an employee of the community services board or its designee.\(^8\) A TDO has a detention period of forty-eight hours,\(^9\) after which a commitment hearing must be held or the person must be released.\(^10\) If it is determined at the commitment hearing that the commitment criteria are met, an order of involuntary commitment is issued.\(^11\)

The primary goal of statutory construction is to ascertain and give effect to the intent of the legislature.\(^12\) Any construction that would impair the purpose of a statute or that would defeat its object is to be avoided.\(^13\) The obvious purpose of §§ 16.1-340 and 37.1-67.1 is to establish an emergency detention procedure for persons believed to need immediate hospitalization. The statutes permit any magistrate to issue the order after an in-person evaluation by an employee of a community services board. The order may be issued upon the petition of "any responsible person" or upon the magistrate's own motion.\(^14\) Moreover, § 37.1-67.1 requires the chief judge of each general district court to establish and require that a magistrate, as provided by the section, be available twenty-four hours a day, seven days a week, to issue such TDOs. Section 37.1-67.1 also requires every local community services board to provide each general district court and each magistrate "a list of its employees and designees who are available to perform the evaluations."

It would be inconsistent with the purpose of § 37.1-67.1 and the procedure established by the General Assembly under the statute to require that a juvenile intake officer file a petition in the juvenile court before a magistrate may issue a TDO. Imposing additional requirements that could delay the issuance of the order would defeat the object of the statute. Accordingly, it is my opinion that a magistrate may issue a TDO under § 37.1-67.1 in the case of a juvenile without a petition being filed in the juvenile court and without the intervention of a juvenile intake officer.\(^15\) This conclusion also is consistent with § 16.1-246(H), which permits a child to be taken into immediate custody when the child "is believed to be in need of inpatient treatment for mental illness as provided in § 16.1-340."

In addition to the issuance of TDOs under § 37.1-67.1, the involuntary commitment statutes for adults authorize magistrates to issue emergency custody orders ("ECOs") under § 37.1-67.01. Unlike a TDO, an ECO may be issued without a prior evaluation of the individual. An ECO requires that the person be taken into custody and transported to a "convenient location" for evaluation by a community services board designee to assess the need for hospitalization.\(^16\) The custody period under § 37.1-67.01 may not exceed four hours.
While § 16.1-340 permits a minor to be taken into custody in an emergency situation in accordance with the procedures specified in § 37.1-67.1, § 16.1-340 contains no reference to § 37.1-67.01. An established principle of statutory construction is that when the General Assembly includes one item in a statute, it intends to exclude omitted items from the scope of the statute. Moreover, in enacting the comprehensive scheme set out in The Psychiatric Inpatient Treatment of Minors Act, the General Assembly has evidenced an intent that the Act control the involuntary commitment of minors in need of psychiatric treatment. It is accordingly my view that a magistrate lacks the authority to issue an ECO under § 37.1-67.01 if the person believed to be mentally ill and in need of hospitalization is a minor.

1Although you inquire specifically about a magistrate's issuance of a TDO following the issuance of an emergency custody order under § 37.1-67.01, it is my opinion, as discussed below, that a magistrate may not issue an emergency custody order under § 37.1-67.01 in the case of a juvenile. Accordingly, I have confined my response to the issuance of a TDO under § 37.1-67.1.

2Other provisions in § 16.1-260 detail the procedure an intake officer is to follow upon receipt of a petition. See, e.g., § 16.1-260(C), (D). Section 16.1-262 sets out the form and content of the petition. Form DC511, which you reference in your request, is the form Juvenile Petition.

3The Psychiatric Inpatient Treatment of Minors Act establishes procedures authorizing the parental admission of minors younger than 14 and nonobjecting minors 14 and over (§ 16.1-338); parental admission of an objecting minor at least age 14 (§ 16.1-339); and the involuntary commitment of a minor when both the parent and minor object to the admission (§ 16.1-345).

4Section 16.1-341(B). If the period ends on a Saturday, Sunday or legal holiday, the period may be extended to a maximum of ninety-six hours. Id.

5Section 16.1-342.

6The period may be extended to a maximum of ninety-six hours to accommodate Saturdays, Sundays and legal holidays. Section 16.1-140.

7The magistrate is to issue the TDO if the evidence indicates "that the person presents an imminent danger to self or others as a result of mental illness, or is so seriously mentally ill as to be substantially unable to care for self." Section 37.1-67.1.

8Section 37.1-67.1. The person may be detained for a maximum of ninety-six hours if the detention period ends on a Saturday, Sunday or legal holiday. Section 37.1-67.3.

9Section 37.1-67.3.

10Section 37.1-67.1.


13Section 37.1-67.1.

14A prior opinion of the Attorney General considers the statutory authority of a magistrate rather than a juvenile intake officer to certify a juvenile's refusal to submit to a chemical test for alcohol or drug content. See 1987-1988 Op. Va. Att'y Gen. 271. The opinion concludes that the statute clearly authorizes only the magistrate to issue the certificate of refusal. Id. at 273. Once the magistrate issues the certificate and warrant, jurisdiction is then transferred to the juvenile court, at which time the petition requirement is triggered and the juvenile intake officer becomes involved. Id. at 273-74. The procedure established under The Psychiatric Inpatient Treatment of Minors Act for the involuntary commitment of minors appears to operate in the same manner.

15Section 37.1-67.01.

MOTOR VEHICLES: ABANDONED, IMMOBILIZED, UNATTENDED AND TRESPASSING VEHICLES; PARKING.

POLICE (STATE): DEPARTMENT OF STATE POLICE.

Department of State Police, and not Attorney General, is appropriate agency to determine whether unattended vehicle parked on paved shoulder of roadway constitutes hazard. Whether such vehicle constitutes hazard is question of fact, to be determined on case-by-case basis, considering factors historically encountered by State Police officers.

The Honorable C. Richard Cranwell
Member, House of Delegates
February 8, 1999

You ask whether the Department of State Police may, by internal policy, deem an unattended vehicle a hazard, simply because it is parked on a portion of the roadway that is paved, i.e., a paved shoulder.

You relate that a constituent recently experienced car trouble on Interstate 581 and pulled his vehicle off the road. He pulled the vehicle all the way off the traveled portion of the highway, to the right of the fog line against the guardrail. You relate further that the shoulder, at that point of the interstate, is paved all the way to the guardrail. You advise that the constituent left his vehicle for approximately one hour and ten minutes to get another vehicle, and, upon returning, found that his vehicle had been towed.

You also relate that the constituent paid $50 to retrieve his towed vehicle. When the constituent questioned the State Police concerning the reason for the towing, he was told that, according to internal policy, a vehicle on a paved portion of any roadway is deemed by State Police to be a hazard. You relate that § 46.2-1209 of the Code of Virginia allows vehicles that are not a hazard to remain on roadways for up to twenty-four hours. You advise that if the constituent's car had been on a grassy or gravel shoulder, it would not automatically have been deemed a hazard.

For many years, Attorneys General have concluded that § 2.1-118, the authorizing statute for official opinions of the Attorney General, does not contemplate that such opinions be rendered on matters requiring factual determinations, rather than matters interpreting questions of law. In addition, a 1987 opinion of the Attorney General concludes that, in rendering official opinions pursuant to § 2.1-118, the Attorney General has declined to render such opinions when the request (1) does not involve a question of law, (2) requires the interpretation of a matter reserved to another entity, (3) involves a matter currently in litigation, and (4) involves a matter of purely local concern or procedure. Prior opinions also conclude that a request for an official opinion made pursuant to § 2.1-118 concerning the propriety of the actions of another entity interpreting matters reserved solely to it is not subject to review by the Attorney General and must be treated as the binding determination with regard to the matter. The General Assembly mandates that "the promotion of highway safety ... shall be in the Department of State Police." This is mandatory language. Consequently, I must respectfully decline to render an opinion on the appropriateness of any internal policy of the Department of State Police which allows an officer to deem as a hazard an unattended
vehicle left on or adjacent to any roadway. I am of the opinion that the Department of State Police is the appropriate agency to make such determinations. Moreover, the question whether a vehicle parked on a paved portion of a roadway, i.e., a paved shoulder, constitutes a hazard ultimately is a question of fact, to be determined on a case-by-case basis, considering factors historically encountered by State Police officers. The Office of the Attorney General historically has declined to render official opinions when the request involves a question of fact rather than one of law.

Section 46.2-1209 provides, in part: “No person shall leave any motor vehicle ... unattended on or adjacent to any roadway if it constitutes a hazard in the use of the highway. No person shall leave any unattended motor vehicle ... longer than twenty-four hours on or adjacent to any roadway outside the corporate limits of any city or town, or on an interstate highway or limited access highway, expressway, or parkway inside the corporate limits of any city or town. Any law-enforcement officer may remove it or have it removed to a storage area for safekeeping and shall report the removal to the Department of Motor Vehicles and to the owner of the motor vehicle ... as promptly as possible. Before obtaining possession of the motor vehicle, ... its owner shall pay to the parties entitled thereto all costs incidental to its removal or storage.”


Section 52-4.

See 1986-1987 Op. Va. Att'y Gen. 300, 300, and opinions cited therein (use of word "shall" in statute indicates "procedures are intended to be mandatory").

I also note that it is an elementary rule of statutory interpretation that the construction given to a statute by public officials charged with its enforcement is entitled to great weight and, in doubtful cases, will be regarded as decisive. See Bed Company v. Corporation Commission, 205 Va. 272, 275, 136 S.E.2d 900, 902 (1964) (citing Commonwealth v. Appalach. El. Power Co., 193 Va. 37, 45, 68 S.E.2d 122, 127 (1951)).


MOTOR VEHICLES: LICENSURE OF DRIVERS.

CRIMES AND OFFENSES GENERALLY: CRIMES INVOLVING HEALTH AND SAFETY - DRIVING MOTOR VEHICLE, ETC., WHILE INTOXICATED.

One-year suspension of driver's license of Virginia resident convicted in federal court for refusing to consent to blood or breath test upon being arrested for driving under influence of drugs or alcohol. Assignment of demerit points for convictions of federal offenses pertaining to operator or operation of motor vehicle.

Mr. Richard D. Holcomb
Commissioner, Department of Motor Vehicles
November 24, 1999

You inquire regarding the authority of the Department of Motor Vehicles (the "Department") to impose license sanctions or to assess demerit points on a Virginia resident and licensee upon receiving notice of the licensee's conviction by a federal court of violating a federal traffic law.
You ask first whether § 46.2-434 of the Code of Virginia requires the Department to suspend a Virginia resident's license upon notice that the person has been convicted by a federal court of refusing to consent to a blood or breath test in violation of a federal statute or regulation. Section 46.2-434 imposes the following duty on the Commissioner of the Department:

The Commissioner shall suspend or revoke the license and registration certificate and plates of any resident of the Commonwealth upon receiving notice of his conviction, in a court of competent jurisdiction of the Commonwealth, any other state of the United States, the United States, Canada or its provinces or any territorial subdivision of such state or country, of an offense therein which, if committed in the Commonwealth, would be grounds for the suspension or revocation of the license granted to him ....

Sections 18.2-268.2 through 18.2-268.4 control the offense of refusing to consent to have blood and breath tests taken in Virginia. The statutes provide that, if a person is arrested for violating the laws prohibiting driving while under the influence of drugs or alcohol, the person is deemed to have consented to have blood and breath samples taken. The unreasonable refusal of the person to consent to the tests constitutes a separate offense under Virginia law, and, upon conviction, the court is required to suspend the person's driving privileges for one year.

You state that, in the past, the Department has suspended a Virginia resident's license under § 46.2-434 only if the person is convicted of an offense that would require the Department to suspend the person's license under § 46.2-389 or § 46.2-391. Because §§ 18.2-268.2 through 18.2-268.4 are not included in either § 46.2-389 or § 46.2-391, it has been the Department's practice not to suspend the license of a Virginia resident upon receiving notice from a federal court of the resident's refusal to consent to a blood or alcohol test under federal law. You question the correctness of this position.

In my opinion, § 46.2-434 is not confined to the specific offenses set out in §§ 46.2-389 and 46.2-391. While § 46.2-434 applies only to Virginia residents, Virginia residents also are encompassed within §§ 46.2-389 and 46.2-391. Section 46.2-389 applies to "any resident or nonresident," and § 46.2-391 applies to "any person." Moreover, both §§ 46.2-389 and 46.2-391 extend to violations of similar laws of other states and the United States. Thus, if a Virginia resident is convicted of violating a federal law similar to any law specified in §§ 46.2-389 and 46.2-391, those sections would require the Department to suspend the person's license. If § 46.2-434 were intended to encompass only the same offenses, § 46.2-434 would be unnecessary.

To conclude that an act of the legislature is unnecessary is contrary to the presumption that, in enacting and amending legislation, the General Assembly does not intend to do a vain or useless thing. It also violates the rule of statutory construction directing that laws relating to the same subject are to be interpreted so as to give effect to each provision to the extent possible. In addition, there is no language in § 46.2-434 indicating
an intent that the statute be confined to those offenses specified in §§ 46.2-389 and 46.2-391. The language requires only the "conviction" of a Virginia resident by a court of another state or the United States "of an offense therein which, if committed in the Commonwealth, would be grounds for the suspension ... of the license granted to him." Accordingly, it is my opinion that § 46.2-434 encompasses a situation in which a Virginia resident is convicted in a federal court of violating a federal statute or regulation that makes it an offense to refuse to consent to a blood or breath test upon being arrested for driving under the influence of drugs or alcohol. Upon receiving notice of such a conviction, the Department is to suspend the person's license for a period of one year.\footnote{The regulation of traffic on federal military installations or on federal park lands is within the control of the federal government, with the federal courts or federal officials having jurisdiction over violations of the applicable traffic regulations.}

Your second question is whether § 46.2-492(B) requires the Commissioner to assign demerit points for convictions of federal statutes or regulations. Section 46.2-492(B) requires the Commissioner to assign point values to convictions received from the United States of an offense which, if committed in the Commonwealth, would be reported to the Department under § 46.2-383.\footnote{One such example is a federal regulation which requires the operator of a vehicle on federal park lands, such as the George Washington Parkway, Yorktown Parkway or Blue Ridge Parkway, to submit to tests for drug and alcohol content if the officer has probable cause to believe that the operator is under the influence of alcohol or drugs. 36 C.F.R. § 4.23 (1998).} Section 46.2-383(A) requires the courts to report to the Department an abstract of the record in convictions for the charges described in § 46.2-382(1) or (2) or § 46.2-382.1. These charges include a violation of any state law or local ordinance "pertaining to the operator or operation of any motor vehicles" and offenses "pertaining to the operator or operation of ... a commercial motor vehicle" under the Virginia Commercial Driver's License Act or "a commercial motor vehicle carrying hazardous materials."\footnote{It is my opinion that § 46.2-492(B) clearly requires the Commissioner to assign demerit points for convictions in the United States courts of violations of federal statutes or regulations to the extent the particular offense fits within the language of § 46.2-382(1) or (2) or § 46.2-382.1. The offense must be one that pertains "to the operator or operation of a motor vehicle" rather than offenses "relating to registration, insurance, or equipment." Whether an offense relates to the operator or operation of a vehicle will depend on the particular federal statute or regulation. Driving while disqualified and failing to stop at a railroad crossing in violation of federal regulations clearly would constitute offenses related to the operator or operation of a vehicle. In instances in which it is unclear whether an offense relates to the operator or operation of a motor vehicle, it is my opinion that § 46.2-492 grants the Commissioner of the Department the discretion to make that determination in accordance with the guidelines set out in the statute. In addition, § 46.2-489 authorizes the Commissioner to promulgate regulations to carry out the Uniform Demerit Point System.}
Section 18.2-268.4. The purpose of a license suspension for such offenses is not to punish the driver but "to protect the public from intoxicated drivers and to reduce alcohol-related accidents." Tench v. Com., 21 Va. App. 200, 205, 462 S.E.2d 922, 924 (1995); see also Ingram v. Com., 29 Va. App. 759, 514 S.E.2d 792 (1999).

Section 46.2-389(A) requires the Department to suspend the license of "any resident or nonresident" upon receiving a record of the person's conviction for certain vehicle-related crimes committed in violation of state law or local ordinance or in violation of the laws of the United States or another state that substantially parallel like state laws.

Section 46.2-391(A)-(B) requires the Department to suspend the license of "any person upon receiving a record of the person's conviction under Virginia's second and third offender laws or a violation of federal law or other state law or local ordinance similar to the Virginia laws.

"Section 46.2-434. You indicate that your primary concern is with commercial motor vehicle violations under federal regulations, including driving while disqualified, not stopping at a railroad crossing, and having inoperative brakes.

Section 46.2-492(A) (expressly excluding such offenses from Uniform Demerit Point System, except as otherwise provided in Title 46.2).

MOTOR VEHICLES: POWERS OF LOCAL GOVERNMENTS.

CRIMES AND OFFENSES GENERALLY: IN GENERAL – CLASSIFICATION OF CRIMINAL OFFENSES AND PUNISHMENT THEREFOR.

Statutory authority allowing local governing body to incorporate certain statute(s) by reference in ordinance is limited to statute(s) so designated. Local governing body has no authority to adopt ordinance incorporating by reference crimes classified as misdemeanors.

Mr. Joseph B. Benedetti
Director, Department of Criminal Justice Services
December 17, 1999

You ask whether § 46.2-1313 of the Code of Virginia, or any other statute or common law, permits localities to adopt ordinances which incorporate by reference the provisions of Title 18.2, relating to crimes classified as misdemeanors pursuant to Article 3, Chapter 1 of that title.
Chapter 13 of Title 46.2, §§ 46.2-1300 through 46.2-1314, sets forth the powers of local governments regarding the operation of motor vehicles. Section 46.2-1313 provides that local ordinances "may incorporate appropriate provisions ... of Article 2 (§ 18.2-66 et seq.) of Chapter 7 of Title 18.2 into such ordinances by reference." Article 2, Chapter 7 of Title 18.2 relates to the offense of driving a motor vehicle while under the influence of drugs or alcohol. The provisions of other chapters of Title 18.2 to which you refer relate to various other misdemeanor offenses.

The long-followed Dillon Rule requires a narrow construction of all powers conferred on and exercised by local governments in Virginia, because such powers are delegated powers. Thus, localities "have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable." A 1982 opinion of the Attorney General concludes that the Virginia Code specifically allows adoption of certain statutes by reference and cites as an example the predecessor statute to § 46.2-1313. Accordingly, § 46.2-1313 enables local governments to incorporate the provisions of Article 2, Chapter 7 of Title 18.2 into ordinances by reference.

The authority of a local governing body expressed in a statute to adopt an ordinance incorporating another statute by reference, however, is limited to the statute so designated. The Supreme Court of Virginia has held that "[w]hen one statute adopts another by specific reference, only those particular parts of the statute referred to are incorporated." This principle is especially significant regarding penal ordinances because "[p]enal ordinances are to be strictly construed, and are not to be extended by implication."

Section 46.2-1313 authorizes a local governing body to adopt an ordinance incorporating by reference Article 2, Chapter 7 of Title 18.2. Based on the above, it is my opinion that neither this statute, nor any other statute of which I am aware nor common law authorizes a local governing body to adopt an ordinance incorporating by reference the statutory provisions about which you inquire.

---

1 Specifically, you cite §§ 18.2-8, 18.2-11 to 18.2-13.
7 Id. at 26, 215 S.E.2d at 638.

---

MOTOR VEHICLES: REGULATION OF TRAFFIC - RECKLESS DRIVING AND IMPROPER DRIVING.

Individual driving 68 miles per hour in 35 mile-per-hour school zone may be charged with reckless driving and traffic infraction.
The Honorable John J. Davies
Member, House of Delegates
June 7, 1999

You ask whether an individual who drives sixty-eight miles per hour in a thirty-five mile-per-hour school zone may be charged with reckless driving, in violation of § 46.2-862 of the Code of Virginia, with a traffic infraction, in violation of § 46.2-873, or with both offenses.

You present a hypothetical situation in which an individual drives a motor vehicle 68 miles per hour in a thirty-five mile-per-hour school zone. You state that the thirty-five mile-per-hour speed limit in the school zone applies only when the “school-in-session” lights are flashing; however, the speed limit is fifty-five miles per hour when the “school-in-session” lights are not flashing.

As a general rule, the offense of reckless driving occurs when “any person ... drives a vehicle upon a highway recklessly or at a speed or in a manner so as to endanger the life, limb, or property of any person.” Specific instances of reckless driving are identified in § 46.2-862, including driving “at a speed of sixty miles per hour or more where the applicable maximum speed limit is thirty-five miles per hour.” Section 46.2-870 prescribes maximum speed limits on highways in Virginia. Section 46.2-873(A) establishes the maximum speed limit “between portable signs, tilt-over signs, or fixed blinking signs placed in or along any highway and bearing the word ‘school’ or ‘school crossing.”’

Furthermore, § 46.2-873(E) provides:

Any person operating any motor vehicle in excess of a maximum speed limit established specifically for a school crossing zone,\(1\) when such school crossing zone is (i) indicated by appropriately placed signs displaying the maximum speed limit and (ii) in operation pursuant to subsection B of this section \(\textit{shall} \) be guilty of a traffic infraction punishable by a fine of not more than $250, \textit{in addition to other penalties provided by law}. [Emphasis added.]

The use of the word “\(\textit{shall} \)” indicates that the General Assembly intends the terms of this provision to be mandatory.\(2\) Additionally, it is an accepted rule of statutory construction that, when construing statutes on the same subject, each section should be considered in conjunction with every other section to produce a harmonious result.\(3\) Moreover, when the language of a statute is plain and unambiguous, and its meaning is clear and definite, it must be given effect.\(4\)

A driver may be charged, prosecuted, and punished for violation of two different statutes when the legislature intends each such violation to be a separate offense. “[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.”\(5\) In addition, “[i]f each [offense] requires proof of a fact that the other does not, the [applicable] test is satisfied, notwithstanding a substantial overlap in the proof offered to establish the
Consequently, in the case of Estes v. Commonwealth, the Supreme Court of Virginia upheld the trial court's habitual offender conviction, based on the 1964 conviction of driving under the influence and the 1968 convictions of driving under the influence and driving on a suspended license. Although the latter offenses arose out of the same act of driving, they were separate acts for double jeopardy purposes.

In the hypothetical situation you present, for the Commonwealth to convict under § 46.2-873, it must be proven that the individual drove in a school crossing zone at a speed in excess of thirty-five miles per hour, but the statute does not require proof that the vehicle was traveling more than sixty miles per hour. To convict for a violation of § 46.2-862, the Commonwealth must prove that the driver was traveling sixty miles per hour or more, but that statute does not require proof that the person was driving in a school crossing zone. Consequently, viewed in the abstract, a driver does not necessarily violate the specific instances of reckless driving identified in § 46.2-862 by driving in excess of thirty-five miles per hour in a school zone, in violation of § 46.2-873.

The intent of the General Assembly is, in my opinion, readily apparent in § 46.2-873, and is not in doubt. Section 46.2-873(E) specifically provides that the fine for conviction of a traffic infraction—driving in excess of the established maximum speed limit "between portable signs, tilt-over signs, or fixed blinking signs placed in or along any highway bearing the word 'school' or 'school crossing'"—is "in addition to other penalties provided by law." "When considering multiple punishments for a single transaction, the controlling factor is legislative intent." The General Assembly "may determine the appropriate 'unit of prosecution' and set the penalty for separate violations." Therefore, although multiple offenses may be the "same," an accused may be subjected to legislatively "authorized cumulative punishments." It is judicial punishment in excess of legislative intent that offends the double jeopardy clause.

It is, therefore, apparent that the General Assembly intends to impose an additional penalty on drivers exceeding the speed limit in a school crossing zone. I am of the opinion, therefore, that an individual driving sixty-eight miles per hour in a thirty-five mile-per-hour school zone, as identified in § 46.2-873, may be charged and prosecuted with a violation of both §§ 46.2-862 and 46.2-873.

1Section 46.2-852.
2Section 46.2-862(ii).
3Section 46.2-873(A) establishes, as a general rule, a speed limit of 25 miles per hour for school crossing zones. Section 46.2-873(C), however, establishes a process to adopt a different speed limit in such zones. For purposes of your hypothetical situation, I have assumed that that process has occurred and the speed limit has been properly raised to 35 miles per hour.
4Section 46.2-873 defines "school crossing zone" as "an area located within the vicinity of a school at or near a highway where the presence of children on such school property or going to and from school reasonably requires a special warning to motorists. Such zones are marked and operated in accordance with the requirements of this section with appropriate warning signs or other traffic control devices indicating that a school crossing is in progress."
5See 1986-1987 Op. Va. Att'y Gen. 300, 300, and opinions cited therein (use of word "shall" in statute indicates "its procedures are intended to be mandatory").
NOTARIES AND OUT-OF-STATE COMMISSIONERS: VIRGINIA NOTARY ACT.

CONSTITUTION OF VIRGINIA: LOCAL GOVERNMENT (COUNTY AND CITY OFFICERS).

No statute directs that applicant's name on notary commission be full legal name or that commission be in any particular form. Clerk may not require name presented on commission to be in any particular form. Clerk is required to use reasonable or ordinary care in determining whether identification presented by applicant identifies him as individual commissioned by Secretary of Commonwealth. Fact that name on commission does not precisely match name on applicant's identification is not wholly determinative of identity of applicant.

The Honorable John T. Frey
Clerk, Circuit Court of Fairfax County
December 27, 1999

You ask whether the clerk of a circuit court may require the name on the commission of a notary public to match the name on the identification presented by a notary public applicant before administering the notary public oath. You relate as examples situations where the name on the applicant's commission is a nickname or uses initials, but the name on the identification presented by the applicant is the applicant's full legal name.\(^1\)

Title 47.1, §§ 47.1-1 through 47.1-33 of the Code of Virginia, sets forth the Virginia Notary Act. Specifically, §§ 47.1-3 through 47.1-11 govern the appointment process of notaries public. Pursuant to § 47.1-5, an applicant must submit an application, "in a form prescribed by the appointing authority,"\(^2\) to the Secretary of the Commonwealth. Section 47.1-8 provides:

\[T\]he Secretary, if satisfied the applicant is qualified to be appointed and commissioned as a notary public, shall prepare a notary commission for the applicant and forward the commission to the clerk of the
circuit court in which the applicant shall elect to qualify. The Secretary shall thereupon notify the applicant that the commission has been granted and where and how it may be secured.

It is clear from the plain language of § 47.1-8 that the duty of assessing an applicant for appointment as notary public and the granting of a commission is delegated to the Secretary of the Commonwealth. Before receiving the commission, however, § 47.1-9 provides that the applicant must appear before the appropriate circuit court clerk within sixty days of his appointment and "make oath" swearing or affirming his familiarity with notary laws, his duty to uphold the federal constitution, the state constitution and state laws, and his faithful performance of his duties. Section 47.1-9 further prescribes that "[s]uch oath shall be signed by the applicant and attested by the clerk. The clerk shall thereupon issue to the applicant his commission as notary public."

Article VII, § 4 of the Constitution of Virginia (1971) creates the office of clerk of the circuit court and provides that a clerk's duties "shall be prescribed by general law or special act." As a rule, clerks of court have no inherent powers, and the scope of their powers must be determined by reference to applicable statutes. I am unaware of any statute which directs that the name on the commission be the applicant's full legal name. Although it may be prudent for the name on the commission to be the applicant's full legal name, there is no statute which requires the commission to be in any particular form. It is thus my opinion that a clerk may not require the name presented on the commission to be in any particular form.

Section 47.1-9 does not prescribe the standard of care a clerk must exercise in attesting to a notary public applicant's oath. Generally, a clerk is required to use reasonable care or ordinary care in the performance of his duties. What constitutes reasonable or ordinary care necessarily depends on the particular facts and circumstances present. Accordingly, whether the identification presented by an applicant reasonably identifies him as the individual commissioned by the Secretary is a determination for the clerk to make in light of the attending facts and circumstances. Since a clerk is not authorized to require the name on the commission to be the applicant's full legal name, it is my opinion that the fact that the name on the commission does not precisely match the name on the applicant's identification is not wholly determinative of the identity of the applicant.

1 For example, the name "Jim Doe" appears on the commission but the name "James Doe" appears on the applicant's identification, or the name "J. William Doe" appears on the commission but the name "James William Doe" appears on the applicant's identification.
2 See § 47.1-3 (authorizing Governor to appoint "as many notaries as to him shall seem proper").
3 See Ambrogi v. Koontz, 224 Va. 381, 297 S.E.2d 660 (1982) (where language of statute is clear and unambiguous, effect must be given to its plain and ordinary meaning).
4 See also § 15.2-1600 (requiring counties and cities to elect circuit court clerks).
6 Compare e.g., § 46.2-341.12(A)(1) (requiring that application for commercial driver's license reflect applicant's "[f]ull legal name").
7 See 1944-1945 Op. Va. Att'y Gen. 102, 102 (noting that no Virginia statute requires notary's seal to be in any particular form and thus anything that comes within statutory provisions for seal is sufficient).
PENSIONS, BENEFITS, AND RETIREMENT: VIRGINIA RETIREMENT SYSTEM.

CONTRACTS: VIRGINIA PUBLIC PROCUREMENT ACT.

COUNTIES, CITIES AND TOWNS: CERTAIN LOCAL GOVERNMENT OFFICERS.

Retirement System, and not Attorney General, is appropriate agency to determine whether city retiree may continue to receive retirement benefits during his employment by city as independent contractor performing substantially same duties he performed as full-time city employee. Retirement System has determined that because contract position is not eligible for coverage under Retirement System, retiree employed under contract to city may continue to receive retirement allowance. City must open application process for contract employment to all qualified independent contractors; may not offer contract for employment to single contractor. Retiree under contract to city who is not eligible to participate in Retirement System does not meet definition of employee carrying out functions of government. City is not authorized to fill position covered under Retirement System with independent contract retiree receiving retirement allowance, who is not eligible to participate in System, but is afforded all other benefits provided to city employees.

The Honorable Riley E. Ingram
Member, House of Delegates
April 9, 1999

You request an opinion of the Attorney General on behalf of the City Attorney for the City of Hopewell regarding contract employees and their status with the Virginia Retirement System ("Retirement System").

The City Attorney first asks whether a retired city employee ("retiree") may continue to receive a retirement allowance if the city employs him as a contract employee, for a specific contractual period, to perform substantially the same duties he performed as a full-time salaried employee with the City of Hopewell ("city employee"). The City Attorney next asks whether the city must open the application process for contract employment to all individuals, or whether it may offer contract employment to a specific individual. Finally, the City Attorney asks whether it is lawful to fill a position that is covered under the Retirement System with a contract employee who is not eligible to participate in the System, yet is afforded all other benefits provided to city employees.
The City Attorney relates that the City of Hopewell participates in the Retirement System. He further represents that the city's resolution requesting employee participation in the Retirement System has been approved by the Board of Trustees of the Retirement System ("Board"). The city's "eligible employees may become members of the retirement system." Section 51.1-132 of the Code of Virginia defines "eligible employees" as including "employees of the political subdivision who are regularly employed full time on a salaried basis and whose tenure is not restricted as to temporary or provisional appointment." Anyone receiving "a service retirement allowance," however, is not permitted to receive such allowance from the Retirement System "at any time" while he is "in service as an employee in a position covered for retirement purposes under the [Retirement System]."

In his letter, the City Attorney relates that the Retirement System has advised the City of Hopewell that a contract position is not eligible for retirement system coverage, and, therefore, a retired contract employee may continue to receive his retirement allowance. I note that § 51.1-124.22(A)(3) authorizes the Board to employ other persons and incur expenditures deemed "necessary for the efficient administration of the Retirement System." In addition, the Board has the power and duty to make "determinations necessary to carry out the provisions" of Title 51.1. For the purposes of this opinion, I must assume that the employee advising the city on this matter is duly authorized by the Board to provide interpretations to inquiring local governments regarding eligibility requirements for participation in the Retirement System.

The City Attorney's first inquiry is whether a retiree may continue to receive retirement benefits should the city employ him as a contract employee for a specified period to perform substantially the same duties he performed as a city employee.

A 1987 opinion of the Attorney General concludes that, in rendering official opinions pursuant to § 2.1-118, the Attorney General has declined to render such opinions when the request (1) does not involve a question of law, (2) requires the interpretation of a matter reserved to another entity, (3) involves a matter currently in litigation, and (4) involves a matter of purely local concern or procedure. Prior opinions also conclude that a request for an official opinion made pursuant to § 2.1-118 concerning the propriety of the actions of another entity interpreting matters reserved solely to it is not subject to review by the Attorney General and must be treated as the binding determination with regard to the matter. The Retirement System has express authority to make "determinations necessary to carry out the provisions" of Title 51.1, and it may do so through persons employed by the Board.

The City Attorney reports that the Retirement System has advised the City of Hopewell that a contract position is not eligible for coverage under the Retirement System, and, therefore, a retired contract employee may continue to receive his retirement allowance. I am of the opinion that the Retirement System is the appropriate agency to make such a determination. Consequently, I respectfully decline to render an opinion on whether a retiree may continue to receive retirement benefits should the City of Hopewell employ him as a contract employee, for a specified period of time, to perform substantially the same duties he performed as a city employee.
The second inquiry is whether the City of Hopewell is required to open the application process for contract employment to all individuals, or whether the city may offer contract employment to one specific individual.

The City Attorney advises that the city desires to enter into a contract with a retiree for a position that will provide the retiree with all benefits, except retirement coverage benefits, afforded city employees. Furthermore, the City Attorney advises that the retiree will perform substantially the same duties he performed as a city employee. For the purposes of this opinion, I shall assume the following: (1) the retiree is an independent contractor who will perform nonprofessional services for the city; (2) the city will not select and engage the retiree in any manner similar to the selection process for city employees; (3) the city will pay the retiree a sum specified in the contract for nonprofessional services; (4) the retiree will be dismissed pursuant to the terms and conditions of the contract; and (5) the city will exert no control over the results, progress, details, means and methods of the retiree's work.

The Virginia Public Procurement Act, §§ 11-35 through 11-80, requires that all public contracts with nongovernmental contractors be awarded pursuant to competitive procedures, "unless otherwise authorized by law." The City of Hopewell is a "public body," subject to the requirements of the Procurement Act, and all private individuals seeking to enter into a contract with the city as independent contractors are "nongovernmental contractors." Section 11-37 defines the term "services" to mean "any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies." The Act defines "nonprofessional services" as "any services not specifically identified as professional services." A "public contract" is "an agreement between a public body and a nongovernmental source that is enforceable in a court of law." Since § 11-41 requires that "[a]ll public contracts with nongovernmental contractors" be procured competitively, "unless otherwise authorized by law," the threshold question is whether the contract is one entered into by, and binding upon, a "public body." If that question is answered affirmatively, then such contract must be competitively procured, "unless otherwise authorized by law." Section 11-35(D) allows local governing bodies to adopt, "by ordinance or resolution," their own competitive procurement policies and procedures rather than follow the precise procedures detailed in the Procurement Act. I note that the city has not adopted a local competitive procurement policy or procedure. Further, the City Attorney does not indicate that the retiree in question is the only contractor practicably available for that which is to be procured, nor does he recite facts indicating the applicability of any other statutory exemption to the requirement for competitive procurement.

Consistent with the plain meaning and intent of the Procurement Act, and based on my assumption that this will be a contract with an independent contractor, I am of the opinion that the city may not offer the contract for employment to a single contractor, but, rather, must open the application process for contract employment to all qualified independent contractors.
The final inquiry is whether the city may lawfully fill a position that is covered under the Retirement System with a contract employee who is not eligible to participate in the System because he is receiving a retirement allowance, yet is afforded all other benefits provided to city employees.

Title 15.2 contains several provisions addressing aspects of the employer/employee relationship in local government. Section 15.2-1500 specifically provides that “[e]very locality shall provide for all the governmental functions of the locality, including, without limitation ... the employment of ... employees needed to carry out the functions of government.” The statute does not define the terms “employment” and “employee.” In the absence of any such definition, the term must be given its common, ordinary meaning. “Employment” generally is defined as “activity in which one engages or is employed”; “an instance of such activity”; “the act of employing: the state of being employed.” “Employee” is “one employed by another usu. for wages or salary and in a position below the executive level.” Furthermore, the verb “employ” generally means “to use or engage the services of”; “to provide with a job that pays wages or a salary.”

Prior opinions of the Attorney General conclude that, where no applicable statutory definition of the term “employee” exists, it must be given its ordinary meaning, considering the context in which it is used. A 1991 opinion notes that the common law test used for determining the existence of an employer/employee relationship involves the consideration of four elements: “(1) the employer’s selection and engagement of the employee; (2) the payment of wages to the employee; (3) the employer’s retention of the power of dismissal; and (4) the employer’s retention of the power of control.” The most significant of these elements is the power of control. In determining whether [an employer/employee] relationship exists, the crucial question is whether the [employer] ha[s] the right to control not merely results but the progress and details of the work.

Applying the rules of statutory construction and the above definitions to this inquiry, I must conclude that a retiree under contract to the City of Hopewell, who is not eligible to participate in the Retirement System, does not meet the definitions of “employment” and “employee.” Section 15.2-1500 requires that the City of Hopewell provide for all of its governmental functions, “including, without limitation, the organization of all departments ... of government, ... which are necessary and the employment of ... employees needed to carry out the functions of government.” I am of the opinion that a contract employee, as described by the City Attorney, does not meet the definition of an employee performing the functions of government.

Accordingly, I must also conclude that the City of Hopewell is not authorized to fill a position covered under the Retirement System with an independent contract employee, as described by the City Attorney, who, by virtue of his receiving a retirement allowance, is not eligible to participate in the System, but is afforded all other benefits provided to city employees.

"Retirement allowance" means the retirement payments to which a member [of the Retirement System] is entitled. Section 51.1-124.3.

See § 51.1-130 (governing body of political subdivision may adopt resolution requesting that its eligible employees become members of Retirement System); § 51.1-124.3 ("'Employer' means ... the political subdivision participating in the Retirement System.")).

Section 51.1-130(A).

Section 51.1-155(B)(1).

Section 51.1-124.22(A)(8).

Retirement allowance' means the retirement payments to which a member (of the Retirement System] is entitled." Section 51.1-124.3.

Section 51.1-124.22(A)(8).

I also note that it is an elementary rule of statutory interpretation that the construction given to a statute by public officials charged with its enforcement is entitled to great weight and, in doubtful cases, will be regarded as decisive. See Bed Company v. Corporation Commission, 205 Va. 272, 275, 136 S.E.2d 900, 902 (1964) (citing Commonwealth v. Appalach. El. Tower Co., 193 Va. 37, 45, 68 S.E.2d 122, 127 (1951)).

Section 51.1-124.22(A)(3).

"Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation." Section 11-41(D).


See supra note 18 for statutory construction principles applicable to the quoted statement.


Id.


PENSIONS, BENEFITS, AND RETIREMENT: VIRGINIA RETIREMENT SYSTEM - CONTRIBUTIONS.

COUNTIES, CITIES AND TOWNS: CERTAIN LOCAL GOVERNMENT OFFICERS.

Retirement System Board of Trustees has construed statutory language governing member contributions to require that any locality electing to pay member contribution for its employees must do so for all employees. Attorney General defers to Board's interpretation. County must either discontinue payments of employee's share of county administrator's Retirement System contribution or pay member contributions for all county employees.

Mr. James E. Cornwell Jr.
County Attorney for Craig County
May 27, 1999

You ask whether a county may pay an individual employee's share of the contribution to the Virginia Retirement System ("Retirement System") when the county does not pay the contributions for all employees.

You state that, pursuant to an employment contract between Craig County and the county administrator, the county has paid the employee's share of the county administrator's Retirement System contributions for approximately twelve years. You point out that the Attorney General issued an opinion in 1988 to the Commissioner of the Revenue for Craig County concluding that the payment of the county administrator's insurance and retirement benefits did not violate state law. Notwithstanding this opinion, you state that in 1997 the deputy director of the Retirement System informed the county administrator that, under the Retirement System's interpretation of § 51.1-144(F) of the Code of Virginia, the county may not pay the member contribution of only one employee.

Section 51.1-144(A) provides generally that each member of the Retirement System is to "contribute five percent of his creditable compensation for each pay period," with the employer deducting the contribution from the employee's pay. Section 51.1-144(F) permits any employer to "elect to pay an equivalent amount in lieu of all member contributions required of its employees. Such payments shall be credited to the members' contribution account."

The 1988 opinion interprets § 15.1-7.3, predecessor statute to § 15.2-1517. Section 15.2-1517 requires a locality that chooses to provide one or more "group life, accident, and health insurance programs" to its officers and employees also to provide the programs to the locality's constitutional officers and their employees. The question presented in the 1988 opinion is whether, because the county pays the retirement and insurance benefits of the county administrator, § 15.2-1517 requires it to pay the same benefits to constitutional officers and their employees. The opinion concludes that the county's payment of the benefits of the county administrator would not trigger an obligation for the county to pay the benefits of constitutional officers and their employees or the benefits of other county employees. It is important to note that the 1988 opinion addresses the payment of employment benefits generally under § 15.2-1517 and does not specifically address the separate and distinct issue of the payment of member contributions under § 51.1-144.
You assert that, because the language of § 51.1-144(F) grants a locality the authority to pay member contributions without limiting the authority granted a locality in other areas, the statute is clear and unambiguous and thus not subject to administrative interpretation. It is further your view that, even if the statute is subject to administrative interpretation, the fact that the Retirement System accepted the county's payments for twelve years indicates that the Retirement System interprets the statute to permit the payment of only one employee's Retirement System contribution.

It is my opinion that, because § 51.1-144(F) does not expressly authorize a county to pay the member contribution for one employee, the language in the statute does not clearly and unambiguously resolve the question you present. Accordingly, the proper officers of the Retirement System have the authority to interpret the statute. It is my understanding that the Retirement System interprets § 51.1-144(F) to require that any locality that elects to pay the member contribution for its employees must do so for all employees.

A standard rule of statutory construction is that the interpretation given a statute by the public officials charged with its administration is entitled to great weight and, unless clearly wrong, will not be disturbed. The interpretation of § 51.1-144(F) adopted by the Retirement System cannot be said to be clearly wrong. The statute contains no language permitting an employer to pay the member contribution for one employee or for selected employees. In addition, the use of the word "all" in "all member contributions" and the choice of the plural in the language "all member contributions," "employees," and "members' contribution account" support the interpretation that the General Assembly intended to grant an employer only the option to make the payments for all of its employees who are members of the Retirement System.

Accordingly, notwithstanding any implications in the 1988 opinion to the contrary, I defer to the interpretation given § 51.1-144(F) by the Retirement System. The county must either discontinue the payments of the employee's share of the county administrator's Retirement System contribution or pay the member contributions for all county employees.

2Section 15.1-7.3 was recodified without substantive change in 1997 as § 15.2-1517. See 1997 Va. Acts ch. 587, at 976, 1078-79.).
4Id. at 182.
5Id. at 181-82.
6Section 2.1-118 requires that any request by a county attorney for an opinion from the Attorney General "shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions."
7Section 51.1-124.22(A)(8) (authorizing Retirement System Board of Trustees to make "determinations necessary to carry out the provisions of [Title 51.1]").
This rule of statutory construction is particularly persuasive when the statute is part of a complex system administered by the agency. See 1996 Op. Va. Att’y Gen. 124, 127 n.7.

"All" encompasses "every member," and means "being more than one person." *Merriam Webster’s Collegiate Dictionary* 29 (10th ed. 1996).

Section 51.1-144(F) (emphasis added).

You state in your letter that you do not address the implications of federal law on the payment of a single employee’s retirement benefits and, therefore, I express no opinion on any such implications.

---

**PRISONS AND OTHER METHODS OF CORRECTION: LOCAL CORRECTIONAL FACILITIES – REGIONAL JAILS AND JAIL FARMS – PRISONER PROGRAMS AND TREATMENT.**

**DOMESTIC RELATIONS: DESERTION AND NONSUPPORT.**

Sheriff of jurisdiction in which jail is managed by regional jail authority has no authority to operate alternative incarceration program for individuals convicted of desertion or nonsupport.

The Honorable William D. Spence
Sheriff of Orange County
September 9, 1999

You ask whether your office may operate an alternative prisoner incarceration program in your jurisdiction for defendants convicted of failure to pay child support under § 20-61 of the *Code of Virginia*.

You state that your jurisdiction is one of five counties comprising a regional jail that operates various alternative incarceration programs. For the purposes of this opinion, I shall assume that the regional jail operates the jail in your jurisdiction. You inquire whether you have the authority to independently operate an alternative incarceration program.

“Section 20-61 ‘creates the crime of desertion and nonsupport’ [which] may be punished by a fine not exceeding $500, or jail confinement not exceeding twelve months, or both.” Article 7, Chapter 3 of Title 53.1 establishes alternative incarceration programs for local correctional facilities including work release and home/electronic incarceration programs for violators of § 20-61.

Article 5, Chapter 3 of Title 53.1 authorizes the establishment of regional jails and jail farms. Section 53.1-105 provides that any two or more political subdivisions may establish, maintain and operate a regional jail facility. Section 53.1-106(A) vests the supervision and management of regional jails in a board or authority composed of representatives from each participating political subdivision. Section 53.1-106(B)(4) authorizes the appointment of a superintendent of the regional jail, and § 53.1-109 expressly grants regional jail superintendents the power to “enforce[e] the provisions of alternative incarceration ... programs pursuant to ... §§ 53.1-131, and 53.1-131.2.”

The relevant provisions of Articles 5 and 7 make clear that the administrator of the facility housing the inmates has the authority to operate alternative incarceration programs. "Except for regional jails and jail farms established pursuant to § 53.1-105 ...,
the sheriff of a jurisdiction has authority over the jail in that jurisdiction."

"The manifest intention of the legislature, clearly disclosed by its language, must be applied." Consequently, when the operation of a jail in a jurisdiction has been turned over to a regional jail, the sheriff of the jurisdiction no longer has the authority to operate such programs.

Accordingly, it is my opinion that your office does not have the authority to operate an alternative incarceration program for individuals convicted of desertion or nonsupport under § 20-61.

---

PRISONS AND OTHER METHODS OF CORRECTION: LOCAL CORRECTIONAL FACILITIES - PRISONER PROGRAMS AND TREATMENT.

CRIMES AND OFFENSES GENERALLY: CRIMES INVOLVING HEALTH AND SAFETY - DRIVING MOTOR VEHICLE, ETC., WHILE INTOXICATED.

MOTOR VEHICLES: LICENSURE OF DRIVERS - HABITUAL OFFENDERS.

CRIMINAL PROCEDURE: SENTENCE; JUDGMENT; EXECUTION OF SENTENCE.

Court may not assign to home/electronic incarceration habitual offender who is under mandatory sentence of confinement in jail for 12 months.

The Honorable David N. Grimes
Commonwealth's Attorney for Pittsylvania County
July 21, 1999

You ask whether, if a defendant is convicted of an offense that carries a mandatory jail term, a circuit court may order that the defendant serve the sentence at home under a home/electronic incarceration program administered by the Department of Probation and Parole.

Section 53.1-131.2(A) of the Code of Virginia authorizes a court to assign a criminal offender to a home/electronic incarceration program under the conditions specified in the statute. The section provides, in part:
Any court having jurisdiction for the trial of a person charged with a criminal offense, a traffic offense or an offense under Chapter 5 (§ 20-61 et seq.) of Title 20 may, if the defendant is convicted and sentenced to confinement in a state or local correctional facility, and if it appears to the court that such an offender is a suitable candidate for home/electronic incarceration, assign the offender to a home/electronic incarceration program as a condition of probation, if such program exists, under the supervision of the office of the sheriff, the administrator of a local or regional jail, or a Department of Corrections probation and parole district office established pursuant to § 53.1-141.

Whether a court may assign an offender to a home/electronic incarceration program will depend on the facts and on the language of the statutes that relate to the particular offense. You ask specifically about convictions under §§ 18.2-266 and 46.2-357 of a person declared an habitual offender under former § 46.2-351. Section 18.2-266 makes it unlawful for a person to operate a motor vehicle while under the influence of alcohol or certain other intoxicants. Section 46.2-357(A) makes it unlawful for a person to drive a motor vehicle while his driving privileges have been revoked. Under the example you provide, the person would be subject to the punishment set out in § 46.2-357(B).

Section 46.2-357(B) provides:

Except as provided in subsection D, any person found to be an habitual offender under this article, who is thereafter convicted of driving a motor vehicle ... in the Commonwealth while the revocation determination is in effect, shall be punished as follows:

***

2. If such driving ... takes place while such person is in violation of § 18.2-266 ... and one of the offender's underlying convictions is for ... [§] 18.2-266 ..., such person shall be guilty of a felony punishable by confinement in a state correctional facility for not less than one year nor more than five years or, in the discretion of the jury or the court trying the case without a jury, by confinement in jail for twelve months and no portion of such sentence shall be suspended.

Section 46.2-357(D) permits the court to commit the defendant to “the Boot Camp Incarceration Program pursuant to § 19.2-316.1, or the Detention Center Incarceration Program pursuant to § 19.2-316.2, or the Diversion Center Incarceration Program pursuant to § 19.2-316.3.” In addition to § 46.2-357, § 18.2-270 imposes “a mandatory, minimum term of imprisonment of one year, none of which may be suspended” for repeat violations of § 18.2-266.

The purpose of statutory construction is to ascertain and give effect to the intent of the legislature. When there is no ambiguity in a statute, the statute is to be given effect in accordance with its plain meaning. The clear and unambiguous language in
$ 46.2-357(B)(2) mandates confinement in jail for a minimum of "twelve months" and expressly prohibits a court from suspending any portion of the sentence. The sole exception from this mandate is "as provided in subsection and expressly prohibits a court from suspending any portion of the sentence. The sole suspended, offender could not serve his sentence

'see

'serving his sentence' confined to detention center); [6] Unlike home/electronic incarceration, each of the three programs specified in § 46.2-357(D) includes confinement of the offender at a correctional facility or center established and maintained by the Department of Corrections. See §§ 19.2-316.1, 53.1-67.1 (confinement in boot camp); §§ 19.2-316.2, 53.1-67.8 (commitment to detention center); §§ 19.2-316.3, 53.1-67.7 (commitment to diversion center); see also 1997 Op. Va. Att'y Gen. 153, 154 (offenders assigned to home/electronic incarceration are not "confined in jail" for purposes of awarding good conduct credit).

§ 53.1-131.2(C) grants no additional authority to the court but rather authorizes the sheriff or administrator of a local or regional jail to assign a person serving his sentence in the jail to the home/electronic incarceration program under the conditions specified. I express no opinion, however, on whether § 53.1-131.2(C) would permit the sheriff or jail administrator to assign a person to a home/electronic incarceration program under the circumstances you describe.

See In Re: Commonwealth of Virginia, 229 Va. 159, 163, 326 S.E.2d 695, 697 (1985) (when General Assembly prescribes mandatory sentence, it divests trial judge of discretion regarding punishment); Bryant v. Commonwealth, 198 Va. 148, 151, 93 S.E.2d 130, 132 (1956) (court's authority to suspend sentence is regulated by statute); see also Op. Va. Att'y Gen.: 1996 at 88, 88-89 (by setting mandatory periods of incarceration, legislature absolves trial court of sentencing discretion); 1981-1982 at 134, 135 (because habitual offender statute states that no portion of mandatory one-year sentence may be suspended, offender could not be considered for community diversion under Community Diversion Incentive Act); 1975-1976 at 246, 247 (specific statutes mandating sentence for particular crime prevail over general statute authorizing court to suspend sentence). A prior opinion also concludes that, in connection with awarding good conduct credit, offenders assigned to home/electronic incarceration pursuant to § 53.1-131.2(A) would not be deemed to be "confined in jail." See 1997 Op. Va. Att'y Gen., supra note 6, at 154.

1Persons convicted of certain crimes, such as murder, voluntary manslaughter and malicious felonious assault, are not eligible for participation in the program. Section 53.1-131.2(A).

2In connection with amendments to the habitual offender statutes adopted at its 1999 Session, the General Assembly repealed §§ 46.2-351 through 46.2-355. See 1999 Va. Acts: ch. 945, at 2440, 2451; ch. 987, at 2611, 2623. The repeal of § 46.2-351 has no effect on the status of persons previously declared habitual offenders under the statute. See § 1-16; 1992 Op. Va. Att'y Gen. 4, 7 (legislative amendments operate prospectively unless legislature expressly provides otherwise).


5Section 46.2-357(B).

6Unlike home/electronic incarceration, each of the three programs specified in § 46.2-357(D) includes confinement of the offender at a correctional facility or center established and maintained by the Department of Corrections. See §§ 19.2-316.1, 53.1-67.1 (confinement in boot camp); §§ 19.2-316.2, 53.1-67.8 (commitment to detention center); §§ 19.2-316.3, 53.1-67.7 (commitment to diversion center); see also 1997 Op. Va. Att'y Gen. 153, 154 (offenders assigned to home/electronic incarceration are not "confined in jail" for purposes of awarding good conduct credit).

7Section 46.2-357(B). I agree with your opinion that § 53.1-131.2(C) grants no additional authority to the court but rather authorizes the sheriff or administrator of a local or regional jail to assign a person serving his sentence in the jail to the home/electronic incarceration program under the conditions specified. I express no opinion, however, on whether § 53.1-131.2(C) would permit the sheriff or jail administrator to assign a person to a home/electronic incarceration program under the circumstances you describe.

8See In Re: Commonwealth of Virginia, 229 Va. 159, 163, 326 S.E.2d 695, 697 (1985) (when General Assembly prescribes mandatory sentence, it divests trial judge of discretion regarding punishment); Bryant v. Commonwealth, 198 Va. 148, 151, 93 S.E.2d 130, 132 (1956) (court's authority to suspend sentence is regulated by statute); see also Op. Va. Att'y Gen.: 1996 at 88, 88-89 (by setting mandatory periods of incarceration, legislature absolves trial court of sentencing discretion); 1981-1982 at 134, 135 (because habitual offender statute states that no portion of mandatory one-year sentence may be suspended, offender could not be considered for community diversion under Community Diversion Incentive Act); 1975-1976 at 246, 247 (specific statutes mandating sentence for particular crime prevail over general statute authorizing court to suspend sentence). A prior opinion also concludes that, in connection with awarding good conduct credit, offenders assigned to home/electronic incarceration pursuant to § 53.1-131.2(A) would not be deemed to be "confined in jail." See 1997 Op. Va. Att'y Gen., supra note 6, at 154.
You ask whether the sheriff for the City of Emporia must be appointed to the Southside Regional Jail Authority.

Section 53.1-105 of the Code of Virginia authorizes any two or more political subdivisions to establish, maintain and operate a regional jail facility. Section 53.1-106(A) vests supervision and management of regional jails in a board or authority composed of representatives from each political subdivision. The board or authority is “to consist of at least the sheriff from each participating political subdivision, and one representative from each political subdivision participating therein.”

The Southside Regional Jail Authority consists of the City of Emporia and the County of Greensville. You state that the qualified voters of both the county and the city elect a county sheriff and that the qualified voters of the city elect a city sheriff. It is your opinion, however, that the sheriff of the County of Greensville is the sole sheriff for the two political subdivisions and that the sheriff of the City of Emporia need not be appointed to the authority.

You explain that §(51) of the charter for the City of Emporia requires the qualified voters of the city to elect a city sergeant, and that §(59) of the charter requires the qualified voters of the city and county to elect a sheriff conjointly for the city and the county. Section (54a) of the charter provides that the city sergeant is to have such powers as are granted to other city sergeants by the general laws of the Commonwealth and by the city’s ordinances. Section (60) provides that the sheriff is to have the same duties in the city as he has in the county.

You point out that, in 1971, the General Assembly enacted § 15.1-796.1 abolishing the office of city sergeant. Section 15.1-796.1 provided that, “[n]otwithstanding any charter provision or special act, on and after July one, nineteen hundred seventy-one, the office of city sergeant is abolished.” The section further provided that any person holding the office of city sergeant on July 1, 1971, was to continue in office as city sheriff until the expiration of his term and until his successor was elected and qualified. The statute contained an exception, however, for cities that on July 1, 1971, had both a city sergeant and a city sheriff. In such instances, the city sheriff was to continue in office as city sheriff until the expiration of his term and until his successor was elected and qualified, while the city sergeant was to continue in office as city sergeant only until the expiration of his term.
You conclude that, on July 1, 1971, the sheriff of Greensville County was also the sheriff of the City of Emporia pursuant to § (59) of the city charter and that, therefore, the Emporia city sergeant did not by operation of § 15.1-796.1 become the city sheriff on July 1, 1971. It is your view that the city sergeant continued in office as city sergeant until the expiration of his term and that thereafter the position of city sergeant was abolished. Based on the language of the city charter and § 15.1-796.1, it is your opinion that the sheriff of Greensville County is the sole sheriff for both the county and the city. You also state that you are uncertain as to what office the present sheriff of the City of Emporia actually has been elected to fill.

I cannot agree with your conclusion that on the effective date of § 15.1-796.1, the City of Emporia had both a city sergeant and a city sheriff under the provisions of the city charter and that, therefore, the office of city sergeant was abolished. It is my opinion that, on July 1, 1971, the City of Emporia had a city sergeant and that the sheriff elected conjointly by the qualified voters of the city and the county was the sheriff for the County of Greensville. I base my opinion on a review both of the statutes in effect when the Town of Emporia became the City of Emporia and of the legislative changes enacted by the General Assembly upon adoption of the 1971 Constitution of Virginia.

The present charter for the City of Emporia was enacted in 1968 when the Town of Emporia became a city of the second class. The charter provisions reflect the statutes then in effect regarding city and county officers upon the transition of towns to cities. The statutes provided that, when the town became a city, certain town officers were to continue in office as city officers, with § 15.1-989 specifically providing that the town sergeant was to continue as the sergeant of the city. The city was to continue to elect these city officers, including the city sergeant, at the regularly scheduled elections for such city officers. The statutes also provided that, in addition to the city officers elected by the city voters, certain county officers, including the Commonwealth's attorney, clerk of the circuit court and sheriff of the county, were to have jurisdiction in the city and that the voters residing in the city were entitled to vote for the county officers at the county elections. These statutes contemplate the election of two different officers: a city sergeant, who will be a city officer; and a county sheriff, who will be a county officer.

It is my opinion that the only change created in this structure by the enactment of § 15.1-796.1 was that, beginning on July 1, 1971, the city sergeant would have the title of city sheriff. The General Assembly adopted § 15.1-796.1 at its 1971 Special Session as a transition statute to effect the changes in the titles of local officers brought about by adoption of the 1971 Constitution. Under the 1902 Constitution, each city was to elect a city sergeant, and each county was to elect a county sheriff. The 1971 Constitution eliminated this distinction between cities and counties. Article VII, § 4 of the 1971 Constitution requires each county and city to elect a sheriff. Accordingly, the General Assembly amended a number of statutes throughout the Code, including the sections relating to the transition of towns to cities, to substitute the term “city sheriff” for the term “city sergeant.”
The statutes were amended without substantive change and continued the requirement that, when a town becomes a city, the city is to elect a city sheriff every four years at the city elections and the qualified voters in the city are entitled to vote for the county sheriff at the county elections. Opinions of the Attorney General issued after these legislative and constitutional changes confirm this result. Thus, a 1975 opinion of the Attorney General concludes that the sheriff of Wise County would run for election every four years throughout the county, including in the City of Norton, and the city sheriff of the City of Norton would run for election every four years only in the city of Norton.22 Another opinion recognizes that the City of Falls Church is served by both the city sheriff and, because the city is a part of the county, by the sheriff of Fairfax County.23 Like the City of Emporia, both the City of Norton and the City of Falls Church were organized as cities of the second class. A 1973 opinion also confirms that the purpose of the “except” clause in § 15.1-796.1 was to accommodate any city, such as the City of Richmond, in which the office of city sheriff and city sergeant existed simultaneously at the time the 1971 Constitution became effective.24

Because the City of Emporia did not simultaneously have an elected city sheriff and city sergeant in office on July 1, 1971, the city sergeant became the city sheriff by operation of the provisions of § 15.1-796.1. The city has continued to elect a city sheriff. Greensville County also has a county sheriff. The city and the county constitute the members of the Southside Regional Jail Authority. By the clear language of § 53.1-106(A), the sheriff of each political subdivision comprising a regional jail authority must be a member of the authority.25 The statute makes no exception for sheriffs who perform no jail management duties in their locality.26

1Section 53.1-106(A). Prior to its amendment in 1998, § 53.1-106(A) required the appointment of the sheriff of a political subdivision to a jail authority only if the political subdivision appointed more than one representative to the authority. See 1998 Va. Acts ch. 541, at 1289, 1289.

2Section 2.1-118 requires that any request by a county attorney for an opinion from the Attorney General “shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions.”

31968 Va. Acts ch. 78, at 120, 129.

4Id. at 130.

5Id. at 129.

6Id. at 130. You further explain that the sheriff for Greensville County presently performs the duties imposed on sheriffs under § 15.2-1609 and that the sheriff for the City of Emporia has no jail duties or experience in jail management.

7See 1971 Va. Acts ch. 155, at 263, 279. Section 15.1-796.1 was repealed in 1997 when Title 15.1 was recodified as Title 15.2. See 1997 Va. Acts ch. 587, at 976, 1401.


9See id.

10See id.

11See 1968 Va. Acts ch. 78, supra note 3, at 120, 131 (enacting clause 2). For purposes of court structure, the 1902 Constitution of Virginia distinguished between cities of the first class, those with a population of more than 10,000, and cities of the second class, those with a population of less than 10,000. See Va. Const. art. VI, § 98 (1902). The 1971 Constitution neither requires nor prohibits this distinction. See 2 A.E. Dick Howard, Commentaries on the Constitution of Virginia 797 (1974).
1999 REPORT OF THE ATTORNEY GENERAL

PROFESSIONS AND OCCUPATIONS: MEDICINE AND OTHER HEALING ARTS.

INSURANCE: HEALTH SERVICES PLANS — HEALTH MAINTENANCE ORGANIZATIONS.

Whether violation of practice of medicine and other specialties has occurred requires factual determination by Board of Medicine or other appropriate regulatory authority. Physician-patient contract establishing prepayment plan for provision of professional services is not health services plan or health care plan established by health maintenance organization that is subject to insurance licensure and regulation by State Corporation Commission.

The Honorable Thomas G. Baker Jr.
Member, House of Delegates
November 29, 1999

You request guidance regarding a specific contractual arrangement between a physician and her patients.
A physician has designed three medical care payment plans for her patients labeled “Contractual Outpatient Medical Care for the Uninsured or Poorly Insured” (“plan program”). The plans are arranged according to age groupings and health status. Patients pay an annual cost for each plan. The contract specifies the coverages that patients who have paid their annual cost will receive and also lists coverages that are excluded from the plans. You ask whether the plan program violates any state statute regarding the provision of medical care or medical insurance. You also inquire whether there are any special applications, requirements or regulations to oversee or monitor the plan program. You include with your request an opinion from the Bureau of Insurance of the State Corporation Commission concluding that the plan program is exempt from licensure as a health services plan.

With respect to statutes governing the provision of medical services, §§ 54.1-2900 through 54.1-2973 of the Code of Virginia define the practice of medicine and other specialties regulated by the Board of Medicine (the "Board"), establish eligibility requirements for licensure in the Commonwealth, and detail the unprofessional conduct that may subject a licensee of the Board to professional discipline. The limited facts presented do not suggest any violation of these statutory provisions. A particular violation of any such statutes, however, requires a factual determination to be made by the Board or other appropriate regulatory authority.

With respect to whether the plan program violates state insurance statutes, the State Corporation Commission is the state agency charged with regulation of insurance companies. Chapter 42 of Title 38.2, §§ 38.2-4200 through 38.2-4235 governs health services plans. Section 38.2-4200(B) provides:

Nothing contained in this chapter shall prohibit any physician (i) as an individual, ... from entering into agreements directly with his own patients, ... involving payment for professional services to be rendered or made available in the future.

The program plan is an agreement entered into between the physician and her patients. The agreement sets forth an annual cost for each of three plans covering or excluding specific medical care services. Based on these limited facts, including the assertion that the payment plan as specified in the contract will be offered to the physician's patients, it is my opinion that the program plan is an agreement directly entered into by the physician and her patients involving payment for the physician's services, and, therefore, falls within this exception.

Additionally, a recognized principle of statutory construction is that the interpretation given to a statutory provision by the state agency charged with its enforcement is entitled to great weight. The Bureau of Insurance of the State Corporation Commission concludes that the program plan is exempt from licensure as a health services plan pursuant to § 38.2-4200. I concur in the Bureau's determination that the program plan is not a health services plan subject to insurance licensure.
It is also my opinion that the program plan is not a health care plan subject to the requirements of Chapter 43 of Title 38.2, §§ 38.2-4300 through 38.2-4323. Chapter 43 governs the establishment and licensure of health maintenance organizations. Specifically, § 38.2-4300 defines "health maintenance organization" as "any person who undertakes to provide or arrange for one or more health care plans." This statute defines "health care plan" as "any arrangement in which any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services ... as distinguished from mere indemnification against the cost of the services, on a prepaid basis."

Generally, prepaid health care plans are organizations licensed under Title 38.2 and fall within the definition of "insurance company." A 1990 opinion addressing the issue of whether a self-insured employee benefit plan is a "health care plan" under Title 38.2 notes that "the definitions in § 38.2-4300 indicate that a 'health care plan' is a plan provided by a 'health maintenance organization' that actually arranges for or provides health care services." The opinion concludes that, "unless it is established as a licensed health maintenance organization, a self-insured employee benefit plan does not offer 'health care plan[s].'" Similarly, it is my opinion that a contract between a physician and her patients establishing a set payment to cover the provision of specific services does not make the physician a "health maintenance organization" administering a "health care plan" as contemplated by Chapter 43 of Title 38.2.

With respect to your final inquiry, because it is my opinion that the program plan constitutes a contract between a physician and her patients and is not subject to the insurance regulatory authority of the State Corporation Commission, I am aware of no regulations of the Commission that would apply to such a plan.

---

1You include a copy of the physician's plan program with your letter.
2The ages under the three plans range from 4 to 65 and over, and health status ranges from basically healthy to two or more chronic diseases.
3Coverages under the three plans include unlimited office visits; up to four basic in-office laboratory tests, if needed; routine physicals; sample drugs, if available; and the shots and EKGs specified under plans two and three. Excluded coverages include nonsampled drugs, specialized laboratory tests, specialist physician costs, hospital care, and x-rays.
4Letter from Douglas C. Stolte, Deputy Commissioner, Financial Regulation Division, Bureau of Insurance, State Corporation Commission, to you (June 4, 1999). I note that this opinion is premised on the assumption that the physician is contracting directly with her own patients and that the plan program is not a vehicle for direct marketing or solicitation.
6Compare 1984-1985 Op. Va. Att'y Gen. 230, 231 (concluding that determination of whether physician who dispenses medications to his own patients solely for their own convenience, as opposed to dispensing them for supplementation of his income, is factual question to be resolved on individual case basis by Boards of Medicine and Pharmacy).
7All companies, domestic, foreign, and alien, transacting or licensed to transact the business of insurance in this Commonwealth are subject to ... regulation by the [State Corporation] Commission." Section 38.2-200(A).
8Compare § 32.1-127.1:03(B) (defining "patient" as "a person who is receiving or has received health services from a provider").
PROFESSIONS AND OCCUPATIONS: PHARMACY — DRUG CONTROL ACT — MEDICINE AND OTHER HEALING ARTS.

Pharmacist's authority to substitute drug therapy is limited to physician's prescriptive order in treatment protocol contained in collaborative agreement; any deviation or inconsistency with prescribed treatment constitutes grounds for disciplinary action. Proposed emergency regulations promulgated by Boards of Medicine and Pharmacy mirror statutory limitations regarding pharmacist's authority to dispense drugs pursuant to collaborative agreement and treatment protocol prescribed by physician. Boards' interpretation of regulations is entitled to great weight.

The Honorable Phillip Hamilton
Member, House of Delegates
December 27, 1999

You ask whether Chapter 33 of Title 54.1, §§ 54.1-3300 through 54.1-3319 of the Code of Virginia, prohibits a pharmacist's therapeutic substitution of chemically dissimilar drugs without the explicit consent of the prescribing physician.

You advise that your request is based on the possibility of a pharmacist entering into a collaborative agreement that would permit a therapeutic substitution of a chemically dissimilar drug without the explicit knowledge of the prescribing physician. You also advise that during the legislative debate at the 1999 Session of the General Assembly, you offered an amendment to clarify this matter. You relate that the amendment was defeated, because the General Assembly thought the issue would be better addressed in the regulatory process.

The 1999 Session of the General Assembly amended and reenacted § 54.1-3300 and added new § 54.1-3300.1. The 1999 amendments to § 54.1-3300 added the definition of "collaborative agreement," which means:

a voluntary, written arrangement between one pharmacist and his designated alternate pharmacists involved directly in patient care at a location where patients receive services and a practitioner of medicine, osteopathy, or podiatry and his designated alternate practitioners involved directly in patient care which authorizes cooperative procedures with respect to patients of such practitioners. Collaborative
procedures shall be related to treatment using drug therapy, laboratory tests or medical devices, under defined conditions or limitations, for the purpose of improving patient outcomes. A collaborative agreement is not required for the management of patients of an inpatient facility.

Section 54.1-3300.1 provides:

A pharmacist and his designated alternate pharmacists involved directly in patient care may participate with a practitioner of medicine, osteopathy, or podiatry and his designated alternate practitioners involved directly in patient care in collaborative agreements which authorize cooperative procedures related to treatment using drug therapy, laboratory tests or medical devices, under defined conditions and/or limitations, for the purpose of improving patient outcomes. No patient shall be required to participate in a collaborative procedure without such patient's consent.

Collaborative agreements may include the modification, continuation or discontinuation of drug therapy pursuant to written, patient-specific protocols; the ordering of laboratory tests; or other patient care management measures related to monitoring or improving the outcomes of drug or device therapy. No such collaborative agreement shall exceed the scope of practice of the respective parties. Any pharmacist who deviates from or practices in a manner inconsistent with the terms of a collaborative agreement shall be in violation of § 54.1-2902; such violation shall constitute grounds for disciplinary action pursuant to §§ 54.1-2400 and 54.1-3316.

Collaborative agreements may only be used for conditions which have protocols that are clinically accepted as the standard of care, or are approved by the Boards of Medicine and Pharmacy. The Boards of Medicine and Pharmacy shall jointly develop and promulgate regulations to implement the provisions of this section and to facilitate the development and implementation of safe and effective collaborative agreements between the appropriate practitioners and pharmacists. The regulations shall include guidelines concerning the use of protocols, and a procedure to allow for the approval or disapproval of specific protocols by the Boards of Medicine and Pharmacy if review is requested by a practitioner or pharmacist.

Nothing in this section shall be construed to supersede the provisions of § 54.1-3303.

Section 54.1-3410(A), a portion of The Drug Control Act, §§ 54.1-3400 through 54.1-3472, provides that a pharmacist may sell and dispense drugs pursuant to a prescription as follows:
1. A drug listed in Schedule II shall be dispensed only upon receipt of a written prescription that is properly executed, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the federal laws of the person prescribing, if he is required by those laws to be so registered. If the prescription is for an animal, it shall state the species of animal for which the drug is prescribed;

2. In emergency situations, Schedule II drugs may be dispensed pursuant to an oral prescription in accordance with the ... regulations [of the Board of Pharmacy.]

Section 54.1-3410(B)(1) further provides that Schedule III through VI drugs shall be dispensed as follows:

If the prescription is written, it shall be properly executed, dated and signed by the person prescribing on the day when issued and bear the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name and address of the person prescribing. If the prescription is for an animal, it shall state the species of animal for which the drug is prescribed.

Section 54.1-3457(16) prohibits "[d]ispensing or causing to be dispensed, except as provided in § 32.1-87 relating to the Virginia Voluntary Formulary, a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without the permission of the person ordering or prescribing."

Both the 1999 enactments to §§ 54.1-3300 and 54.1-3300.1 and the relevant provisions of §§ 54.1-3410 and 54.1-3457 of The Drug Control Act iterate the limitations placed on a pharmacist's authority to dispense drugs pursuant to a collaborative agreement and treatment protocol. It is my opinion that the authority of a pharmacist to dispense drugs is limited to the physician's prescriptive order contained in the treatment protocol, and that to do otherwise would be considered illegal and unprofessional conduct.5

You also inquire whether the prohibition would remain in effect should the proposed emergency regulations developed by the joint Boards of Medicine and Pharmacy ("Boards") be adopted.4

The Boards are authorized "[t]o promulgate regulations ... which are reasonable and necessary to administer effectively the regulatory system." With respect to collaborative agreements, § 54.1-3300.1 expressly authorizes the Boards to "jointly develop and promulgate regulations to implement the provisions of this section and to facilitate the development and implementation of safe and effective collaborative agreements between the appropriate practitioners and pharmacists." Pursuant to the 1999 enactment, the Boards "shall ... promulgate regulations to implement the provisions of [§ 54.1-3300.1]"
within 280 days of the date of enactment. No collaborative agreement shall become effective prior to ninety days after the effective date of the emergency regulations."

"Where a statute is unambiguous, the plain meaning is to be accepted without resort to the rules of statutory interpretation." "The manifest intention of the legislature, clearly disclosed by its language, must be applied." "Take the words as written' ... and give them their plain meaning."

The proposed emergency regulations provide that "[a]n agreement shall contain treatment protocols that are clinically accepted as the standard of care within the medical and pharmaceutical professions." The treatment protocol (1) "shall describe the disease state or condition, drugs or drug categories, drug therapies, laboratory tests, medical devices, and substitutions authorized by the practitioner," and (2) "shall contain a statement by the practitioner that describes the activities in which the pharmacist is authorized to engage." The regulations provide that a practitioner may include in the protocol a statement of

1. [t]he procedures, decision criteria, or plan the pharmacist shall follow when providing drug therapy management;
2. [t]he procedures the pharmacist shall follow for documentation;
and
3. [t]he procedures the pharmacist shall follow for reporting activities and results to the practitioner.

The regulations also provide that "[a]n order for a specific patient from the prescribing practitioner authorizing the implementation of drug therapy management pursuant to the agreement shall be noted in the patient's medical record and kept on file by the pharmacist."

The collaborative practice contemplated by the proposed emergency regulations involves a voluntary written agreement whereby a physician refers a patient to a pharmacist to manage and/or treat a specific medical condition or disease in accordance with a clinically accepted treatment protocol. Such a practice is similar to the collaborative practices of a physician's assistant and a licensed nurse practitioner pursuant to §§ 54.1-2952 and 54.1-2957. In both of these advanced practices, a physician may delegate certain acts constituting the practice of medicine consistent with regulations of the Boards of Medicine and Nursing. The collaborative agreement between physicians and pharmacists involves a similar delegation whereby the physician, pursuant to a protocol, describes "[t]he procedures, decision criteria, or plan the pharmacist shall follow when providing drug therapy management."

In accordance with the proposed emergency regulations, a pharmacist may alter or change a specific drug therapy only as prescribed by the physician. Such alteration or change may include an increase or decrease in a specific dosage, or it may involve changing drug therapy to another drug product. In both instances, the physician specifically has authorized the pharmacist to make the change in accordance with delineated crite-
ria. The protocol, to the extent it provides for a specific drug therapy, constitutes the prescriptive order of the physician. Therefore, when a pharmacist alters or changes a drug therapy in accordance with the protocol, the pharmacist is merely dispensing drug therapy to a patient pursuant to the direct prescriptive order of a physician.

The proposed regulations clearly and explicitly mirror the statutory limitations regarding a pharmacist's authority to dispense drugs pursuant to a collaborative agreement and treatment protocol. Based on the assumption that the current statutory provisions specifically limit a pharmacist's authority to change or alter a physician's order, any increase or decrease in the dosage or change in a drug product (i.e., a chemically dissimilar drug) must, therefore, be prescribed by the physician. To the extent the protocol provides for a specific drug therapy, it constitutes the prescriptive order of the physician. Whenever a pharmacist alters or changes the drug therapy in accordance with the protocol, the pharmacist does so at the direction of the physician's order. In such a situation, the pharmacist is not prescribing but is merely following the physician's instructions to dispense a drug.

Moreover, since the Boards are the agencies charged with the administration of §§ 54.1-3300 and 54.1-3300.1, their interpretation is entitled to great weight. The proposed emergency regulations of the Board are consistent with the 1999 enactments concerning collaborative agreements and the relevant provisions of The Drug Control Act, and unless that interpretation is clearly wrong, it carries great weight and is entitled to deference. I must, therefore, decline to respond formally to this final question.


See id; ch. 895, at 1716-17; ch. 1011, at 2687.

See § 54.1-2902 (making practice of medicine unlawful without valid license issued by Board of Medicine); § 54.1-3316 (listing conduct that results in revocation, suspension or denial of license by Board of Pharmacy).

I am advised that an ad hoc committee of the Boards, with representatives from the Virginia Medical Society and the Virginia Pharmaceutical Association, is considering regulations governing collaborative practice agreements. See proposed Regulations of the Joint Boards of Pharmacy and Medicine Governing Collaborative Practice Agreements (June 20, 1999) (hereinafter draft regs) (on file with Department of Professional and Occupational Regulation).

Section 54.1-2400(6).

1999 Va. Acts, supra note 1, chs. 895, 1011, at 1717, 2688, respectively (quoting cl. 3).


The draft regs define "agreement" as "a collaborative practice agreement." See draft regs, supra note 4, at 1 (to be codified at 18 VAC 110-40-10).

Id. at 2 (to be codified at 18 VAC 110-40-40(A)).

Id. (to be codified at 18 VAC 110-40-40(B)).

Id. (to be codified at 18 VAC 110-40-40(C)).
Id. at 2-3 (to be codified at 18 VAC 110-40-40(C)(1-3)).  
15Id. at 3 (to be codified at 18 VAC 110-40-50(B)).  
Id. at 2 (quoting proposed 18 VAC 110-40-40(C)(1)); see also § 54.1-3408(A) (authorizing licensed pharmacists, registered nurses or licensed practical nurses to administer vaccines to adults for immunization, pursuant to protocol approved by Board of Nursing, when prescribing practitioner is not physically present).  
See id. at 2-3 (citing proposed 18 VAC 110-40-40(C)(1-3), 110-40-50(B)).  
See §§ 54.1-3300, 54.1-3300.1, 54.1-3410(A), (B), 54.1-3457.  
See draft regs, supra note 4, at 2-3 (citing proposed 18 VAC 110-40-40(C)(1-3), 110-40-50(B)).  
"It is an elementary rule of statutory interpretation that the "construction given to a statute by public officials charged with its enforcement is entitled to great weight ... and in doubtful cases will be regarded as decisive." Bed Company v. Corporation Commission, 205 Va. 272, 275, 136 S.E.2d 900, 902 (1964) (citing Commonwealth v. Appalach. El. Power Co., 193 Va. 37, 45, 68 S.E.2d 122, 127 (1951)).

PROPERTY AND CONVEYANCES: PROPERTY OWNERS' ASSOCIATION ACT.

Assuming member of property owners' association identifies purpose of request for minutes of meeting of association's board of directors, availability of minutes is not contingent on board's approval of such minutes.

The Honorable Robert G. Marshall  
Member, House of Delegates  
December 17, 1999

You ask whether the response to a request for copies of the minutes of a meeting of the board of directors of a homeowners' association made pursuant to the Virginia Property Owners' Association Act, §§ 55-508 through 55-516.2 of the Code of Virginia (the "Act"), is contingent upon the approval of such minutes by the board.

You relate that a meeting of the board of directors of a homeowners' association occurred in July 1999, and that two homeowners have requested copies of the minutes of that meeting. You further relate that the association did not honor the request because the association maintains a policy of not releasing the minutes until they are approved by the board at the next meeting, which was held in October.

The Act governs the operation of property owners' associations. The Act guarantees certain rights and protections to individual association members and specifically places upon the associations certain reporting and accounting requirements. Section 55-510.1(A) provides that meetings of the board of directors of such associations "shall be open to all members of record" of the association. "Minutes shall be recorded and shall be available as provided in § 55-510 B." Section 55-510(B) provides:

[All books and records kept by or on behalf of the association ... shall be available for examination and copying by a member in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the association. The right of examination shall exist without reference to the duration of member-
ship and may be exercised ... upon five days' written notice reasonably identifying the purpose for the request and the specific books and records of the association requested.\footnote{Reading §§ 55-510.1(A) and 55-510(B) together, it is quite clear that minutes of the board of directors of property owners' associations are to be made available for examination by members of the association. Generally, the term "minutes" refers to a brief summary of the official actions taken by a board at a meeting. A rule of statutory construction provides that where the language of a statute is clear and unambiguous, effect must be given to its plain and ordinary meaning. Additionally, it is axiomatic that the primary object of statutory construction is to ascertain and give effect to the intent of the General Assembly. Although it is customary for a board to review and approve its minutes at its next meeting so that any inaccuracies may be noted and corrected, nothing in § 55-510(B) postpones the release of minutes until such time as they are approved. Indeed, a conclusion that minutes are not available for examination until they are approved at a later date would conflict with the obvious intent of the General Assembly for openness and availability that these statutes are designed to attain. Accordingly, it is my opinion that, assuming the requester and request meet the requirements of § 55-510(B), a request for minutes of a meeting of a board of directors of a homeowners' association falls within the purview of this statute regardless of whether they have yet been approved by the board.}


PROPERTY AND CONVEYANCES: RECORDATION OF DOCUMENTS - UNIFORM RECOGNITION OF ACKNOWLEDGMENTS ACT.

TRADE AND COMMERCE: ELECTRONIC SIGNATURES.

Person acknowledging instrument must appear before person taking acknowledgment. Notary public may not acknowledge "electronic signature."
You ask whether, pursuant to § 55-118.3 of the Code of Virginia, a notary public may acknowledge an electronic signature, as that term is defined and used in Chapter 39 of Title 59.1.¹

Section 59.1-467 defines the term “electronic signature,” for the purposes of Chapter 39 of Title 59.1, to mean “any electronic identifier intended by the person making, executing, or adopting it to authenticate and validate a record.” Section 59.1-469 permits electronic signatures to be used by “every agency, department, board, commission, authority, political subdivision or other instrumentality of the Commonwealth” “[c]onsistent with other applicable law” and in accordance with the criteria established in the statute.²

The Uniform Recognition of Acknowledgments Act is set forth in Article 2.1, Chapter 6 of Title 55 (the “Act”). Pursuant to § 55-118.1 of the Act, notaries public are authorized to take proof of acknowledgments of instruments. Section 55-118.3 of the Act requires a notary public taking an acknowledgment to certify that:

(1) The person acknowledging appeared before him and acknowledged he executed the instrument; and

(2) The person acknowledging was known to the person taking the acknowledgment or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

The Act defines the phrase “acknowledged before me” to mean:

(1) That the person acknowledging appeared before the person taking the acknowledgment,

(2) That he acknowledged he executed the instrument,

(3) That, in the case of:

(i) A natural person, he executed the instrument for the purposes therein stated;

(ii) A corporation, the officer or agent acknowledged he held the position or title set forth in the instrument and certificate, he signed the instrument on behalf of the corporation by proper authority, and the instrument was the act of the corporation for the purpose therein stated;

(iii) A partnership, the partner or agent acknowledged he signed the instrument on behalf of the partnership by proper authority and he executed the instrument as the act of the partnership for the purposes therein stated;
(iv) A person acknowledging as principal by an attorney in fact, he executed the instrument by proper authority as the act of the principal for the purposes therein stated;

(v) A person acknowledging as a public officer, trustee, administrator, guardian, conservator or other representative, he signed the instrument by proper authority and he executed the instrument in the capacity and for the purposes therein stated; and

(4) That the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate.\[41\]

"[T]he primary objective of statutory construction is to ascertain and give effect to legislative intent."\[45\] Under applicable rules of statutory construction, the General Assembly is presumed to be aware of the law existing at the time it adopts a statute.\[46\] The General Assembly is also presumed to be aware of its own previous enactments.\[47\] To determine legislative intent in this instance, statutes dealing with the same subject matter should be construed together to achieve a harmonious result, resolving conflicts to give effect to each statute, to the maximum extent possible.\[48\] Another accepted principle of statutory construction is that, when it is not clear which of two statutes applies, the more specific statute prevails over the more general.\[49\] Also, when statutes provide different procedures on the same subject matter, the more general gives way to the more specific.\[50\] Section 55-118.3 specifically applies to acknowledgments taken by notaries public, while § 59.1-469 generally applies only to the authentication and validation of records "[c]onsistent with other applicable law." Section 55-118.3 is thus the more specific statute in this instance and is plain and unambiguous in the requirement "[t]hat the person acknowledging appeared before the person taking the acknowledgment."\[51\]

I am therefore, of the opinion that, pursuant to § 55-118.3, a notary public may not acknowledge an "electronic signature" as that term is defined in § 59.1-467.

---

\[1\] Sections 59.1-467 to 59.1-469.

\[2\] The criteria established in § 59.1-469 "to ensure the authenticity and validity of electronic signatures" are that the signatures must be: "(i) unique to the signer, (ii) capable of verification, (iii) under the signer's sole control, (iv) linked to the record in such a manner that it can be determined if any data contained in the record was changed subsequent to the electronic signature being affixed to the record, and, (v) created by a method appropriately reliable for the purpose for which the electronic signature was used."

\[3\] Sections 55-118.1 to 55-118.9.

\[4\] Section 55-118.5.


\[8\] VEPCO v. Prince William Co., 226 Va. 382, 387-88, 309 S.E.2d 308, 311 (1983); 1991 Op. Va. Att'y Gen. 7, 8; id. at 159, 160; see also Prillaman v. Commonwealth, 199 Va. 401, 405-06, 100 S.E.2d 4, 7-8 (1957) (statutes relating to same subject are not to be considered in isolation but must be construed together to produce harmonious result that gives effect to all provisions if possible).
PROPERTY AND CONVEYANCES: RESIDENTIAL LANDLORD AND TENANT ACT.

RULES OF SUPREME COURT OF VIRGINIA: GENERAL DISTRICT COURTS-IN GENERAL — PRACTICE AND PROCEDURE IN ACTIONS AT LAW — INTEGRATION OF THE STATE BAR — UNAUTHORIZED PRACTICE RULES AND CONSIDERATIONS.

Individual meeting statutory definition of "landlord" may file unlawful detainer action in general district court; seeking payment of rent into court escrow account, judgment against tenant, and possession of leased premises; landlord representing only his interest in court would not be engaging in unauthorized practice of law. Procedural requirement that court determine veracity of tenant's good faith defense does not necessarily require scheduling of evidentiary hearing. Court may accept tenant's oath of good faith defense on return date, prior to actual trial, and grant continuance without escrowed funds or set case for contested trial.

The Honorable William L. Wimbish
Chief Judge, 13th Judicial District
July 1, 1999


Section 55-248.25:1 provides:

A. Where a landlord has filed an unlawful detainer action seeking possession of the premises as provided by this chapter and the tenant seeks to obtain a continuance of the action or to set it for a contested trial, the court shall, upon request of the landlord, order the tenant to pay an amount equal to the rent that is due as of the initial court date into the court escrow account prior to granting the tenant's request for a delayed court date. However, if the tenant asserts a good faith defense, and the court so finds, the court shall not require the rent to be escrowed. If the landlord requests a continuance, or to set the case for contested trial, the court shall not require the rent to be escrowed.

B. If the court finds that the tenant has not asserted a good faith defense, the tenant shall be required to pay an amount determined by the court to be proper into the court escrow account in order for the case to be continued or set for contested trial. To meet the ends of justice, however, the court may grant the tenant a continuance of no more than one week to make full payment of the court-ordered amount into the court escrow account.
account. If the tenant fails to pay the entire amount ordered, the court shall, upon request of the landlord, enter judgment for the landlord and enter an order of possession of the premises.

C. The court shall further order that should the tenant fail to pay future rents due under the rental agreement into the court escrow account, the court shall, upon the request of the landlord, enter judgment for the landlord and enter an order of possession of the premises.

D. Upon motion of the landlord, the court may disburse the moneys held in the court escrow account to the landlord for payment of his mortgage or other expenses relating to the dwelling unit.

You first ask who meets the definition of “landlord,” as that term is used in § 55-248.25:1, for the purpose of appearing in court to make a request for payment of rent into an escrow account, judgment against the tenant, and possession of the leased premises.

Section 55-248.25:1 is enacted as part of the Virginia Residential Landlord and Tenant Act. Statutes relating to the same subject “are not to be considered as isolated fragments of law, but as a whole, or as parts of a great connected, homogeneous system, or a single and complete statutory arrangement.”4 Section 55-248.4 of the Act defines “landlord” to mean "the owner, lessor or sublessor of the dwelling unit or the building of which such dwelling unit is a part, and 'landlord' also means a manager of the premises who fails to disclose the name of such owner, lessor or sublessor.” The primary goal of statutory construction "is to ascertain and give effect to the legislative intent."5 I “take the words as written” and determine their plain meaning.6 I must, therefore, conclude that the General Assembly has clearly and unambiguously determined that “the owner, lessor or sublessor of the dwelling unit or the building of which such dwelling unit is a part” or the manager of such premises may appear in court to make requests for payment of rent into the court escrow account, judgment against the tenant, and possession of the leased premises.

You also ask whether such landlord must retain legal representation when making such requests and/or motions before the court.

The Supreme Court of Virginia has approved rules governing appearances before a court in Virginia. Non-lawyers may represent themselves in court, provided they are not engaging in the unauthorized practice of law.

A non-lawyer may represent himself, but not the interest of another, before any tribunal. A non-lawyer regularly employed on a salary basis ... may present facts, figures, or factual conclusions, as distinguished from legal conclusions, when such presentation does not involve the examination of witnesses or preparation of briefs or pleadings.”8

A non-lawyer regularly employed on a salary basis by a corporation appearing on behalf of his employer before a tribunal shall not engage in
activities involving the examination of witnesses, the preparation and filing of briefs or pleadings or the presenting of legal conclusions.\textsuperscript{[19]}

These rules clearly provide that a non-lawyer may represent himself before any court. A non-lawyer representing another before a court would be engaging in the unauthorized practice of law, unless such non-lawyer (1) is appearing on behalf of his employer and does not engage in "activities involving the examination of witnesses, the preparation and filing of briefs or pleadings or the presenting of legal conclusions,"\textsuperscript{[16]} or (2) is a regular employee acting for his employer and prepares notices or contracts incident to the regular course of conducting a business.\textsuperscript{[11]}

An exception to the unauthorized practice of law prohibition applies to "an appeal ... noted by a party's regular and bona fide employee or by a person entitled to ask for judgment under any statute." \textsuperscript{[12]} In an unlawful detainer action, a landlord normally would be representing only his interest in court. In addition, a manager of leased premises may also be the "landlord" for the purposes of the actions authorized by § 55-248.25:1.\textsuperscript{[13]}

Based on this assumption, the landlord and manager would not, therefore, be engaged in the unauthorized practice of law. I must, therefore, conclude that such landlord and manager are not required to retain legal representation when appearing before the court to make the requests and/or motions permitted in § 55-248.25:1.

You next ask whether an evidentiary hearing must be held to determine whether a tenant has asserted a good faith defense, or, in the alternative, whether the court may accept a tenant's oath of a good faith defense on the return date and grant a continuance without escrowed funds.

Section 55-248.25:1(A) provides that if the court finds the tenant has asserted a good faith defense, "the court shall not require the rent to be escrowed." This language is directory.\textsuperscript{[14]} Under well-accepted principles of statutory construction, when a statute contains a specific grant of authority, the authority exists only to the extent specifically granted in the statute.\textsuperscript{[15]} Section 55-248.4 defines "good faith" as "honesty in fact in the conduct of the transaction concerned."

The procedural nature of § 55-248.25:1(A) is underscored by the Supreme Court's "repeated holding that the use of 'shall,' in a statute requiring action by a public official, is directory and not mandatory unless the statute manifests a contrary intent."\textsuperscript{[16]} The General Assembly does not require in clear and unambiguous language that the court conduct an evidentiary hearing on the return date to find that the tenant asserts a good faith defense. When the General Assembly intends to enact a mandatory requirement, it knows how to express its intention.\textsuperscript{[17]} A court, therefore, must determine on a case-by-case basis whether an evidentiary hearing is necessary to prove a tenant's assertion of a good faith defense on the return date. I am of the view that the good faith defense to be found by the court is a procedural requirement that does not necessarily require an evidentiary hearing be held to determine whether a tenant has asserted a good faith defense. Consequently, I am also of the opinion that the court may accept a tenant's oath of a good faith defense on the return date and grant a continuance without escrowed funds.
You also ask that the phrase "good faith" defense in newly enacted § 55-248.25:1(A) and (B) be reconciled with § 55-248.25.

When new provisions are added to existing legislation by amendment, a presumption arises that, "in making the amendment the legislature acted with full knowledge of, and in reference to, the existing law upon the same subject and the construction placed upon it by the courts."\(^1\) It is presumed further that the legislature acted purposefully with the intent to change existing law.\(^2\) The principles of statutory construction also require that statutes be harmonized with other existing statutes, if possible, to produce a consistently logical result that gives effect to the legislative intent.\(^3\)

Section 55-248.25(a) provides that, in an action for the nonpayment of rent,

the tenant may assert as a defense that there exists upon the leased premises,

a condition which constitutes or will constitute, a fire hazard or a serious threat to the life, health or safety of occupants thereof, including but not limited to a lack of heat or running water or of light or of electricity or adequate sewage disposal facilities or an infestation of rodents, or a condition which constitutes material noncompliance on the part of the landlord with the rental agreement or provisions of law.

The assertion of any defense permitted by § 55-248.25(a) must be conditioned upon specific matters set forth therein.\(^4\) Section 55-248.25(b) sets forth that which "shall be a sufficient answer" to the defenses permitted by § 55-248.25(a). Section 55-248.25(c) requires that the court "make findings of fact upon any defense raised under this section or the answer to any defense." The clear language of § 55-248.25 requires that such defenses be asserted for determination by the court at the contested trial that is set in the general district court on the initial return date. "The manifest intention of the legislature, clearly disclosed by its language, must be applied."\(^5\)

Section 55-248.25:1, however, clearly applies only to the proceedings that occur on the return date in the general district court at which time the matter may be continued or set for a contested trial. It is clear that § 55-248.25:1 contemplates proceedings that occur upon return to the general district court, prior to the actual trial on the unlawful detainer, where the tenant seeks to continue the action or set the case for a contested trial. The clear intent of the General Assembly is to change the existing law by permitting a tenant to assert a defense on the return date to avoid having rent escrowed by the court when either a continued or contested trial date is requested.

---

3. See supra note 2.
Section 55-248.4.

19 VA. SUP. CT. R. pt. 6, § 1, R. 1, UPC 1-1.

Id. UPR 1-101(B).

Id. pt. 6, § 1(B)(2). Rule 3:16(a) provides that motions in writing are pleadings. This rule applies only to civil actions at law in a court of record. See id. pt. 3, R. 3:1.

Id. pt. 7, R. 7A:13 (emphasis added).

See § 55-248.4 (defining "landlord").


See Tate v. Ogg, 170 Va. 95, 195 S.E. 496 (1938); 2A Norman J. Singer, Sutherland Statutory Construction § 47.23 (5th ed. 1992 & Supp. 1999).


City of Richmond v. Sutherland, 114 Va. 688, 693, 77 S.E. 470, 472 (1913).


See § 55-248.25(a)(1)-(2).


PUBLIC SERVICE COMPANIES: TELEGRAPH AND TELEPHONE COMPANIES.

CONSTITUTION OF VIRGINIA: LOCAL GOVERNMENT.

COUNTIES, CITIES AND TOWNS: FRANCHISES, PUBLIC PROPERTY, UTILITIES.

City or town may satisfy constitutional requirements by advertising and receiving public bids before awarding franchise to certificated telecommunications providers to use its public rights-of-way for more than five years, notwithstanding fact that amount of bid is related to Public Rights-of-Way Use Fee collected from such providers. Requirement that locality accept highest bid from responsible bidder does not alter this conclusion.

The Honorable Vincent F. Callahan Jr.
Member, House of Delegates
October 22, 1999

Section 9 of Article VII places restrictions on the rights of a city or town to create franchises, leases, or other rights to use public property, including its streets and avenues. In addition to limiting the term of such franchises, § 9 imposes the following procedural requirement:

Before granting any such franchise or privilege for a term in excess of five years, except for a trunk railway, the city or town shall, after due advertisement, publicly receive bids therefor.

Section 15.2-2102 provides that, in connection with granting the franchise upon the receipt of public bids, the city council "shall accept the highest bid from a responsible bidder." Sections 56-458, 56-462, 56-468.1 and 56-468.2 relate to the Public Rights-of-Way Use Fee (the "Use Fee") collected from certificated providers of local exchange or interexchange telephone service, referred to in the statutes as "certificated providers of telecommunications services." Section 56-458(B) prohibits the imposition of "any fee on a certificated provider of telecommunications service for the use of public rights-of-way except in the manner prescribed in § 56-468.1." Section 56-468.1(B) provides:

Notwithstanding any other provisions of law, there is hereby established a Public Rights-of-Way Use Fee to replace any and all fees of general application (except for zoning, subdivision, site plan and comprehensive plan fees of general application) otherwise chargeable to a certificated provider of telecommunications service by the Commonwealth Transportation Board in connection with a permit for such occupation and use granted in accordance with § 56-458 or § 56-462. Cities and towns whose public streets and roads are not maintained by the Virginia Department of Transportation, and any county that has withdrawn or elects to withdraw from the secondary system of state highways ... may impose the Public Rights-of-Way Use Fee only by local ordinance.

The amount of the Use Fee is measured by the number of highway and street miles in the Commonwealth, the number of feet of new installation and the number of access lines in the Commonwealth.

You express concern that, because the Use Fee is a uniform state fee and preempts local franchise fees for use of the public rights-of-way, a city or town that has adopted the Use Fee and wishes to grant a franchise to a certificated provider of telephone services for a term exceeding five years would be unable to publicly receive bids as required by § 9 of Article VII. You ask, therefore, whether the Use Fee is unconstitutional as applied to cities and towns.

A presumption of constitutionality attaches to every legislative act of the General Assembly, and the Supreme Court of Virginia applies a strict standard to constitutional challenges to state statutes. A statute will be upheld "[i]f any reasonable doubt exists as to its constitutionality." The Court stated in Dean v. Paolicelli:
No act of the legislature should be held unconstitutional unless it is prohibited by the state or federal constitution in express terms or by necessary implication, nor should it be so construed as to bring it into conflict with constitutional provisions unless such a construction is unavoidable.\textsuperscript{[10]}

It may be argued that, by mandating the receipt of public bids, the Constitution necessarily implies that the city or town must accept the highest bid. The history of adoption of the constitutional language indicates otherwise.

The language requiring advertisement and public bids was added as an amendment to the restrictions on the rights of cities and towns to sell or lease rights to public property in Article VIII, § 125 of the Constitution of 1902. Section 9 of Article VII is virtually unchanged from § 125 of the 1902 Constitution. The report of the proceedings and debates pertaining to adoption of the 1902 Constitution contains a full discussion of the intent and purpose of the provision.\textsuperscript{[11]} The language was offered by C.V. Meredith, the delegate to the convention from the City of Richmond.\textsuperscript{[12]} Mr. Meredith stated:

I desire to have this language added: “Before granting such franchise or privilege for a term of years, except as to a trunk railway, such municipality shall first, after due advertisement, receive bids therefor publicly in such manner as may be provided by law, and shall then act as may be required by law.”

The whole object of that amendment, Mr. President, is simply to require publicity. These franchises are sometimes given away in a night, and the object is to require that publicity may be had about them and an effort made to ascertain what they are worth. That is the only restriction that is put upon the council; that before you give away this property, no matter whether you do it hurriedly or after due consideration, you shall let the public know what the franchises are worth, and then after that you shall do what the General Assembly may see fit. If the General Assembly shall require you to put it out to the highest bidder, you are compelled to do that, but it is left entirely to the Legislature....

I wish to call the attention of the Convention to the fact that in the Constitution of Kentucky they have a far more stringent rule. It provides: “Before granting such franchises or privilege for a term of years, such municipality shall first, after due advertisement, receive bids therefor publicly and award the same to the highest and best bidder, but it shall have the right to reject any and all bids.” That Constitution requires that the bid shall be given to the highest bidder.... [B]ut this amendment does not go to that extent. It does not require that it shall be given to any person, but simply that there shall be publicity about the matter. It says to the council: “You shall do this thing after due consideration, and you shall try to find out
what the franchises are worth, so that the people can know how their property is being given away or sold, or whatever disposition is made of it"; then afterwards such proceedings may be taken as may be required by law.\textsuperscript{13}

Although the 1971 Constitution omits from § 9 of Article VII the language "in such manner as may be provided by law, and shall then act as may be required by law," there is no indication that any substantive change from the 1902 Constitution was intended.\textsuperscript{14} It follows that the purpose of the advertisement and bid provision in § 9 of Article VII is merely to require publicity and that the section does not require that the city or town accept the highest bid.\textsuperscript{15} The General Assembly retains the authority to determine other matters related to a municipality's granting of a franchise for use of the public rights-of-way.

Accordingly, it is my opinion that a city or town may satisfy the requirements of § 9 by advertising and publicly receiving bids from certificated telecommunications providers prior to granting a franchise for a term exceeding five years, notwithstanding the fact that the amount of the bid related to the use of the public rights-of-way is controlled by § 56-468.1. The express requirement in § 15.2-2102 that a locality accept the highest bid does not alter this conclusion. Section 56-468.1(B) begins with the phrase "in lotwithstanding any other provisions of law." This phrase indicates a legislative intent to override any potential conflicts with earlier legislation.\textsuperscript{16}

\textsuperscript{1}Section 9 also requires an affirmative vote of three fourths of the members elected to a city or town governing body before a city or town may sell any rights "in and to its waterfront, wharf property, public landings, wharves, docks, streets, avenues, parks, bridges, or other public places, or its gas, water, or electric works."

\textsuperscript{2}The franchises, leases or rights may not exceed 40 years or, for air rights and easements for columns of support, 60 years. Art. VII, § 9.

\textsuperscript{3}The council may accept a lower bid if, for some reason, the interest of the municipality "makes it advisable to do so." Section 15.2-2102.

\textsuperscript{4}Section 56-468.1 defines "[c]ertificated provider of telecommunications service" as "a public service corporation holding a certificate issued by the State Corporation Commission to provide local exchange or interexchange telephone service."

\textsuperscript{5}See § 56-468.1(C), (D). The Department of Transportation is to calculate the fee annually. Section 56-468.1(C). The telephone company collects the fee by adding it to the ultimate end user's monthly bill and remits the fee either to the Department of Transportation or to the locality that imposes the fee. Section 56-468.1(G), (H)(1)-(2).

\textsuperscript{6}A locality with a franchise agreement or other consent in effect before July 1, 1998, or with an ordinance imposing a franchise fee in effect on February 1, 1997, may choose to continue enforcing the franchise, ordinance or consent for use of the public rights-of-way in lieu of imposing the Use Fee. See § 56-468.1(I). No other provision in the statutes permits a locality to choose between imposing a franchise fee for use of the public rights-of-way or imposing the Use Fee.

\textsuperscript{7}Because Article VII, § 9 applies only to cities and towns, no question is presented as to the constitutionality of the statutes in relation to counties.


\textsuperscript{9}City of Roanoke v. Elliott, 123 Va. 393, 406, 96 S.E. 819, 824 (1918).

\textsuperscript{10}194 Va. 219, 227, 72 S.E.2d 506, 511 (1952) (emphasis added). In accordance with these dictates from the Supreme Court, it has been a long-standing practice of Attorneys General to refrain from

11See 2 Report of the Proceedings and Debates of the Constitutional Convention, State of Virginia, Held in the City of Richmond, June 12, 1901, to June 26, 1902, at 2033-40 (1906) [hereinafter Debates Constitutional Convention].

12Id. at 2033; see also 1 Debates Constitutional Convention, supra, at 3.

132 Debates Constitutional Convention, supra note 11, at 2033.


15See Town of Victoria v. Ice, Etc., Co., 134 Va. 124, 132, 114 S.E. 89, 91 (1922) (purpose of advertisement is to require publicity); see also 2 A.E. Dick Howard, Commentaries on the Constitution of Virginia 855 (1974) (advertisement provision is "to prevent hasty and clandestine moves" by city council).


PUBLIC SERVICE COMPANIES: TELEGRAPH AND TELEPHONE COMPANIES.

TAXATION: LICENSE TAXES.

Locality may impose public rights-of-way use fee and business license tax on telephone company providing telephone exchange service in locality.

The Honorable James L. Williams
Treasurer for the City of Portsmouth
August 16, 1999

You ask whether, if the City of Portsmouth adopts an ordinance imposing a public rights-of-way use fee on telephone companies, the city may continue to collect an annual business license tax on telephone companies conducting a telephone exchange in the city.

Section 56-458(A) of the Code of Virginia grants telephone companies the authority to occupy and use public parks, roads, streets and alleys in any county, city or town for the erection of poles, wires and cables or for laying underground conduits. If the road or street is in the State Highway System or the secondary system of state highways, the company must first obtain a permit from the Commonwealth Transportation Board. Otherwise, the company must obtain the consent of the local governing body. Section 56-458(B) states:

No locality or the Commonwealth Transportation Board shall impose any fees on a certificated provider of telecommunications service for the use of public rights-of-way except in the manner prescribed in § 56-468.1[.]

Section 56-468.1(B) establishes a public rights-of-way use fee chargeable to a provider of telecommunications service. The fee is imposed by the Commonwealth Transportation
Board or by a locality if the streets in the locality are not maintained by the Virginia Department of Transportation. Section 56-468.1(B) provides, in part:

Notwithstanding any other provisions of law, there is hereby established a Public Rights-of-Way Use Fee to replace any and all fees of general application (except for zoning, subdivision, site plan and comprehensive plan fees of general application) otherwise chargeable to a certificated provider of telecommunications service by the Commonwealth Transportation Board in connection with a permit for such occupation and use granted in accordance with § 56-458 or § 56-462. Cities and towns whose public streets and roads are not maintained by the Virginia Department of Transportation, and any county that has withdrawn or elects to withdraw from the secondary system of state highways ... may impose the Public Rights-of-Way Use Fee only by local ordinance.

The enabling legislation for the local assessment of business license taxes is set out in Chapter 37 of Title 58.1. Section 58.1-3703(A) authorizes a locality to adopt an ordinance assessing a business, professional and occupational license ("BPOL") tax on the gross receipts of any person, firm or corporation that is operating a licensable business within the locality. Section 58.1-3731 expressly authorizes a locality to impose the BPOL tax on telephone companies providing a telephone exchange service in the locality.

The rights-of-way use fee and the BPOL tax are dissimilar in purpose and application. The public rights-of-way use fee is imposed on the telephone company's use of the public parks, roads, streets and alleys, with the amount of the fee measured by the number of highway and street miles in the Commonwealth, the number of feet of new installations and the number of access lines in the Commonwealth. In contrast, the BPOL tax is imposed on the telephone company for the privilege of engaging in business in the locality, with the amount of the tax measured by the company's gross receipts accruing from sales to the ultimate consumers in the locality. Moreover, the amounts imposed by a locality under the BPOL statutes constitute a tax rather than a fee.

It is clear that the BPOL tax is neither a fee "for the use of public rights-of-way" under § 56-458(B) nor a fee "of general application ... chargeable ... in connection with a permit for such occupation and use" under § 56-468.1(B). No other language in the public rights-of-way statutes indicates a legislative intent to prohibit a locality that imposes a public rights-of-way use fee from imposing a BPOL tax on a telephone company. Accordingly, it is my opinion that collection of a public rights-of-way use fee on a telephone company under § 56-468.1 is not prevented by the collection of a BPOL tax on the company under § 58.1-3731.

1Section 56-458(A).
2Id.
3Section 56-468.1(B).
Sections 58.1-3700 to 58.1-3735. I assume for purposes of this opinion that the city's present license tax on telephone companies conducting a telephone exchange in the city is imposed pursuant to this enabling legislation.

\textsuperscript{3}See § 56-468.1(C), (D). The Department of Transportation is to calculate the fee annually. Section 56-468.1(C). The telephone company collects the fee by adding it to the ultimate end user's monthly bill and remits the fee either to the Department of Transportation or to the locality that imposes the fee. Section 56-468.1(G), (H)(1)-(2).

\textsuperscript{4}See § 58.1-3700.

\textsuperscript{5}Section 58.1-3731.


\textbf{PUBLIC SERVICE COMPANIES: VIRGINIA ELECTRIC UTILITY RESTRUCTURING ACT.}

Act's definition of "person" may encompass real estate investment trusts formed as legal entities for purpose of allowing public investment in stock issued by entities. Each entity specified in definition is "person" for purposes of Act.

The Honorable William C. Mims
Member, Senate of Virginia
August 31, 1999

You ask whether "person," as defined in § 56-576 of the Code of Virginia, a portion of the Virginia Electric Utility Restructuring Act\textsuperscript{1} (the "Act"), encompasses real estate investment trusts formed as legal entities for the express purpose of allowing the public to invest in stock issued by the entities.

Section 56-576 contains definitions of specific terms used in the Act. The term "person" is defined as "any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any municipality."\textsuperscript{2}

You advise that there are conflicting views regarding apparent limitations imposed on the entities preceding the phrase "or other private legal entity" in the Act's definition of "person." You also ask whether the entities listed would be considered a "person" in view of the "private legal entity" specification in the Act's definition.

You indicate that an interpretation of the Act's definition of "person" is crucial to enable the property management sector of the Virginia real estate industry to continue the unrestricted practice of supplying electric energy to managed buildings and to allow the industry to participate fully in the restructuring of electric utilities in the Commonwealth.

The Supreme Court of Virginia has held that, "[w]hile in the construction of statutes the constant endeavor of the courts is to ascertain and give effect to the intention of the legislature, that intention must be gathered from the words used, unless a literal construction would involve a manifest absurdity."\textsuperscript{3} "[T]he plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction."\textsuperscript{4}
Statutes should not be construed to frustrate their purpose.5

To conclude that the phrase “or other private legal entity” imposes a limitation upon the entities preceding the phrase would, in my opinion, frustrate the purpose of the Act. The central purpose of the Act is to eventually permit all retail electricity customers in the Commonwealth to purchase electric energy from the provider of their choice.6 Transmission and distribution of electric energy will remain regulated services, with transmission regulated principally by the Federal Energy Regulatory Commission and distribution by the State Corporation Commission.7 Additionally, by the year 2001, electric utilities are required to join or establish regional transmission entities to manage and control their transmission assets.8 The apparent intent of the phrase “or other private legal entity” is to distinguish privately owned and operated entities from “the Commonwealth or any municipality.”

This is a matter of first impression. A plain reading of the Act’s definition of “person” does not imply that the General Assembly intended the phrase “or other private legal entity” to impose a limitation on the preceding entities, which clearly are private entities that may be formed to accomplish the purposes of the Act. The phrase “or other private legal entity,” therefore, is not a limitation on such private entities but, rather, is intended to expand the definition of “person” to include all possible private legal entities that may be formed to supply electric energy to retail customers in the Commonwealth.

Therefore, it is my opinion that the term “person” in § 56-576 may encompass real estate investment trusts formed as legal entities for the express purpose of allowing the public to invest in stock issued by the entities. It is also my opinion that each entity specified in the definition is a “person” for purposes of the Act.

---

1Sections 56-576 to 56-595.
2Section 56-576.
6See § 56-577(A)(2).
7See §§ 56-578, 56-580.
9Section 56-576 (defining “person”).

---

STATE WATERS, PORTS AND HARBORS: STATE WATER CONTROL LAW.

CONSERVATION: CHESAPEAKE BAY PRESERVATION ACT.

Lawful adoption of Virginia Pollutant Discharge Elimination System Permit Regulation and Virginia Water Protection Permit Regulation by State Water Control Board. Authority of Board to define “surface water” by regulation to include “wetlands”; inclusion of “nontidal wetlands” within regulatory definitions of “wetlands.” Authority of Chesapeake Bay Local Assistance Board to
establish criteria for protection of water quality within Chesapeake Bay Preservation Areas must not affect authority of State Water Control Board to regulate industrial or sewage discharges pursuant to State Water Control Law. Board’s regulatory authority does not extend beyond § 401 certification over nontidal wetlands.

The Honorable Thomas W. Moss Jr.
Speaker of the House of Delegates
October 7, 1999

You inquire regarding the authority of the State Water Control Board (“Board”) to regulate nontidal wetlands. You express concern regarding nontidal wetland destruction in the Commonwealth resulting from a June 1998 decision of the United States Court of Appeals for the District of Columbia Circuit that limits federal authority to regulate the ditching and draining of nontidal wetlands. You relate that the Virginia Institute of Marine Science estimates that nearly 8,000 acres of nontidal wetlands may be impacted by ditching.

You note that a 1991 opinion of the Attorney General addresses the regulatory authority granted the Board under § 62.1-44.15:5 of the Code of Virginia. You state that § 62.1-44.15:5, a portion of the State Water Control Law, was adopted to implement § 401 of the Clean Water Act of 1977. You indicate that a recent federal court decision removes the basis for the Commonwealth to require a permit pursuant to § 62.1-44.15:5 for certain activities related to the ditching of nontidal wetlands. You relate that the 1991 opinion of the Attorney General does not address the right of the Commonwealth to act absent a federal mandate or prohibition. You note that § 62.1-44.15(3a) explicitly acknowledges that the Board may enact standards of quality or policies “which are more restrictive than applicable federal requirements.” Such standards must be forwarded to the appropriate standing committee of the General Assembly, “together with the reason why the more restrictive provisions are needed.”

The Congress of the United States has enacted laws, and federal agencies have promulgated regulations, protecting water quality in the United States. The Secretary of the Army, acting through the Army Corps of Engineers, issues federal permits for the discharge of dredged or fill material into waters of the United States, including nontidal wetlands. The Commonwealth does not issue permits for such discharge; however, in such instances, § 401 of the Clean Water Act requires that the applicant for the federal permit obtain from the state in which the discharge originates (1) a certification that the discharge will comply with applicable requirements; or (2) a waiver of such certification.

The 1989 Session of the General Assembly created a separate mechanism for such certifications. Section 62.1-44.15:5(A) provides that, “[a]fter the effective date of regulations adopted by the Board pursuant to [§ 62.1-44.15:5], issuance of a Virginia Water Protection Permit shall constitute the certification required under § 401 of the Clean Water Act.” The applicable Board regulation became effective May 20, 1992.

You first ask whether the Board has the authority under state law to define “state waters” or “surface water” to include “wetlands.” The 1991 opinion concludes that the “Board
has the authority to define ‘surface water’ by regulation to include ‘wetlands.’” The presumption in favor of an administrative agency’s regulatory interpretation of the statutes that agency implements remains applicable, and, therefore, I agree with the conclusion of the 1991 opinion.

You next ask whether the Board’s regulations defining “wetlands” as “state waters” were lawfully adopted pursuant to this authority. The regulations to which you refer are the Virginia Pollutant Discharge Elimination System Permit Regulation and the Virginia Water Protection Permit Regulation. It is my view that these regulations, which have been in effect for some time, appear to have been lawfully adopted.

You next ask whether nontidal wetlands are encompassed within the Board’s definition of “wetlands.” Both sets of regulations adopted by the Board contain the same definition of “wetlands”:

“Wetlands” means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Although the term “nontidal wetlands” is not a precise term, it appears to fall within this definition.

Your final questions focus on whether the Board has the authority, other than by § 62.1-44.15:5, to regulate wetlands. The 1991 opinion concludes that the Board’s authority over wetlands is limited to those activities requiring a § 401 certification—a Virginia Water Protection Permit under § 62.1-44.15:5. In reaching this conclusion, the 1991 opinion relies on the refusal of the General Assembly to pass legislation that would have established a comprehensive regulatory program concerning nontidal wetlands. At the 1988 Session of the General Assembly, legislation was introduced which would have authorized the Director of the Department of Conservation and Historic Resources to promulgate regulations protecting nontidal wetlands and to grant permits for activities proposed in or anticipated to adversely affect nontidal wetlands. The bill was carried over to the 1989 Session by the Senate Committee on Agriculture, Conservation and Natural Resources. The Committee proposed substitute legislation in 1989 that would have created a Nontidal Wetlands Study Commission to evaluate existing programs and legislation related to nontidal wetlands. The General Assembly did not pass the substitute bill. However, the Virginia Nontidal Wetlands Roundtable was created, and it reported to the Governor and General Assembly in 1990. In the executive summary the report states, “Roundtable members concluded that while effective management of nontidal wetlands should be of immediate and continuing concern to the Commonwealth, creation of a new regulatory program for the resource may be premature at this time.” I, therefore, concur with the 1991 opinion which inferred from the legislative decisions declining to act that the General Assembly did not intend for the Board to have authority beyond the § 401 certification over nontidal wetlands.
Furthermore, the General Assembly has taken no action in eight years to alter the conclusions of the 1991 opinion. In *Deal v. Commonwealth*, the Supreme Court of Virginia has stated that "[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."25

The 1991 opinion focuses on the general authority of the Board concerning nontidal wetlands. Your inquiry specifically addresses the ditching and draining of wetlands in connection with development.26 You further inquire whether the ditching and draining of wetlands may be regulated pursuant to other provisions of the State Water Control Law.27 Where, as here, the General Assembly has enacted several statutes that appear to bear on the same issue, the task is to ascertain the legislative intent. In its enactment of the Virginia Water Protection Permit statute, § 62.1-44.15:5, the legislature directed a particular program to comply with the § 401 certifications. The Supreme Court repeatedly has affirmed that it is a presumption of statutory construction that, where both general and specific statutes appear to address a matter, the General Assembly intends the specific statute to control the subject.28 Accordingly, I must conclude that the legislature intended the activity you describe to be regulated by the Board to the extent authorized by § 62.1-44.15:5.

There is yet another indication of legislative intent on this matter. The 1988 Session of the General Assembly created the Chesapeake Bay Preservation Act.29 The Act establishes the Chesapeake Bay Local Assistance Board30 to "promulgate regulations which establish criteria for use by local governments to determine the ecological and geographic extent of Chesapeake Bay Preservation Areas."31 The Chesapeake Bay Preservation Act further directs that, "[i]n developing and amending the criteria, the [Chesapeake Bay Local Assistance] Board shall consider all factors relevant to the protection of water quality from significant degradation as a result of the use and development of land."32 Statutes should not be construed to frustrate their purpose.33 In addition, the use of the word "shall" in a statute generally implies that its terms are intended to be mandatory, rather than permissive or directive.34 Finally, when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.35 The express legislative intent is for local governments, with the assistance of the Chesapeake Bay Local Assistance Board, to protect water quality from the effects of land development, at least in the Chesapeake Bay Preservation Areas.

The Chesapeake Bay Preservation Act provides additional guidance concerning the authority granted local governments to protect water quality and that granted under the State Water Control Law:

No authority granted to a local government by [the Chesapeake Bay Preservation Act] shall affect in any way the authority of the State Water Control Board to regulate industrial or sewage discharges under Articles 3 (§ 62.1-44.16 et seq.) and 4 (§ 62.1-44.18 et seq.) of the State Water Control Law (§ 62.1-44.2 et seq.)."36
Under generally accepted principles of statutory construction, the mention of one thing in a statute implies the exclusion of another. The clear implication is that the grant of authority to localities does affect the Board's authority under other articles of the State Water Control Law. The statutes about which you inquire are found in those other articles. This further demonstrates the intent of the General Assembly that the Board's authority in this area be limited to that demanded by the § 401 certification process.

The 1991 opinion concludes that the Board does not have authority to regulate wetlands beyond that contemplated by the § 401 certification process. In light of the indication of legislative intent on which the 1991 opinion relies and the eight-year acquiescence of the General Assembly in that opinion, accepted principles of statutory construction, and the express directive to the Chesapeake Bay Local Assistance Board, I concur in that opinion. Accordingly, the answers to your final four questions are identical: at the present time, the Board may regulate nontidal wetlands only to the extent necessary to carry out its responsibility under § 401 of the Clean Water Act.

1991 Op. Va. Att’y Gen. 307, 311, 312-13 (Board authority to regulate wetlands is limited to those federally permitted activities that require § 401 certification).

Section 62.1-44.15:5 provides:

"A. After the effective date of regulations adopted by the Board pursuant to this section, issuance of a Virginia Water Protection Permit shall constitute the certification required under § 401 of the Clean Water Act.

"B. The Board shall issue a Virginia Water Protection Permit for an activity requiring § 401 certification if it has determined that the proposed activity is consistent with the provisions of the Clean Water Act and will protect in-stream beneficial uses. The preservation of in-stream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, cultural, and aesthetic values is a beneficial use of Virginia’s waters. Conditions contained in a Virginia Water Protection Permit may include, but are not limited to, the volume of water which may be withdrawn as a part of the permitted activity. Domestic and other existing beneficial uses shall be considered the highest priority uses. When a Virginia Water Protection Permit is conditioned upon compensatory mitigation for adverse impacts to wetlands, the applicant may be permitted to satisfy all or part of such mitigation requirements by the purchase or use of credits from any wetlands mitigation bank, including any banks owned by the permit applicant, that has been approved and is operating in accordance with applicable federal and state guidance, laws or regulations for the establishment, use and operation of mitigation banks as long as: (1) the bank is in the same U.S.G.S. cataloging unit, as defined by the Hydrologic Unit Map of the United States (U.S.G.S. 1980), or an adjacent cataloging unit within the same river watershed, as the impacted site, or it meets all the conditions found in clauses (i) through (iv) and either clause (v) or (vi) of this subsection; (2) the bank is ecologically preferable to practicable on-site and off-site individual mitigation options, as defined by federal wetland regulations; and (3) the banking instrument, if approved after July 1, 1996, has been approved by a process that included public review and comment. When the bank is not located in the same cataloging unit or adjacent cataloging unit within the same river watershed as the impacted site, the purchase or use of credits shall not be allowed unless the applicant demonstrates to the satisfaction of the Department of Environmental Quality that (i) the impacts will occur as a result of a Virginia Department of Transportation linear project or as the result of a locality project for a locality whose jurisdiction crosses multiple river watersheds; (ii) there is no practical same river watershed mitigation alternative; (iii) the impacts are less than one acre in a single and complete project within a cataloging unit; (iv) there is no significant harm to water quality or fish and wildlife resources within the river watershed of the impacted site; and either (v) impacts within the Chesapeake Bay watershed are mitigated within the Chesapeake Bay watershed as close as possible to the impacted site or (vi) impacts within U.S.G.S. cataloging units 02080108, 02080208, and 03010205, as defined by the Hydrologic Unit Map of the United States (U.S.G.S. 1980), are mitigated..."
in-kind within those hydrologic cataloging units, as close as possible to the impacted site. After July 1, 2002, the provisions of clause (vi) shall apply only to impacts within subdivisions of the listed cataloging units where overlapping watersheds exist, as determined by the Department of Environmental Quality, provided the Department has made such a determination by that date.

"C. Prior to the issuance of a Virginia Water Protection Permit, the Board shall consult with, and give full consideration to the written recommendations of, the following agencies: the Department of Game and Inland Fisheries, the Department of Conservation and Recreation, the Virginia Marine Resources Commission, the Department of Health, the Department of Agriculture and Consumer Services and any other interested and affected agencies. Such consultation shall include the need for balancing instream uses with offstream uses. Agencies may submit written comments on proposed permits within forty-five days after notification to the written recommendations of the Department of Agriculture and Consumer Services and any other interested and affected agencies. Such consultation shall include the need for balancing instream uses with offstream uses. Agencies may submit written comments on proposed permits within forty-five days after notification by the Board. The Board shall assume that if written comments are not submitted by an agency within this time period, the agency has no comments on the proposed permit.

"D. No Virginia Water Protection Permit shall be required for any water withdrawal in existence on July 1, 1989; however, a permit shall be required if a new § 401 certification is required to increase a withdrawal.

"No Virginia Water Protection Permit shall be required for any water withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal has received a § 401 certification before January 1, 1989, with respect to installation of any necessary withdrawal structures to make such withdrawal; however, a permit shall be required before any such withdrawal is increased beyond the amount authorized by the certification."

1Tit. 62.1, ch. 3.1, §§ 62.1-44.2 to 62.1-44.34:28.
3National Min. Ass'n v. U.S. Army Corps of Engineers, 145 F.3d 1399 (D.C. Cir. 1998) (holding that Corps of Engineers exceeded scope of its regulatory authority under Clean Water Act by regulating incidental "fallback," i.e., de minimis redeposit of dredged material, including excavated material, at its point of removal from water).
4Section 62.1-44.15(3a).
11See 9 VAC 25-31-10 (West Supp. 1999); 9 VAC 25-210-10.
13See cite supra note 10.
14See supra notes 10 & 14 and accompanying text.
15See supra note 13.
16Specifically, you ask: (1) whether ditching and draining of nontidal wetlands constitute an alteration of "the physical, chemical or biological properties of ... state waters," which is prohibited under § 62.1-44.5, "[e]xcept in compliance with a certificate issued by the Board"; (2) whether the Board has the authority under § 62.1-44.15(5) to require a permit for the ditching and draining of nontidal wetlands as an "alteration ... of the physical, chemical or biological properties of state waters"; (3) whether the Board has the authority under § 62.1-44.15(3a) and 9 VAC 25-380-30(B) to establish standards and policies and to "take all appropriate steps" to prevent ditching and dredging of nontidal wetlands; and (4) whether the Board has the authority under § 62.1-44.15(8a) to issue a cease and desist order to parties currently engaged in ditching and draining of nontidal wetlands or to seek injunctive relief against such actions.
18See H.B. 1037 (introduced Mar. 7, 1988) (§§ 10-262.3(2), 10-262.4).
19See id.
See id. (proposed Jan. 16, 1989).


Id. at 2.


In particular, your inquiry arises from the decision in National Mining Association v. U.S. Army Corps of Engineers, which invalidated an effort by the U.S. Army Corps of Engineers to require a § 404 permit for any discharge, including the "incidental fallback" that accompanies dredging operations. One example of "incidental fallback" occurs "during dredging, 'when a bucket used to excavate material from the bottom of a river, stream, or wetland is raised and soils or sediments fall from the bucket back into the water.'" 145 E3d at 1403 (quoting plaintiff's briefs). The court held that the excavation of material is not a discharge where only a small portion of the material happens to fall back. Id. at 1404. For the five years from the Corps' promulgation of a rule regulating incidental fallback until the decision in this case, the federal government required a § 404 permit; state certification under § 401 also was required. During that interim, the activity about which you inquire required a Virginia Water Protection Permit under § 62.1-44.15:5. I note that the National Mining Association decision addresses the situation where excavated material is hauled away; the filling of wetlands, e.g., the placement of excavated material into wetlands, without a permit remains prohibited.

See e.g., § 62.1-44.15(3a), (5), (8a).


Section 10.1-2102.

Section 10.1-2107(A).

Section 10.1-2107(B) (emphasis added).


Section 10.1-2113.


TAXATION: GENERAL PROVISIONS OF TITLE 58.1.

"Line of duty" exclusion to prohibition against commissioner of revenue divulging personal property tax information is applicable to city revenue office employees. Commissioner is not prohibited from disclosing to another city revenue office information regarding year, make, model and assessed value of delinquent taxpayers' vehicles and whether taxes on such vehicles have been prorated or exonerated, to enable employees to perform duty under city code of collecting delinquent taxes.

The Honorable Marsha Compton Fielder
Commissioner of the Revenue for the City of Roanoke
January 20, 1999
You ask whether, in the circumstances you describe, § 58.1-3 of the Code of Virginia prohibits a commissioner of the revenue from providing employees of another city office access to confidential personal property files and records.

You state that the City of Roanoke has an office of billings and collections ("OBC") which is under the supervision of the director of finance and which has the responsibility under the city code to collect delinquent personal property taxes. While OBC currently has access to the name of the person assessed, the bill number and the amount due, you state that OBC wants access to the year, make, model and assessed value of each vehicle that a taxpayer owns and information regarding whether the personal property taxes for each vehicle have been prorated or exonerated. OBC represents that, by enabling it to provide the delinquent taxpayer specific information about the basis for the bill and to confirm or deny the accuracy of a delinquent taxpayer's statements at the outset, the information would assist OBC's collection of delinquent taxes.

Section 58.1-3(A) provides that, "[e]xcept in accordance with proper judicial order or as otherwise provided by law," a commissioner of the revenue shall not divulge any information acquired in the performance of his duties which relates to a person's personal property. While § 58.1-3 contains various exceptions to the prohibition, only two apply to the facts you present: (1) "[m]atters required by law to be entered on any public assessment roll or book;" and (2) "[a]cts performed or words spoken or published in the line of duty under the law." You indicate that the information OBC requests is not entered on any public assessment roll or book.

Thus, unless the disclosure is permitted under the "line of duty" exclusion, you may not provide OBC access to the information.

Prior opinions of the Attorney General conclude that the line of duty exclusion permits local tax or revenue officers to divulge taxpayer information to other local tax or revenue officers or employees necessary for the performance of the officers' or employees' duties. A 1974 opinion also concludes that employees of a division within a city's department of finance are employees of a local revenue officer for purposes of the exclusion. Accordingly, it is my opinion that § 58.1-3 does not prohibit you from providing OBC information or access to information regarding the year, make, model and assessed value of delinquent taxpayers' vehicles and regarding whether the personal property taxes on the vehicles have been prorated or exonerated. This information will enable OBC to perform its duty of collecting delinquent taxes.

1Section 58.1-3(A)(1)-(2).


3See Op. Va. Att'y Gen.: 1984-1985 at 397, 398 (commissioner may disclose taxpayer's social security number to county treasurer for collection of delinquent taxes under Setoff Debt Collection Act because Act requires treasurer to submit social security numbers to Department of Taxation); 1982-1983 at 603, 604 (tax official may disclose information in aid of recovery of delinquent taxes to attorney hired to collect taxes within line of duty exclusion); 1975-1976 at 394, 395 (in light of complementary nature of duties of commissioner in assessing value of personal property and treasurer in collecting personal property taxes, commissioner's transfer of tax return of taxpayer to treasurer is within line of duty exception); 1957-1958 at 275, 276 (commissioner may permit delinquent tax collector hired by county to examine personal property return of any delinquent taxpayer who disputes correctness of tax bill).
1. See 1974-1975 Op. Va. Att’y Gen. 524, 525 (employees of city’s data processing division are employees of city’s department of finance and are thus employees of revenue officer; commissioner may grant such employees access to gross receipts information to enable division to process business license tax forms).

2. Because OBC’s duty is to collect delinquent personal property taxes, only the files and records containing personal property tax information of delinquent taxpayers that will assist OBC in performing its duty may be disclosed. See 1957-1958 Op. Va. Att’y Gen., supra note 3, at 275-76. OBC employees are obligated to protect the confidentiality of the information the same as though they were tax officials. See § 58.1-3(A); 1982-1983 Op. Va. Att’y Gen., supra note 3, at 604.

TAXATION: LICENSE TAXES.

For business license tax purposes, funds travel agency disburse on behalf of clients for travel and accommodation are not included in agency’s gross receipts. Funds travel agency receives from travel package it purchases and resells to clients at increased price would be included in agency’s gross receipts. Determination whether funds travel agency receives from its clients constitute gross receipts lies with commissioner of revenue and depends on nature of transaction among agency, its clients and recipients of funds.

The Honorable Philip J. Kellam
Commissioner of the Revenue for the City of Virginia Beach
September 14, 1999

You ask under what circumstances the funds handled by travel agencies are excluded from gross receipts under the business license tax provisions of Chapter 37 of Title 58.1, §§ 58.1-3700 through 58.1-3735 of the Code of Virginia.

You state that travel agencies operate by accepting funds from clients, forwarding the funds to the appropriate airline, cruise line or hotel, and receiving a commission on the transaction. You ask whether the funds forwarded to the airline, cruise line or hotel are to be included in the travel agencies’ gross receipts for business license tax purposes.

Section 58.1-3700.1 defines “gross receipts” as “the whole, entire, total receipts, without deduction.” Prior opinions of the Attorney General conclude that, under certain circumstances, the term does not include funds which the business receives and disburse as the agent for another.1 Thus, the term does not include monies that an attorney receives from a client and places in an escrow account, such as in the settlement of a real estate sales transaction, or monies that a client submits to reimburse the attorney for the payment of court costs and fees.2 The attorney is merely handling funds as the agent for his client and is not receiving funds for the rendering of services.

Neither does the term include funds a corporation receives from foreign clients and disburse to the clients’ United States vendors, although the management fee charged the clients for processing the orders and disbursing the funds constitutes gross receipts.3 Likewise, investment assets managed by a mutual fund management company, which remain the funds of the clients, are not deemed a part of the company’s gross receipts.4 As noted in the opinions, “gross receipts are not subject to a local gross receipts tax when the taxpayer acts as the agent or fiduciary for another in receiving and disbursing money on behalf of a person or entity other than the taxpayer.”5
Whether a business acts as a disbursing agent on behalf of another is a determination of fact to be made by the local commissioner of the revenue. In the case of *Alexandria v. Morrison-Williams Associates, Inc.*, the Supreme Court of Virginia considered the operations of an advertising agency that placed its clients' advertisements with media sources. The media sources billed the advertising agency for the costs of the advertisements, and the advertising agency billed the clients for these costs plus its commissions. Upon review of all of the facts, the Court held that the advertising agency did not act merely as a disbursing agent for its clients and that, therefore, the amount the clients paid the agency for the media costs was included within the agency's gross receipts. The clients had no contact with the media sources and were under no obligation to pay the media should the advertising agency fail to pay. The media costs were viewed as an expense of the advertising agency incurred in connection with its providing a service to its clients.

Whether the funds a travel agency receives from its clients for payment to the airlines, cruise lines or hotels constitute gross receipts likewise will depend on the nature of the transaction among the agency, its clients and the recipients of the funds. If the clients submit funds to the travel agency for the agency to disburse to the intended recipients on the clients' behalf, with the clients' paying a separate fee to the travel agency for the services the agency renders the clients, it is my view that the funds the agency disburses to the recipients would not be included in the agency's gross receipts. If, on the other hand, the travel agency provides a product that includes travel expenses and accommodations which the agency, in effect, purchases and resells to its clients at an increased price, the reasoning of the Court in *Alexandria v. Morrison-Williams* suggests that the total cost to the client would be included in the travel agency's gross receipts. The final determination is to be made by you as commissioner of the revenue upon consideration of all of the facts.

---

7. 223 Va. 349, 288 S.E.2d 482 (1982).
8. The Court viewed the transaction as analogous to a wholesale retail operation, in which the retailer purchases goods from a wholesaler and sells to the public at a marked-up price. Id. at 351, 288 S.E.2d at 484.

---

**TAXATION: LICENSE TAXES — REVIEW OF LOCAL TAXES.**

Decision whether company that assembles materials is manufacturer is question of fact to be resolved by commissioner of revenue analyzing such factors as type of materials being assembled, complexity of process, and product resulting from assembly. Locality is not liable for payment of interest on refund of erroneously assessed BPOL taxes for license years prior to Jan. 1, 1997.
The Honorable Ray A. Conner
Commissioner of the Revenue for the City of Chesapeake
June 7, 1999

You ask whether an assembly plant doing business in the City of Chesapeake is a manufacturer under § 58.1-3703(C)(4) of the Code of Virginia.

Section 58.1-3703(C)(4) prohibits a locality from assessing a business, professional and occupational license ("BPOL") tax "[o]n a manufacturer for the privilege of manufacturing and selling goods, wares and merchandise at wholesale at the place of manufacture." The BPOL statutes do not define the term "manufacturer," and the question often arises regarding whether the activity of a business constitutes manufacturing for purposes of the § 58.1-3703(C)(4) exemption.

Whether a business is engaged in manufacturing is a question of fact to be resolved on a case-by-case basis by the commissioner of the revenue. You provide the following facts regarding the assembly plant in Chesapeake. The plant is a national company headquartered in Michigan. The plant produces automotive seating for Ford pickup trucks according to specifications provided by the Ford Motor Company. The Chesapeake plant obtains parts and materials from subsidiary suppliers and independent manufacturers. Various types of mechanical equipment are used to assemble the seating components. The seats are transferred from one workstation to the next by conveyor belt or similar device until the process is complete. The seats are then ironed, cleaned, wrapped and shipped to the Ford Motor Company's plant in Norfolk. Quality engineers at the Chesapeake plant devise and implement operational tests on the seats. A plant production engineer assists with design of the seats in conjunction with the principal design services performed at the Michigan headquarters.

You state that it is your view that the company engages in an assembly process and that, because there is no transformation of the character of the original materials, the company is not a manufacturer for purposes of § 58.1-3703(C)(4). You believe this view to be consistent with the definition of "manufacturer" that the Supreme Court of Virginia has traditionally applied. You question, however, whether the BPOL guidelines issued by the Department of Taxation and a recent advisory opinion of the State Tax Commissioner expand the term "manufacturer" beyond its meaning as interpreted by the Supreme Court.

The Supreme Court has held that manufacturing contains three components: (1) a raw or original material; (2) a process whereby the material is changed; and (3) a resulting product that is different in character from the original material. Although the Court has applied this test to various types of business activities, I am aware of no case in which the Court has considered directly whether the assembly of parts into a finished product constitutes manufacturing.

Moreover, while numerous prior opinions of the Attorney General also consider whether a particular business is engaged in manufacturing under the tax statutes, only one opinion applies the manufacturing test to an assembly process. The opinion considers
whether the assembly of precut furniture kits constitutes manufacturing and concludes that the assembly is not manufacturing. The opinion notes that the original kit, without assembly, would be usable by consumers and that the company's assembly for the consumer merely enhances the item, i.e., the furniture kit, without changing its character.

Appendix B of the BPOL guidelines provides the following guidance on whether the assembly of products is manufacturing:

The assembly of purchased components may or may not constitute manufacturing. Routine assembly generally is not manufacturing. For example, if components are sold separately and assembly is offered as an option to the purchaser, the assembly is a service (which may or may not be ancillary to the sale of the component, or de minimis). When evaluating the facts and circumstances to determine if a business is engaged in manufacturing, factors which suggest that assembly is not a separate service but part of a manufacturing process include, but are not limited to, any one or more of the following:

(i) The assembly process is complex and uses numerous parts.

(ii) After assembly the components cannot be recognized without previous knowledge.

(iii) The components are not readily usable for any purpose other than incorporation into the finished product.

In a 1998 advisory opinion, the Tax Commissioner applied these guidelines to a company that assembled component parts into a computer and advised that the company was engaged in manufacturing. The Commissioner considered both the complexity of the assembly process and the essential difference between the original material and the resulting product.

An argument can be made that the assembly of materials lacks the "processing" component necessary for manufacturing to occur. No Virginia cases expressly so hold. Moreover, the Court has held that the manufacturing exemption is to be liberally construed in furtherance of the state's public policy of encouraging manufacturing in the Commonwealth. Accordingly, it is my view that such a narrow interpretation should not be adopted unless clearly directed by the Court's rulings.

The Court has held that (1) the pasteurization of milk is not manufacturing because it does not alter the substantial form and character of raw milk; (2) the slaughtering and cleaning of chickens is not manufacturing because it does not transform the chickens into a different product and (3) the crushing and grading of sand and gravel is not manufacturing because neither the sand nor rock is changed into a product of substantially different character. The primary focus of the analysis in each of these cases is whether, through subjecting materials to a process, a product results that is different from the original materials. While each case concluded that the process did not result in the transformation of one product into a substantially different product, I do not
believe that the cases direct a conclusion that the assembly of original materials into a different product cannot be deemed manufacturing or that, in order for such assembly to constitute manufacturing, the original materials must themselves undergo a transformation in character. Accordingly, it is my opinion that, in light of the Court's liberal construction mandate, neither the BPOL guidelines nor the Commissioner's advisory opinion are in conflict with Supreme Court rulings interpreting the term "manufacturer." 18

Whether a company engaged in the assembly of materials is or is not a manufacturer remains a question of fact and will depend on an analysis of such factors as the type of materials being assembled, the complexity of the process, and the product resulting from the assembly. It is my opinion that the facts you provide in your letter would support a conclusion that the company is engaged in manufacturing for purposes of § 58.1-3703(C)(4). The final decision, however, must be made by you as the commissioner of the revenue upon consideration of all of the facts. 19

You ask also whether, should the company be entitled to a refund for the BPOL taxes paid for the years 1995 through 1998, the city must add interest to the refund for tax years preceding January 1, 1997. Amendments to the BPOL statutes adopted at the 1996 Session of the General Assembly include the addition of § 58.1-3703.1. 20 The amendments to the BPOL taxes are effective generally for license years beginning on and after January 1, 1997. 21

Section 58.1-3703.1(A)(2) contains the provisions regarding the due dates for payment of the license tax and the imposition of penalties and interest. Section 58.1-3703.1(A)(2)(e) provides that "[i]nterest shall be paid on the refund of any BPOL tax from the date of payment or due date, whichever is later, whether attributable to an amended return or other reason." It is clear under this provision that, for license years beginning on and after January 1, 1997, the locality must pay interest on the refund of any erroneously assessed license taxes.

Section 58.1-3703.1(B)(2) provides, however, that "[t]he provisions of this section relating to penalties, interest, and administrative and judicial review of an assessment shall be applicable to assessments made on and after January 1, 1997, even if for an earlier license year." If the language "assessments made" applies not only to assessments made by the tax officials but also to a taxpayer's request for a refund, it would appear that a locality would be liable for the payment of interest on the refund of taxes assessed for license years prior to 1997. 22 It is my opinion, however, that the amendments to the BPOL statutes do not indicate that the legislature intended this conclusion.

The Supreme Court of Virginia has repeatedly held that, "[i]n the absence of statutory authority allowing payment of interest, it is not recoverable from the government upon refund of taxes erroneously assessed, collected and ordered refunded." 23 Likewise, § 58.1-3991 requires a locality that chooses to pay interest on the refund of erroneously assessed taxes to adopt an ordinance so providing. Assuming for purposes of this opinion that the city has not adopted such an ordinance or elected to have the BPOL amendments
apply to an earlier tax year, interest may be paid on the refund of BPOL taxes paid or due before January 1, 1997, only if authorized by § 58.1-3703.1(B)(2).

In my opinion, § 58.1-3703.1(B)(2) does not indicate a clear legislative intent to impose retroactive interest payment liability on local governments. The imposition of such retroactive liability results only if the legislature intended the language "assessments made" in § 58.1-3703.1(B)(2) to include a taxpayer's request for a refund or filing of an amended return. Moreover, the effect of this broadened interpretation would be to impose interest payment liability on a local government for a period during which there was no statutory authority for the payment. Absent a clearer indication of legislative intent, it is my opinion that a locality is not liable for the payment of interest on the refund of the BPOL taxes for years prior to 1997.


The present guidelines were issued in 1997. See DEPARTMENT OF TAXATION, GUIDELINES FOR LOCAL BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE TAXES (Jan. 1, 1997) [hereinafter BPOL guidelines]. "After July 1, 2001, the [BPOL] guidelines shall be subject to the Administrative Process Act and accorded the weight of a regulation under § 58.1-205." Section 58.1-3701. The present Guidelines are issued "for the use of local governments in administering the taxes imposed" under the BPOL statutory scheme. Id.

Section 58.1-3701 authorizes the Tax Commissioner to issue advisory written opinions in specific cases to interpret the BPOL statutes and guidelines.


See Solite Corp. v. King George County, 220 Va. 661, 261 S.E.2d 535 (1980) (quarrying, crushing, washing and grading to remove impurities, and segregating sand and gravel into various grades, does not constitute manufacturing); Prentice v. City of Richmond, 197 Va. at 730-31, 90 S.E.2d at 843-44 (chicken processing operation is not manufacturing); Commonwealth v. Meyer, 180 Va. 466, 23 S.E.2d 353 (1942) (process by which hog on hoof becomes hams, shoulders, sausage and other articles of commerce fit for consumption is manufacturing); Richmond v. Dairy Co., 156 Va. 63, 157 S.E. 728 (1931) (pasteurization of milk and production of buttermilk are not manufacturing).

See, e.g., Op. Va. Att'y Gen.: 1996 at 214 (embroidering images on tee shirts and converting them into outerwear may constitute manufacturing); 1995 at 257 (transforming water into fruit-flavored liquid drink is manufacturing); id. at 254 (process of electroplating items is not manufacturing); 1993 at 231 (seafood processor who transforms unusable product into usable product is manufacturer); 1991 at 248 (business primarily providing software development is not engaged in manufacturing); 1985-1986 at 287 (removing tack from fiber and rewinding fiber on cone is not manufacturing); 1984-1985 at 399, 400 (grading and packing herbs is not manufacturing unless raw material consists of plants that are dried, crushed, graded and packaged); id. at 356 (processing 15 products into cement-related products is blending together of ingredients and is not manufacturing).


The opinion reasons that the assembly is not manufacturing because (1) it does not involve a raw material that is changed in any manner; (2) there is no substantial transformation into a new or different product; and (3) the finished product is not different from the original raw materials. 1996 Op. Va. Att'y Gen., supra, at 213.


The Commissioner also noted that, in considering similar facts, the Circuit Court of Fairfax County had ruled that such computer assembly constituted manufacturing. See id. at 15,398-99 (citing Fairfax County v. DataComp Corp., 36 Va. Cir. 60 (1995)).

See Solite Corp. v. King George County, 220 Va. at 665, 261 S.E.2d at 537 (blending together of various ingredients, absent transformation into substantially different product, is not manufacturing).
In *State Tax Commissioner v. Flow Research Animals*, 221 Va. 817, 820, 273 S.E.2d 811, 813 (1981), and *Commonwealth v. Orange-Madison Cooperative Farm Service*, 220 Va. 655, 658, 261 S.E.2d 532, 534 (1980), the Court defined "processing" as subjecting a product to a treatment rendering the product more marketable or usable. These cases deal with the exemption from the retail sales and use tax for equipment used in industrial processing and have limited relevance to questions regarding the manufacturing exemption.


"See Prentice v. City of Richmond, 197 Va. at 730-31, 90 S.E.2d at 843-44.

"See Solite Corp. v. King George County, 220 Va. at 665, 261 S.E.2d at 537-38.

"A prior opinion considering the BPOL guidelines recognizes that constructions placed on the law by agencies charged with administrative duties in connection with the law are entitled to great weight, especially when the agency has been charged by the General Assembly with construing individual statutes that constitute part of a complex statutory scheme. See 1997 Op. Va. Att'y Gen. 176, 179.

"Should you determine that only a portion of the company's activities constitute manufacturing, the business would be classified as a manufacturer if such activities are substantial in comparison to the company's remaining activities. See County of Chesterfield v. BBC Brown Boveri, 238 Va. at 70-72, 380 S.E.2d at 893-94. To be considered substantial, the manufacturing activities must not be "de minimis, merely trivial, or only incidental to its principal business." Id. at 71, 380 S.E.2d at 893-94.


"See id. cl. 3, 4, at 1244, 1258.

The Department of Taxation has concluded in several advisory opinions that a taxpayer's request for a refund constitutes an assessment and that, therefore, interest would be due on any refund paid pursuant to a taxpayer's request for a refund made on or after January 1, 1997, even if the request is for taxes paid for a year prior to January 1, 1997. See 2 Va. Tax Rep. (CCH) ¶ 203-382, Comm'r Rul. 97-129 (Mar. 19, 1997); see id. ¶ 203-524, Comm'r Rul. 97-273, at 14,916 (June 16, 1997). Section 58.1-3700.1 defines "assessment" generally to include not only assessments by the assessing official but also self-assessments by the taxpayer.


---

**TAXATION: LOCAL TAXES — LOCAL OFFICERS — COMMISSIONERS OF THE REVENUE**

**CONSTITUTION OF VIRGINIA: LOCAL GOVERNMENT (COUNTRY AND CITY OFFICERS).**

**ADMINISTRATION OF GOVERNMENT GENERALLY: PRIVACY PROTECTION ACT OF 1976.**

Local tax official, and not governing body, has discretionary authority to decide whether to require disclosure of taxpayers' social security numbers. City council has no authority to direct commissioner of revenue to ascertain social security numbers of all taxpayers subject to local taxation in city.

The Honorable Brenda B. Rickman
Commissioner of the Revenue for the City of Franklin
September 9, 1999

You ask whether a city council may require the commissioner of the revenue to ascertain the social security numbers of all taxpayers subject to local taxation in the city.
You relate that the City Council for the City of Franklin has adopted an ordinance directing that the county assessing official obtain and record, among other things, the social security number of all taxpayers for tax assessment, billing and collection purposes. In your capacity as commissioner of the revenue, you do not ascertain taxpayer social security numbers and, to do so, would require you to contact each taxpayer.

Pursuant to Article VII, § 4 of the Constitution of Virginia (1971), the commissioner of the revenue is a constitutional officer whose duties "shall be prescribed by general law or special act" of the General Assembly. The duties of the commissioner of the revenue are set out specifically in Article 1, Chapter 31 of Title 58.1, §§ 58.1-3100 through 58.1-3122.2 of the Code of Virginia, as well as generally in Titles 15.2 and 58.1.

Absent specific legislation, local governing bodies have no authority to specify the duties of constitutional officers. Additionally, numerous prior opinions of the Attorney General conclude that local governing bodies have no authority to supervise or intervene in the management and control of a constitutional officer's duties. These opinions support the long-standing rule that constitutional officers are independent of their respective localities' management and control.

Dillon's rule of statutory construction generally limits powers of local governing bodies to those conferred expressly by law or by necessary implication from express grants. The city ordinance at issue cites as its derivative authority § 58.1-3017, which provides:

Notwithstanding any other provision of law, a tax official of any county, city or town may require disclosure of the social security account number of a taxpayer for any purpose relating to local taxes administered by such official, including verification of the identity of any individual. Such numbers shall be regarded as confidential tax information. [Emphasis added.]

The plain language of this statute grants the authority to require a taxpayer's social security number to a tax official of a locality, and not to the governing body of such locality. Furthermore, this statute provides the "tax official" the discretion to determine whether or not to require the social security number. Section 58.1-3017 thus authorizes a locality's tax official, not its local governing body, to decide whether to require the number. Accordingly, it is my opinion that the city council's reliance on this statute as its authority to require taxpayers' social security numbers is misplaced.

Additionally, § 2.1-385 of the Privacy Protection Act of 1976 prohibits state and local government entities from requiring the disclosure or furnishing of an individual's social security number unless such is required by federal or state law, or the social security number previously was disclosed or furnished to the requesting entity prior to July 1, 1977. Inasmuch as § 58.1-3017 enables only "a tax official" to require a taxpayer to disclose his social security number and you indicate that such numbers have not previously been disclosed, the exception provided in this section to its general prohibition against requiring individuals to furnish their social security numbers does not apply to the ordinance in question.
Based on the above, it is my opinion that a city council does not have the authority to
direct the commissioner of the revenue to ascertain the social security numbers of all
taxpayers subject to local taxation in the city.

2Id. at 48 and opinions cited at 50 n.2.
3Id. at 48.

TAXATION: MISCELLANEOUS TAXES — CONSUMER UTILITY TAXES.

Town has authority to impose consumer utility tax on its residents. County in which town is
located may not impose its consumer utility tax on residents of town if town also imposes tax and
provides police or fire protection and water or sewer services, or formerly provided latter
services now furnished by county per county/town agreement.

Ms. Nita K. Stanley
Town Attorney for the Town of Ridgeway
September 28, 1999

You ask whether, pursuant to § 58.1-3812 of the Code of Virginia, a town has the
authority to impose a consumer utility tax on consumers of local telecommunication
service. Assuming it may do so, you then inquire whether the county in which the town
is located also may impose its consumer utility tax on the residents of the town. You
relate that the town provides police protection in addition to the general county-wide
police protection by the county in which it is located. You also relate that although the
town provided water service to its residents in the past, water service currently is provided
by the county public service authority pursuant to an agreement between the county
and town.

Section 58.1-3812(A) authorizes "[a]ny county, city or town" to impose a tax on con-
sumers of telecommunication service "if the consumer's service address is located in
such county, city or town." This statute also prescribes the applicable fee structure for
such tax. Section 58.1-3812(C) provides:

Any county tax imposed [under § 58.1-3812] shall not apply within
the limits of any incorporated town located within such county which
town imposes a town tax authorized by this section, provided that such
town (i) provides police or fire protection, and water or sewer services,
provided that any such town .. which formerly provided water and
sewer services and is now served by the county in which it is located pursuant to an agreement between the town and the county shall be deemed to be providing such water or sewer services itself.... [Emphasis added.]

A prior opinion of the Attorney General concludes that § 58.1-3812(A) grants the authority for counties, cities, and towns to impose a tax upon local telephone service. Accordingly, all towns may impose the § 58.1-3812 tax whether or not they provide any police, fire, water, or sewer services. The answer to your first inquiry, therefore, is that a town has the authority to impose the § 58.1-3812 consumer utility tax on its residents.

With respect to your second inquiry, a county consumer utility tax applies within a town that also imposes such tax unless the town comes within the purview of § 58.1-3812(C). If a town meets the criteria contained therein, its residents cannot be subject to the utility tax imposed by the county. Otherwise, both taxes are applicable to town consumers.

Section 58.1-3812(C) generally excepts town consumers from county consumer utility tax if such town provides police protection and water, or police protection and sewer, or fire protection and water, or fire protection and sewer. Under the facts you present, the town in issue currently provides police protection only. Thus, the town does not fall within this initial proviso.

Section 58.1-3812(C)(i) deems a town a provider of water or sewer services if such town formerly provided water and sewer services but no longer does so because the town is served by the county pursuant to an agreement between the two localities. The town in issue formerly provided water, but not sewer, services.

Statutes granting the power of taxation to localities are to be strictly construed, with any reasonable doubt to be resolved against the taxation. Indeed, the authority of a locality to impose a tax must be clear. Although it may be argued that statutes granting exemptions from tax must be strictly construed and thus the town must have formerly provided water and sewer services in order for the town to come within the condition set forth in § 58.1-3812(C)(i), the exception provided in clause (i) is not deemed to be an exemption from the consumer utility tax, but, instead, is a limitation on the county's authority to impose a tax on town residents who already are paying the tax.

It is my opinion, therefore, that a town that provides police protection and which formerly provided water services to its residents who are now served by the county for such services pursuant to an agreement between the town and county meets the relevant conditions set forth in § 58.1-3812(C)(i), notwithstanding the use of the words "and" as well as "or" throughout the statute.

My conclusion is supported by § 58.1-3814(C), a comparable statute to § 58.1-3812(C). Section 58.1-3814(A) authorizes any county, city or town to impose consumer utility taxes on the consumers of services provided by "any water or heat, light and power company." Section 58.1-3814(C), however, provides that any such county tax imposed on consumers
shall not apply within the limits of any incorporated town located within such county which town imposes a town tax on consumers of utility service or services [under § 58.1-3814 (A)], provided that such town (i) provides police or fire protection, and water or sewer services, provided that any such town ... served by the county in which the town is located when such service or services are provided pursuant to an agreement between the town and county shall be deemed to be providing such water and sewer services itself .... [Emphasis added.]

As with § 58.1-3812(C), "and" and "or" appear throughout the statute and do not appear to evidence a particular intent to define the provision of water/sewer services in one manner over another. Reading § 58.1-3812(C) and § 58.1-3814(C) together so that one may be harmonized with the other, it is my opinion that the exceptions provided in those statutes are applicable to a town which currently provides police or fire protection and which formerly provided either water or sewer services which are now provided by the county pursuant to an agreement between the town and county.

Accordingly, under the facts you present, a county may not impose the § 58.1-3812 consumer utility tax on residents of an incorporated town located within the county, if the town also imposes the § 58.1-3812 consumer utility tax.

1Because you do not provide any information on the provision of fire protection and sewer service by the town, I assume that neither is provided to the town residents by the town.
2"Service address" is "the location of the telecommunication equipment from which the telecommunication is originated or at which the telecommunication is received by a consumer." Section 58.1-3812(J).
4Id.
8Id. at 453.
10Id.
13Compare 1997 Op. Va. Att'y Gen. 99, 100 & 101 n.9 (noting that, under strict construction of statute, use of conjunctive "and" generally indicates connection between words whereas use of disjunctive "or" indicates two separate instances).
TAXATION: MISCELLANEOUS TAXES - CONSUMER UTILITY TAXES.

PUBLIC SERVICE COMPANIES: PAY TELEPHONE REGISTRATION ACT.

Authority of locality to impose consumer utility tax must be clear. Because provider of pay telephone service is not “consumer” subject to imposition of tax for services provided by telephone company, owner of pay telephones is not subject to tax.

The Honorable Ross A. Mugler
Commissioner of the Revenue for the City of Hampton
June 8, 1999

You ask whether the owners of pay telephones are subject to the consumer utility tax imposed pursuant to § 58.1-3812 of the Code of Virginia. For the purposes of this opinion, I shall assume that you are referring to persons falling within the purview of the Pay Telephone Registration Act who provide “payphone service.”

Section 58.1-3812 authorizes the imposition of a local tax upon the consumers of utility services provided by telegraph and telephone companies. Section 58.1-3812(J) defines “consumer” to mean “a person who, individually or through agents, employees, officers, representatives, or permittees, makes a taxable purchase of local telecommunication services.” “Taxable purchase” is defined as “the acquisition of telecommunication services for consumption or use.”

A primary goal of statutory construction is to interpret statutes in accordance with the legislature’s intent. Whenever there is doubt, however, as to the meaning or scope of laws imposing a tax, such laws are to be construed against the government and in favor of the citizen. This rule of construction is consistently applied in interpreting the extent of the consumer utility taxes authorized by § 58.1-3812.

Section 58.1-3812(A) authorizes a locality to tax a telephone company consumer if the consumer’s service address is located in such locality. The tax is collected by the service provider of the local telecommunication services to such consumer. While § 58.1-3812 clearly contemplates the imposition of the tax on resident customers of a local telephone service provider who utilize such service, it is less clear that the statute contemplates imposition of the tax on a provider of pay telephone equipment which subsequently is used by another party for telephone service.

Statutes granting the power of taxation to localities are to be strictly construed, with any reasonable doubt to be resolved against the taxation. Dillon’s rule of strict construction likewise generally limits powers of local governing bodies to those conferred expressly by law or by necessary implication from express grants. Thus, the authority of a locality to impose a tax must be clear.

It is my opinion that a provider of pay telephone service is not a “consumer” as such term is used in § 58.1-3812. Therefore, this statute does not encompass the imposition of the tax on a provider of pay telephone service. Applying the rule of strict construction in interpreting the extent of the consumer utility tax authorized by § 58.1-3812, I must, therefore, conclude that the owners of pay telephones are not subject to the tax.
1999 REPORT OF THE ATTORNEY GENERAL  199

1See tit. 56, ch. 16.3, §§ 56-508.15, 56-508.16.
247 U.S.C.A. § 276(d) (West Supp. 1998) (defining "payphone service" provided by any Bell operating company to general public as "the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services").
3Section 58.1-3812(f).
7See § 58.1-3812(F).
8See, e.g., 1993 Op. Va. Att’y Gen., supra note 5, at 239 (concluding that cellular telephone customer of cellular telephone company which does not provide enhanced emergency service of E-911 system is not "consumer" for purposes of § 58.1-3813 special tax on telephone consumers of such service).

TAXATION: MISCELLANEOUS TAXES – FOOD AND BEVERAGE TAX.

HOTELS, RESTAURANTS, SUMMER CAMPS, ETC.: EXEMPTIONS.

Governing body may adopt by ordinance reasonable and uniformly applied definition of term "occasional" for purposes of food and beverage tax exemption.

Mr. Jacob P. Stroman IV
County Attorney for Gloucester County
November 30, 1999

You ask whether, pursuant to § 35.1-25(3) of the Code of Virginia, an organization which holds five dinners a year to raise money for its charitable causes is exempt from a food and beverage tax levied under § 58.1-3833. You ask specifically for an interpretation of the word "occasional" in § 35.1-25(3).

Section 58.1-3833(A) provides:

Any county is hereby authorized to levy a tax on food and beverages sold, for human consumption, by a restaurant, as such term is defined in subdivision 9 of § 35.1-1 .... Such tax shall not be levied on food and beverages sold ... by any person described in subdivisions 1, 2, 3, and 5 of § 35.1-25 ....

Section 35.1-25(3) contains the following description:

Churches, fraternal, school and social organizations, and volunteer fire departments and rescue squads which hold occasional dinners, bazaars, and other fund raisers of one or two days’ duration, at which
food prepared in the homes of members or in the kitchen of the church, school or organization is offered for sale to the public.[1]

While the term "occasional" clearly implies an infrequent as opposed to a regular activity, neither § 58.1-3833 nor § 35.1-25 defines the term. Section 58.1-3833(A) does provide, however, that the food and beverage tax "shall be effective in an amount and on such terms as the governing body may by ordinance prescribe." It is my opinion that this language permits the governing body to adopt a reasonable and uniformly applied definition of the term "occasional." I note that the Department of Taxation has adopted regulations interpreting the term "occasional sale" for purposes of the exemption for an "occasional sale" under § 58.1-609.10(2) of the Virginia Retail Sales and Use Tax Act. The regulations provide that a nonprofit organization "not regularly engaged in selling tangible personal property is not required to ... collect the tax on its sales provided it makes sales on three or fewer separate occasions within the calendar year." 6

A locality likewise may establish a numerical definition of the term "occasional" for purposes of the food and beverage tax. The local standard need not be the same as the standard established by the Department of Taxation in defining "occasional sale." The Department of Taxation's definition is consistent with the principle that statutes granting exemptions from the state sales and use tax are to be narrowly construed. 2 On the other hand, statutes granting taxing power to localities are also to be narrowly construed. 3 This distinction would justify a county establishing a standard less strict than the one established by the state sales and use tax regulations. 4

---

1 Sections 58.1-600 to 58.1-639. Section 58.1-602 defines "occasional sale" as "a sale of tangible personal property not held or used by a seller in the course of an activity for which he is required to hold a certificate of registration." A nonprofit organization that regularly sells tangible personal property is required to register as a dealer, unless specifically exempted by statute. See 23 VAC 10-210-1070(A) (Law. Coop. 1996).

23 VAC 10-210-1072(C) (Law. Coop. 1996). This regulation further provides that "sales made at fairs, flea markets, festivals and carnivals are not considered occasional sales." Id.


3 In the absence of an ordinance establishing a definition of "occasional," the local taxing authority should apply a uniform and reasonable standard. Under the language of § 35.1-25(3), any fund-raiser of more than two days' duration would not be entitled to the exemption.

---

TAXATION: MISCELLANEOUS TAXES – TRANSIENT OCCUPANCY TAX.

CONSERVATION: OPEN-SPACE LAND ACT.

Express statutory authority granted locality to expend portion of revenues derived from imposition of transient occupancy tax to promote and generate tourism confers by implication power to determine how tax revenues are to be spent to achieve purpose of promoting tourism in locality.
Whether open-space land purchased with revenues derived from transient occupancy tax promotes tourism and whether land so purchased is preserved for historic or scenic purposes consistent with Act requires factual determination to be made by local governing body.

The Honorable Jack Roberts  
County Attorney for Loudoun County  
July 21, 1999

You ask whether the revenues derived from the imposition of the transient occupancy tax pursuant to § 58.1-3819 of the Code of Virginia may be used to fund purchases of open space pursuant to the Open-Space Land Act to protect historic and scenic highways or historic sites. Specifically, you inquire whether such purchases are consistent with the proviso in § 58.1-3819(A) that such revenues be used to promote tourism in the locality that imposes the tax.

Section 58.1-3819(A) provides for the imposition of "a transient occupancy tax on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms." This statute further provides, regarding certain localities, that "[t]he revenues collected from that portion of the tax over two percent shall be designated and spent for promoting tourism, travel or business that generates tourism or travel in the locality." 2

The primary object of statutory construction is to ascertain and give effect to the intent of the General Assembly. 3 The plain language of § 58.1-3819 articulates the General Assembly's intent that a certain portion of the revenues derived from the imposition of the tax be spent to promote and generate tourism in the locality imposing the tax. 4 Any methods by which such localities may do so is not articulated in the statute. 5

Dillon's rule of statutory construction generally limits powers of local governing bodies to those conferred expressly by law or by necessary implication from express grants. 6 The power to determine how the applicable revenues are to be spent to achieve the purpose of promoting tourism in a locality is a power necessarily implied from the legislative grant of the power to spend such revenues to promote tourism.

The Open-Space Land Act authorizes public bodies to protect open space by acquiring easements in gross to preserve open space. 7 The Act defines "open-space land" as "any land in an urban area which is provided or preserved for ... historic or scenic purposes." 8 It also defines a "public body" to include "any county," and "urban area" is defined as "any area which is urban or urbanizing in character, including semiurban areas and surrounding areas which form an economic and socially related region." 9 Section 10.1-1701 provides also that "[t]he use of the real property [purchased] for open-space land shall conform to the official comprehensive plan for the area in which the property is located."

Assuming that the requirements of the Open-Space Land Act are met and in order to carry out "the purpose of holding scenic and [historic] easements in perpetuity," 10 a county may "acquire by purchase ... title to ... real property that will provide a means for the preservation or provision of open-space land." 11 Whether the land so purchased is provided or preserved for historic or scenic purposes consistent with the Act is a question of fact for determination by the local governing body. 12 Similarly, whether the
acquisition of the land "promotes tourism" in accordance with the proviso in § 58.1-3819(A) that revenues derived from the transient occupancy tax be "designated and spent for promoting tourism" also requires a factual determination to be made by the local governing body.

1Tit. 10.1, ch. 17, §§ 10.1-1700 to 10.1-1705.
2Section 58.1-3819(A).
5Compare portions of § 58.1-3819(A) (addressing certain other localities which direct that applicable revenues "be designated and spent solely for tourism, marketing of tourism or initiatives that, as determined in consultation with the local tourism industry organizations, attract travelers to the locality and generate tourism revenues in the locality").
8Section 10.1-1700.
9Id.
11Section 10.1-1701(i).

TAXATION: REAL PROPERTY TAX.

County-wide rezoning resulting in portion of property being rezoned to more intensive use not requested by owner does not affect continued qualification of property under land-use ordinance. Property once eligible that becomes ineligible for land-use value assessment and taxation is to be assessed at fair market value. Roll-back taxes equal difference between tax levied when land qualified for special assessment and tax that would have been levied had property been subject to fair market value assessment rather than special assessment. County's inclusion in its determination of roll-back taxes value of rezoned portion of property is consistent with statutes governing roll-back taxes.

The Honorable William K. Barlow
Member, House of Delegates
October 29, 1999

You ask for guidance regarding the calculation of roll-back taxes pursuant to § 58.1-3237 of the Code of Virginia.

You relate that certain property in Prince George County has been farmed for many decades and has thus qualified for a special assessment for land preservation ordinance pursuant to Article 4, Chapter 32 of Title 58.1, §§ 58.1-3229 through 58.1-3244. You also relate that, in the 1960s, 2.5 acres of this property was zoned for commercial
use by the county, but not at the request of the property owner. You advise that, prior to 1996, the entire tract of land was used for agricultural purposes, and was, therefore, taxed at land-use value. You also advise that notices sent by the county to the property owner reflected two total assessed values of the property—fair market and land use. You state that, in 1996, a portion of the property, which included the commercially zoned 2.5 acres, was sold. You further state that, upon such conveyance, the county included in its determination of roll-back taxes on such property the value of the 2.5 acres as commercially zoned. You inquire whether the determination should have been made by dividing the total assessed value of the property by the total number of acres to arrive at a per-acre value.

Section 58.1-3231 authorizes localities to adopt ordinances providing for the "use value assessment" of real property. To qualify for the special assessment, the land must be devoted to agricultural, horticultural, forest or open-space uses, as specified in § 58.1-3230. The purpose of Article 4 is to create a financial incentive to encourage the preservation and proper use of real estate classified for such uses. The imposition of roll-back tax liability furthers this goal by encouraging the property owner to continue preserving the land for one of the classifications established and defined in § 58.1-3230. Discontinuing the favorable tax treatment when the land no longer satisfies the use or acreage requirements of Article 4 is consistent with this stated purpose.

Generally, a property owner is subject to roll-back tax liability when a change in use or size of the property results from action by the property owner. A 1983 opinion of the Attorney General concludes that action by an owner to rezone his land to a more intensive use, thereby making it eligible for development, will render it ineligible for land-use valuation, whereas a county-wide rezoning, which is not requested by the owner and which results in a change in zoning to a more intensive use, does not disqualify the land from land-use valuation, assessment and taxation until the use of the land changes.

Accordingly, in the instant case, the county-wide rezoning occurring in the 1960s, which resulted in a portion of the property being rezoned to a more intensive use not requested by the owner, did not affect the continued qualification of the property under the land-use ordinance.

Section 58.1-3241(A), however, provides:

Separation or split-off of lots, pieces or parcels of land from the real estate which is being valued, assessed and taxed under an ordinance adopted pursuant to this article, either by conveyance or other action of the owner of such real estate, shall subject the real estate so separated to liability for the roll-back taxes applicable thereto....

Under this provision, it is the action of the owner selling the property that triggers roll-back tax liability. Thus, although the fact that the owner did not request the zoning change is a consideration when determining whether the property continues to qualify for land-use assessment, this fact is immaterial to property that does not qualify for such assessment.
"[R]oll-back taxes [are] considered to be deferred real estate taxes." Accordingly, § 58.1-3237 provides that such "deferred tax for each [applicable] year shall be equal to the difference between the tax levied and the tax that would have been levied based on the fair market value assessment of the real estate for that year." Therefore, roll-back taxes are equal to the difference between the tax levied under the land-use assessment statutes and the tax that would have been levied pursuant to the assessed fair market value of the property had it not been subject to the special assessment.

Accordingly, once property that had been eligible for land-use value assessment and taxation is made ineligible for land-use assessment and taxation, such property is to be assessed at fair market value. The Supreme Court of Virginia has construed "fair market value" generally as "the price [a property] will bring when it is offered for sale by one who desires, but is not obliged, to sell it, and is bought by one who is under no necessity of having it." In determining fair market value, "all the capabilities of the property and all the uses to which it may be applied or for which it is adapted, are to be considered," with the assessment based on the highest and best use of the property. Ultimately, fair market value is a factual question to be determined by the commissioner of the revenue upon a consideration of the factors affecting the property's value. It is my opinion, however, that, under the facts presented, the determination made by Prince George County appears to be consistent with the statutes governing roll-back taxes.

3 Id.
8 Section 58.1-3237(B), (C).
TAXATION: REAL PROPERTY TAX.

PROPERTY AND CONVEYANCES: VIRGINIA REAL ESTATE COOPERATIVE ACT.

Real estate cooperative association, and not proprietary lessee with possessory interest in individual cooperative unit, is owner of real estate subject to real estate tax assessment. Tax exemptions for elderly and handicapped are not available to individual proprietary lessee.

The Honorable Philip J. Kellam
Commissioner of the Revenue for the City of Virginia Beach
July 16, 1999

You ask whether the “owner of real estate,” for purposes of real estate tax assessment pursuant to § 58.1-3281 of the Code of Virginia with respect to a real estate cooperative, is the real estate cooperative association or the person who owns a cooperative interest in the real estate cooperative coupled with a possessory interest in an individual cooperative unit (“proprietary lessee”). You also ask whether, if the association is the owner for purposes of § 58.1-3281, the proprietary lessee may be considered an owner for purposes of the § 58.1-3210 tax exemption for the elderly or disabled.

The creation and operation of real estate cooperatives is controlled by the Virginia Real Estate Cooperative Act, §§ 55-424 through 55-506 (the "Act"). Real estate cooperatives are a form of common ownership in which title to both the units and common areas lies with the association. The Act defines a “cooperative” as “real estate owned by an association, each of the members of which is entitled, by virtue of his ownership interest in the association, to exclusive possession of a unit.” The Act defines “association” to mean “the proprietary lessees’ association organized under § 55-458.” A “cooperative interest” is “an ownership interest in the association coupled with a possessory interest in a unit under a proprietary lease.” A “proprietary lease” is “an agreement with the [cooperative] association pursuant to which a proprietary lessee has a possessory interest in a unit,” and a “unit” is “a physical portion of the cooperative designated for separate occupancy under a proprietary lease.”

Section 58.1-3281 provides that real estate taxes shall be assessed to the “owner of real estate” as of January 1 of the tax year. Section 55-426 defines a “cooperative” as “real estate owned by an association.” Where the language of a statute is plain and unambiguous, the legislature should be assumed to have intended to mean what it plainly has expressed, and statutory construction is unnecessary. The definition of “cooperative” clearly contemplates that the owner of the subject real estate is the cooperative association. Accordingly, it is my opinion that the real estate cooperative association is the “owner of real estate” subject to real estate tax assessment under § 58.1-3281.

You next inquire whether, for purposes of § 58.1-3210, the proprietary lessee may be considered an “owner” within the meaning of the statute. Section 58.1-3210 provides for an exemption from or a deferral of real estate taxes for certain elderly or handicapped persons. Specifically, this statute requires that the real estate “be owned by, and be occupied as the sole dwelling of anyone at least sixty-five years of age or ... found to be permanently and totally disabled.”
Section 58.1-3210 uses the phrase “owned by” to describe those to whom tax relief may be granted. Exemptions under this statute must be strictly construed and, in doubtful cases, resolved against recognition of the exemption. Accordingly, I am constrained to narrowly construe the application of the exemptions. Because it is my opinion that the cooperative association owns the real estate in issue, I must conclude that the § 58.1-3210 exemptions are not available to an individual proprietary lessee.

Section 55-426 (emphasis added.).
Id.
Id.
Id.
Section 58.1-3210(A).
Compare 1971-1972 Op. Va. Att’y Gen. 428, 428 (noting that § 58-760.1 (predecessor statute to § 58.1-3210) used words “owned by,” “owners,” and “owning title or partial title” to describe those to whom tax relief was granted).

TAXATION: REVIEW OF LOCAL TAXES — LOCAL TAXES.

Collection of personal property taxes during calendar year of January 1 assessment. Taxes collected annually in October by county that imposes tax on calendar year basis are those assessed previously in January of same year. Change from annual to semiannual collection in May and October results in installment payment of taxes assessed in January of same calendar year.

The Honorable Richard H. Black
Member, House of Delegates
August 9, 1999

You ask whether a Virginia locality may alter its collection of personal property taxes from annual collections to a semiannual personal property tax collection in a manner that appears to impose an additional one-half year tax on its citizens.

You relate that a county that imposes taxes on a calendar year basis has been collecting personal property taxes annually each October. In January 1998, the county changed to a semiannual basis for collection of such taxes to be made in two installments. The first one-half of the amount assessed is collected in May and the remaining half is collected in October. As a result, in the first year affected by this change, you express
concern that the taxpayers in the county paid 100 percent of their car tax for 1998 on October 5, 1997, and thus the May 1998 installment resulted in an additional half-year's taxation on such taxpayers.

Unless a locality has opted to levy taxes on a fiscal year basis pursuant to § 58.1-3010 of the Code of Virginia or a similar charter provision, "all counties and cities in the Commonwealth must assess their taxes on a calendar year basis with January 1 as the tax day."2 Taxes may not be prepaid "during a current year for the ensuing year."3 Thus, taxes assessed on January 1 of any given year are collected in that year, and are not prepaid in advance of the next calendar year. In the situation you present, therefore, taxes assessed on January 1, 1997, were collected in October 1997. Consequently, the collection of these taxes in October 1997 was not a prepayment of 1998 taxes.

Accordingly, the taxes collected in October 1997 were those assessed for the calendar year 1997. The taxes collected in May and October of 1998 were those assessed for calendar year 1998. The installment due in May 1998 reflects one-half of the 1998 taxes owed and the October 1998 installment reflects the other half owed. None of these payments overlapped.4 It is, therefore, my opinion that your concern that the change to semiannual collection resulted in an additional half-year's taxation is not actually the case under these circumstances.

1See VA. CODE ANN. § 58.1-3916 (authorizing governing body of locality to establish "by ordinance ... due dates for the payment of local taxes" and to "provide that payment be made in a single installment or in two equal installments").


31958-1959 Op. Va. Att'y Gen. 298, 299. But see § 58.1-3920 (authorizing taxpayer "desiring to pay any local taxes for any year prior to the time the treasurer receives copies of the commissioner[ ] of the revenue's books" to do so under limited circumstances).

4It is inevitable, but not unlawful, that a locality operating on a fiscal year budget will receive two payments in the first fiscal year affected by the change in collection of taxes from an annual to a semiannual basis. See 1976-1977 Op. Va. Att'y Gen. 7, 8 (stating that "[t]here is ... no statutory requirement that the tax year correspond to the fiscal year").

---

TAXATION: REVIEW OF LOCAL TAXES.

CIVIL REMEDIES AND PROCEDURE: EXECUTIONS AND OTHER MEANS OF RECOVERY.

MOTOR VEHICLES: TITLING AND REGISTRATION OF MOTOR VEHICLES.

Broad authority to seize property for delinquent taxes does not extend to seizure of persons. Stopping automobile and detaining person at roadblock constitutes seizure of person. Within limitations imposed by Fourth Amendment, law-enforcement officers may set up roadblocks as exercise of their statutory authority to stop vehicles to inspect equipment or verify registration and licenses. No authority to detain person at roadblock to verify payment of personal property taxes or to detain person for being delinquent in payment of personal property taxes.

The Honorable Lee Stoffregen
Sheriff for the City of Manassas
June 8, 1999
You ask whether, in conjunction with vehicle stops conducted by the county police department to check for licensing and equipment violations, you may execute a distress warrant and seize a vehicle if the driver is delinquent in the payment of his local taxes.

You state that, pursuant to §§ 58.1-3919 and 58.1-3941 of the Code of Virginia, the Prince William County Treasury Manager issues distress warrants to your office for the collection of delinquent taxes. Your office seizes personal property, usually a vehicle, belonging to the person owing the taxes and sells the property at public auction. The proceeds are forwarded to the Treasury Manager to be applied to the delinquent tax account.

Your question involves your seizure of vehicles for delinquent taxes during periodic vehicle checks conducted by the county police department. You state that persons from your office and from the county's Treasury Management office attend the vehicle checks. The police department sets the criteria for which vehicles will be stopped. The vehicles are checked by police officers for licensing and equipment violations. If a current county decal is not displayed, Treasury Management checks the records to determine if the driver has a delinquent tax account. If the driver's taxes are delinquent, Treasury Management issues a distress seizure warrant, which the deputy sheriff is to execute on the scene. If the taxpayer cannot provide payment, the deputy sheriff seizes the vehicle and later sells it at public auction.

Section 58.1-3919 requires a local treasurer to collect delinquent taxes "by distress or otherwise." Section 58.1-3934(B) authorizes a locality to place local taxes in the hands of the sheriff for collection, with the sheriff having the powers conferred by law upon the treasurer. Additionally, § 58.1-3941 provides that "[a]ny goods or chattels ... in the county, city or town belonging to the person ... assessed with taxes ... collected by the treasurer may be distrained therefor by the treasurer, sheriff, constable or collector," and § 58.1-3942 provides that a security interest in good or chattels does not prevent the property from being distrained and sold for taxes, "no matter in whose possession they may be found."

These statutes clearly authorize a sheriff, as well as a local treasurer, to distraint property and to sell the property to collect delinquent taxes.\(^1\) The procedure requires no judicial hearing. As stated in a 1954 opinion, the treasurer may distraint property for taxes without a warrant based on the tax bill alone, may remove the property from the premises as an essential part of the power to distraint the property, and may sell the property to satisfy the delinquent taxes.\(^2\)

You question whether, notwithstanding this statutory authority to distraint or seize property for taxes, the procedure that you describe for seizing property in conjunction with a roadblock violates the protection against unreasonable searches and seizures secured by the Fourth Amendment to the Constitution of the United States. The Fourth Amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,
and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Supreme Court of the United States has held that "stopping an automobile and detaining its occupants [at a roadblock] constitute a 'seizure'" of the person and will be unreasonable under the Fourth Amendment if not based on an articulable and reasonable suspicion that the laws are being violated. The Court has held, however, that fixed checkpoint stops are reasonable under the Fourth Amendment if the procedure is "carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers." The interference with individual liberty in such instances is balanced against a state's strong interest in promoting safety on its roads by checking to see that licensing, registration, and vehicle inspection requirements are being met. The Supreme Court of Virginia and the Court of Appeals of Virginia have applied the standards established by the United States Supreme Court in a number of cases challenging stops as violating the Fourth Amendment.

Within the limitations imposed by the Fourth Amendment, law-enforcement officers may set up roadblocks as a means of exercising their statutory authority to stop vehicles to inspect equipment or to verify registration and licenses. While the practice constitutes a seizure of the person under the Fourth Amendment, the state's interest in promoting safety on the roads justifies the limited interference with individual liberty. During a roadblock conducted in conformity with Fourth Amendment standards, a law-enforcement officer may further detain a person upon a reasonable suspicion based on articulable facts that a crime has been or is being committed. A law-enforcement officer would have no authority to detain a person at a roadblock to verify the payment of personal property taxes or to detain a person for being delinquent in the payment of personal property taxes.

A treasurer likewise has no such authority. While a treasurer has broad statutory power to seize property for delinquent taxes, no statute grants a treasurer the power to seize persons for the failure to pay their taxes. A roadblock constitutes a seizure of the person. It is my opinion that such a seizure of persons is beyond the statutory authority granted treasurers to seize property. It is also my opinion that the seizure would not pass Fourth Amendment scrutiny because there is no connection between the failure of a taxpayer to timely pay taxes on his vehicle and the promotion of safety on the roads.

---

1See Op. Va. Att'y Gen.: 1997 at 203, 204; 1990 at 249, 250. Section 8.01-492 details the procedure for the sale of distressed property.
3Delaware v. Prouse, 440 U.S. 648, 653 (1979) (holding that random spot checks that place discretion in officers as to which vehicle to stop and where to conduct stop are unconstitutional).
4Brown v. Texas, 443 U.S. 47, 51 (1979); see also United States v. Martinez-Fuerte, 428 U.S. 543, 559-62 (1976). In determining the constitutionality of any such seizure, the courts are to weigh "the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty." Brown v. Texas, 443 U.S. at 51.
**1999 REPORT OF THE ATTORNEY GENERAL**

5See Delaware v. Prouse, 440 U.S. at 658; see also Michigan Dept. of State Police v. Sitz, 496 U.S. 444 (1990) (holding that highway sobriety checkpoints are consistent with Fourth Amendment).


7See §§ 46.2-103, 46.2-104. If a local ordinance so provides, a law-enforcement officer may issue a citation or summons to a person who fails to display a local license required by ordinance. Section 46.2-752(G). The officer could not, of course, seize the vehicle for the nonpayment of personal property taxes.

---

**TAXATION: REVIEW OF LOCAL TAXES.**

**UNIFORM COMMERCIAL CODE: NEGOTIABLE INSTRUMENTS - ENFORCEMENT OF INSTRUMENTS.**

Taxpayer may not use accord and satisfaction methods of Uniform Commercial Code to remedy disputed local tax liability. Tax Code provides administrative and judicial remedies for resolution of disputed tax assessments. No statutory authority permits taxpayer to resolve disputed tax liability by withholding payment of penalty and interest from check submitted to treasurer accompanied by statement that acceptance of partial payment of taxes constitutes full satisfaction of assessment.

The Honorable Alfred C. Anderson
Treasurer for Roanoke County
April 20, 1999

You ask whether a treasurer is bound by the accord and satisfaction provisions of § 8.3A-311 of the Code of Virginia, should the treasurer accept and negotiate a taxpayer's check for partial payment of his personal property tax assessment.

You present a factual situation in which a taxpayer disputes his liability for the penalty and interest imposed for late payment of his personal property taxes. You state that the taxpayer submitted to your office a check in the amount of the tax only, requesting by attached letter that the treasurer cash the check only if the treasurer agrees that the taxpayer's debts to the county are "paid in full."

Section 8.3A-311 is a portion of the negotiable instruments provisions of the Uniform Commercial Code. Section 8.3A-311 provides an informal method whereby the amount of a disputed claim may be resolved by use of a negotiable instrument. Under the conditions specified in the section, a claim is discharged if paid by an instrument containing or accompanied by a conspicuous statement that the instrument was tendered in full satisfaction of the claim and if the claimant obtains payment of the instrument.

A taxpayer may not use the dispute resolution remedy provided for commercial transactions under § 8.3A-311 as a remedy for a disputed local tax liability. The remedies for resolving disputed tax assessments, including the imposition of penalties and interest for the late payment of taxes, are set out in Title 58.1. Sections 58.1-3980 through
58.1-3983 and §§ 58.1-3990 through 58.1-3992 provide administrative remedies for correction of the erroneous assessments of local taxes, and §§ 58.1-3984 through 58.1-3989 provide a judicial remedy for erroneous tax assessments. There clearly is no statutory authority permitting a taxpayer to resolve a disputed tax assessment by withholding payment of the disputed amount and stating that acceptance of partial payment constitutes full satisfaction of the assessment.  

Section 8.3A-31I provides: "(a) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.

(b) Unless subsection (c) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(c) Subject to subsection (d), a claim is not discharged under subsection (b) if either of the following applies:

"(1) The claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and (ii) the instrument or accompanying communication was not received by that designated person, office, or place.

"(2) The claimant, whether or not an organization, proves that within ninety days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This paragraph does not apply if the claimant is an organization that sent a statement complying with paragraph (1)(i).

(d) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim."

The Uniform Commercial Code consists of titles 8.1 to 8.11.

See § 8.3A-311 Official Comment.

Section 8.3A-311(a), (b), (d).

The purpose of the Uniform Commercial Code is to clarify and make uniform among the various states "the law governing commercial transactions." Section 8.1-102(2)(a).

Penalty and interest, when imposed, are considered a part of the tax assessment. Section 58.1-3916.

The Honorable Ross A. Mugler  
Commissioner of the Revenue for the City of Hampton  
November 22, 1999

You ask whether the information on a distress warrant issued by a local tax collector pursuant to § 58.1-3941 of the Code of Virginia must be disclosed in response to a request under The Virginia Freedom of Information Act (“Act”) or whether the information is protected from disclosure under § 58.1-3. You state that the distress warrant contains the delinquent taxpayer’s name and address, the type of tax, and the amount of the delinquency.

Section 2.1-342(A) of the Act provides that “[e]xcept as otherwise specifically provided by law, all public records shall be open to inspection and copying by any citizens of the Commonwealth.” A distress warrant is clearly a public record encompassed within the Act and must be disclosed unless an exception applies. Section 2.1-342.01(A)(2) excepts from the Act “confidential tax records held pursuant to § 58.1-3.” Section 58.1-3(A) provides:

Except in accordance with a proper judicial order or as otherwise provided by law, the ... commissioner of the revenue, treasurer, or any other state or local tax or revenue officer or employee ... shall not divulge any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation.

The prohibition does not apply to “[m]atters required by law to be entered on any public assessment roll or book” or “[a]cts performed or words spoken or published in the line of duty under the law.” A violation of the confidentiality provisions of § 58.1-3 constitutes a Class 2 misdemeanor.

In accordance with the language of § 58.1-3(A), the information on a distress warrant would be deemed confidential to the extent the information would reveal, either directly or indirectly, “the transactions, property, ... income or business of any person, firm or corporation” and to the extent the information is neither “required by law” to be entered on a public assessment book nor “published in the line of duty under the law.”

Prior opinions of the Attorney General conclude that, while the fact of delinquency in the payment of taxes is not confidential tax information under § 58.1-3, the amount of the delinquency is confidential when the tax is based on gross receipts because its disclosure would reveal the amount of business done. Thus, the amount of the delinquency may not be disclosed in response to a request under the Act unless one of the exceptions in § 58.1-3 applies. The exception for matters required to be entered on a public assessment roll or book does not apply to gross receipts taxes. Moreover, while a tax collector is authorized to issue a distress warrant, I do not view the amount of a tax delinquency stated on the distress warrant as constituting “words ... published in the line of duty under the law.” The line of duty exception allows tax officials to disclose information to other such officers and employees. It does not authorize the disclosure of the infor-
mation to third parties. Whether a distress warrant related to taxes other than gross receipts taxes would be deemed confidential will depend on the particular facts, including the information that is on the warrant, the extent to which the information constitutes confidential taxpayer information, and whether the information fits within any of the exceptions set out in § 58.1-3.\(^1\)

\(^1\)The first sentence of § 58.1-3941 provides that "[a]ny good or chattels, money and bank notes in the county, city or town belonging to the person or estate assessed with taxes, levies or other charges collected by the treasurer may be distrained therefor by the treasurer, sheriff, constable or collector." As stated in prior opinions, §§ 58.1-3941 and 58.1-3919 authorize a local treasurer to issue a distress warrant or letter without the necessity of a judicial proceeding. See Op. Va. Att'y Gen.: 1997 at 203, 204; 1990 at 249, 250; 1953-1954 at 204 (citing predecessor statutes to §§ 58.1-3919, 58.1-3941).


\(^2\)Section 2.1-118 permits the Attorney General to issue opinions to a commissioner of the revenue only when the question is directly related to the duties of the commissioner. Although distress warrants are issued by the treasurer or other collector, I assume for purposes of this opinion that the distress warrants are in your possession and are connected with the performance of your duties as commissioner of the revenue.

\(^3\)Section 2.1-341 defines "public records" to include "all writings ... prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business."

\(^4\)Section 58.1-3(A)(1).

\(^5\)Section 58.1-3(A)(2). Section 58.1-3 includes numerous other instances in which taxpayer information may be provided. See § 58.1-3(A)(3)-(5), (B)-(E).

\(^6\)Section 58.1-3(A).

\(^7\)Section 58.1-3(A)(1).

\(^8\)Section 58.1-3(A)(2); see 1993 Op. Va. Att'y Gen. 217, 219 (information prohibited from disclosure under § 58.1-3 is not to be disclosed under Act).

\(^9\)Section 58.1-3(B) states: "Nothing contained in this section shall be construed to prohibit ... the publication of delinquent lists showing the names of taxpayers who are currently delinquent, together with any relevant information which in the opinion of the Department [of Taxation] may assist in the collection of such delinquent taxes."

\(^10\)See Op. Va. Att'y Gen.: 1993, supra, at 220 (local tax official may reveal identity of taxpayer delinquent in payment of business license tax but may not reveal amount of delinquency); 1992 at 157, 160 (local tax officials may not disclose amount of delinquent meals tax because such disclosure would reveal volume of business done for time period); see also 1989 Op. Va. Att'y Gen.304, 305 (commissioner of revenue may not disclose amount of tax paid by coal companies subject to gross receipts tax under § 58.1-3712 because it would reveal amount of coal produced).

\(^11\)Section 58.1-3(A)(2).


\(^13\)Because the purpose of § 58.1-3 is to protect the taxpayer from the disclosure of confidential tax information to third parties, the fact that the distress warrant has been served on the delinquent taxpayer would not operate to authorize disclosure to third parties. See 1984-1985 Op. Va. Att'y Gen., supra, at 398 (commissioner of revenue may describe taxpayer's property on tax bill sent to taxpayer but should not describe on personal property tax book available to public except to extend necessary to satisfy statute); see also op. to Hon. Marsha Compton Fielder, Roanoke Comm'r Rev. (Jan. 20, 1999) (information regarding make, model and assessed value of vehicle may not be disclosed unless line of duty exception applies).

\(^14\)A prior opinion concludes that if a local tax official receives a request pursuant to the Act for an existing record containing the names of delinquent taxpayers and the amount of the delinquency, the official should delete the amount of the delinquency before disclosing the document. See 1992 Op. Va. Att'y Gen., supra note 11, at 160 n.1; see also § 2.1-342(A)(3) (public body may "delete or excise" only portion of public record to which exemption applies and shall disclose remainder of record).
TRADE AND COMMERCE: VIRGINIA CONSUMER PROTECTION ACT.

Misrepresentation of geographic origin of final assembly of automobile constitutes violation of Act. Described practice of automobile manufacturers' requiring franchisees to charge destination charges for delivery of vehicles from final assembly point, which includes cost of shipping components to that point, does not violate Act.

The Honorable Walter A. Stosch
Member, Senate of Virginia
August 30, 1999

You ask whether a practice of automobile manufacturers requiring franchisees to charge destination charges for delivery of vehicles from the final assembly point, which include the cost of shipping components to that point, violates § 59.1-200(A)(4) of the Code of Virginia, a portion of the Virginia Consumer Protection Act of 1977 (the "Consumer Protection Act" or "Act").

You indicate that automobile manufacturers allow consumers to believe that "destination charges" accurately reflect only the actual costs of shipping new vehicles from the final assembly point to the dealership. You inquire whether an automobile manufacturer's practice of requiring franchisees to charge "destination charges" in excess of the actual costs for transporting a vehicle from its point of origin to a dealer violates the Consumer Protection Act. If such practice is in violation of the Act, you also request advice regarding any recourse that may be available to the consumer.

The Consumer Protection Act is patterned after the language in the Federal Trade Commission Act prohibiting "unfair or deceptive acts or practices." Similar acts have been adopted by many states which, like the Consumer Protection Act, codify and supplement the common law definitions of "fraud" and "misrepresentation." The Consumer Protection Act amplifies the common law concepts by declaring certain specific practices to be unlawful. Section 59.1-200(A)(4) makes it unlawful for suppliers to misrepresent the "geographic origin in connection with goods or services." Consequently, a supplier who misrepresents the geographic origin of goods or services would be in violation of the Act.

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the legislature. The General Assembly has not defined the term "geographic origin" as used in § 59.1-200(A)(4). Consequently, the term "geographic origin" used in the statute must be given its ordinary meaning within the statutory context. The term "geographic" generally means "of or relating to geography"; "belonging to or characteristic of a particular region." The term "geography" generally means "a science that deals with the earth and its life"; "the geographic features of an area." Finally, the term "origin" generally means "rise, beginning, or derivation from a source."

A fundamental principle of statutory construction is that the clear and unambiguous words of a statute must be accorded their plain meaning. The ordinary meaning of the
term "geographic origin," as used in § 59.1-200(A)(4), suggests that an automobile manufacturer would violate the Act should such manufacturer misrepresent the geographic characteristic or the specific region or source of origin where the final assembly of the automobile actually occurs. You do not provide any facts to support a conclusion that automobile manufacturers are misrepresenting the geographic origin of the final assembly point of an automobile.  

The specific business practice you describe does not lead to a conclusion that consumers are being mislead in connection with a vehicle's final assembly point. Accordingly, based on the facts in your request, I must conclude that the business practice you describe does not violate § 59.1-200(A)(4).  

1Section 59.1-200(A)(4) declares unlawful the following fraudulent act committed by a supplier relating to a consumer transaction: "Misrepresenting geographic origin in connection with goods or services."  

2Sections 59.1-196 to 59.1-207.  


5Section 59.1-200(A) lists 33 prohibited practices.  


9Id. at 1591.  

10Id. at 1591.  


12I note that the facts you present suggest that consumers may be misled about the actual cost of delivery of a vehicle from the final assembly point to the dealerships. I do not, however, address whether the specific conduct described violates any other prohibited practices listed in § 59.1-200(A).  

13Since I conclude that the specific practice you describe does not violate § 59.1-200(A)(4), it is, of course, unnecessary to respond to your request for advice regarding recourse to consumers.  

---

**WELFARE (SOCIAL SERVICES): ADOPTION.**

Exchange of property for adoption generally prohibited. Payment by adoptive parents permitted for certain insurance premiums; for food, shelter and clothing expenses for birth mother and her dependents, when she is unable to work due to pregnancy-related medical reasons; for transportation expenses incident to court appearance, medical treatment and adoption process. Whether expenses associated with shelter for birth mother are reasonable and necessary requires factual determination that Attorney General has no authority to provide. Extent to which birth mother can support herself in limited manner may be taken into consideration in determining amount of adoptive parents' payment(s) for reasonable and necessary expenses related to her support. Payment for expenses incurred for automobile repairs and insurance premiums and for regular monthly telephone bills is not authorized. Juvenile judge may exercise his authority and discretion in setting forth reasonable accounting requirements relating to payment or reimbursement of reasonable and necessary adoption expenses.
The Honorable William G. Boice  
Judge, Juvenile and Domestic Relations District Court  
June 8, 1999

You ask whether certain expenses associated with an adoption proceeding may be paid by the prospective adoptive parents without violating § 63.1-220.4 of the Code of Virginia. You question the propriety of the following expenses: (1) monthly telephone bills (exclusive of long distance calls to persons other than the adoptive parents, adoption agency, doctor, and hospital); (2) automobile insurance premiums; (3) automobile repairs to keep the vehicle in running condition; (4) monthly automobile payments; (5) renter's insurance premiums; (6) monthly furniture payments; (7) furniture rental payments; (8) health/hospitalization insurance premiums; (9) monthly house or apartment rent when a physician states that the birth mother can work part-time; (10) mileage (at the Internal Revenue Service rate) for travel to and from the doctor, hospital, adoption agency, and court; (11) utilities (gas, oil, water, sewer, etc.); and (12) food, clothing and shelter for dependents of the birth mother. You also ask for guidance regarding the accounting of permissible expenses and disbursement of those payments.

Section 63.1-220.4 generally prohibits the exchange of property for an adoption, with certain exceptions:

No person or child-placing agency shall charge, pay, give, or agree to give or accept any money, property, service or other thing of value in connection with a placement or adoption ... except (i) reasonable and customary services provided by a licensed or duly authorized child-placing agency and fees paid for such services; (ii) payment or reimbursement for medical expenses and insurance premiums which are directly related to the birth mother's pregnancy and hospitalization for the birth of the child who is the subject of the adoption proceedings, for mental health counseling received by the birth mother or birth father related to the adoption, and for expenses incurred for medical care for the child; (iii) payment or reimbursement for reasonable and necessary expenses for food, clothing, and shelter when, upon the written advice of her physician, the birth mother is unable to work or otherwise support herself due to medical reasons or complications associated with the pregnancy or birth of the child; (iv) payment or reimbursement for reasonable expenses incurred incident to any court appearance pursuant to § 63.1-220.3 including, but not limited to transportation, food and lodging; (v) usual and customary fees for legal services in adoption proceedings; and (vi) payment or reimbursement of reasonable expenses incurred for transportation in connection with any of the services specified in this section ....

"Adoption in Virginia is solely a creature of statute." "Although the 'adoption statutes should be liberally construed to carry out the beneficent purposes of ... adoption,' the principle is well established that '[c]ourts must construe statutes according to the language used by the legislature."

Thus, "[w]here the statutory language is clear and plain, we
cannot look for ambiguities under the guise of applying liberal construction." Accordingly, any expenses for which payment by the adoptive parents is allowed must fall squarely within the parameters of § 63.1-220.4. The payment of amounts other than those allowed by § 63.1-220.4 is a Class 6 felony which may be subject to prosecution.

With respect to health and hospitalization insurance premiums, § 63.1-220.4(ii) expressly provides for "payment or reimbursement for ... insurance premiums which are directly related to the birth mother's pregnancy and hospitalization for the birth of the child who is the subject of the adoption proceedings." Accordingly, payment or reimbursement of these premiums by the adoptive parents is permissible.

Regarding the payment of expenses related to shelter for the birth mother, such payments are allowable under § 63.1-220.4(iii), if (1) the expenses are "reasonable and necessary," and (2) they result from the birth mother's inability to work or support herself due to medical reasons associated with the pregnancy as documented by her physician. The term "shelter" is defined as "a home with proper environments, as well as protection from the weather." Whether expenses that are claimed to be associated with shelter for the birth mother are "reasonable and necessary" and whether they result from the birth mother's inability to work due to her pregnancy require a factual determination. Accordingly, I must decline to render an opinion on whether such expenses as furniture rental payments, renter's insurance, utilities or other expenses relating to her shelter as that term is used in § 63.1-220.4 are reasonable and necessary.

You also ask whether the provision in § 63.1-220.4(iii) for "food, clothing, and shelter" includes reasonable and necessary expenses for the birth mother's dependents. The aim of statutory construction is to ascertain and give effect to the intent of the legislature. Section 63.1-220.4 recognizes the inherent dilemma of an individual who is unable to work being unable to support herself. It thus allows for the payment of reasonable and necessary expenses for food, clothing, and shelter while the birth mother is unable to support herself due to her pregnancy. Statutes should not be interpreted in ways that produce absurd or irrational consequences. Assuming the facts are such that the birth mother is incapable of supporting herself due to her pregnancy, it is logical to assume that she is similarly incapable of supporting her dependents. Accordingly, provided that the birth mother is unable to work as documented by her physician in accordance with the statute, it is my opinion that the statute contemplates reasonable and necessary expenses associated with food, clothing, and shelter for her dependents. Once again, whether specific expenses associated with the dependents are "reasonable and necessary" requires a factual determination.

With respect to the payment of automobile insurance premiums or automobile repairs, the statute is silent regarding the maintenance of a vehicle as an item for which the birth mother can be compensated. It is a well-established principle of statutory construction that where a statute specifies certain things, an intention to exclude that which is not specified may be inferred. When a statute specifically mentions items to be included within its purview, it may be implied that "omitted items were not intended to be included within the scope of the statute." Thus, "the mention of one thing in a statute..."
implies the exclusion of another."

Accordingly, it is my opinion that expenses incurred by the birth mother for repairs to an automobile or for automobile insurance premiums do not come within the purview of § 63.1-220.4.

Similarly, § 63.1-220.4 does not specifically provide as a compensable expense regular monthly charges for a telephone. Although specific telephone calls may be deemed as a medical expense, an expense incident to a court appearance, or an expense incurred for transportation in connection with services identified in the statute, basic telephone service charges are not expenses included in the statute. Accordingly, as with your inquiry concerning the maintaining of an automobile, it is my opinion that the expense of the regular monthly telephone bill does not come within the purview of § 63.1-220.4.

Section 63.1-220.4(iv) and (vi) does cover "reasonable expenses incurred incident to any court appearance ... including ... transportation" and "reasonable expenses incurred for transportation in connection with any of the services specified in [§ 63.1-220.4]." The language of the statute specifically takes into account transportation expenses for the services identified in the statute and for court appearances. In light of this specific language, I am of the opinion that reasonable mileage expenses for transportation to and from the birth mother's physician and hospital, adoption agency, and court may be paid for or reimbursed by the adoptive parents.

Your inquiry regarding the payment of half of the birth mother's monthly rent when her physician has stated that she can work twenty hours per week (rather than her previous forty-hour workweek) is answered by examining the plain language of the statute. Section 63.1-220.4(iii) clearly provides that certain expenses are compensable "when, upon the written advice of her physician, the birth mother is unable to work or otherwise support herself." Thus, the first condition which must exist is that the mother is unable to work as documented in writing by her physician.

In this instance, the physician has documented that the mother is able to work, although limited, which presumably enables her to be somewhat self-supporting. "[T]he plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or constrained construction." Additionally, statutes should not be construed to frustrate their purpose. To hold that expenses for support can be paid only when the birth mother cannot work at all would frustrate the purpose of this portion of the statute, which is to assure that the birth mother possesses basic necessities during her pregnancy. This language is operative only when her medical condition prevents her from supporting herself. The extent to which she can support herself in a limited manner may, therefore, be taken into consideration in determining the amount of payment by the adoptive parents for reasonable and necessary expenses of the birth mother's support.

Finally, in regard to your inquiries concerning various methods of establishing or verifying a birth mother's expense claims and disbursement of funds therefor, § 63.1-220.4 does not address such issues and imposes no requirements related thereto. However, just as a juvenile and domestic relations district court judge possesses all necessary and inci-
dental powers and authority to carry out the purposes of the juvenile law, such judge may similarly exercise his authority and discretion in setting forth reasonable accounting requirements relating to the payment or reimbursement of expenses which fall within the purview of § 63.1-220.4.

1 Tit 63.1, ch 11, §§ 63.1-220 to 63.1-238.02 (entitled “Adoption”).
2 Section 63.1-220.3 sets forth a detailed procedure for the general placement of children for adoption.
3 Section 63.1-220.4 (emphasis added).
17 E.g., long distance call to physician or hospital.
18 E.g., long distance call to courthouse or adoption agency regarding court appearance.
19 E.g., long distance call arranging transportation to hospital, physician, court appearance, or adoption agency.
20 But see § 15.2-1414.2 (allowing county to provide member of board of supervisors “reimbursement for actual expenses incurred in purchasing, operating, maintaining and using a telephone, ... provided the expenses are attributable directly to the proper performance of the member’s official duties”).
21 Whether maintaining a telephone is a reasonable and necessary expense incident to the provision of shelter for the birth mother is a question of fact.
23 See Ambrogi v. Koontz, 224 Va. 381, 386, 297 S.E.2d 660, 662 (1982) (where language of statute is plain and unambiguous, effect must be given to it, and its plain meaning and intent govern).
26 In your example of payment of her monthly rent, whether such expense translates into half of the monthly rental amount or some other formula relative to her lost wages requires a finding of fact.
WILLS AND DECEDENTS' ESTATES: ADMINISTRATION OF ESTATES - VIRGINIA SMALL ESTATE ACT — DESCENT AND DISTRIBUTION.

COURTS OF RECORD: CLERKS, CLERKS' OFFICES AND RECORDS.

PROPERTY AND CONVEYANCES: RECORDATION OF DOCUMENTS.

CRIMES AND OFFENSES GENERALLY: CRIMES AGAINST THE ADMINISTRATION OF JUSTICE - PERJURY.

Duty of clerk to record list of heirs without inquiry into its legal sufficiency. Duty to record amended list of heirs, regardless of whether clerk believes original list was correct or erroneous. Duty of court at subsequent proceeding to determine accuracy of list. Clerk should inform person who intentionally furnishes under oath or by affidavit false list of heirs that he could be subject to prosecution for perjury.

The Honorable Michael D. Wolfe
Clerk, Circuit Court of Alleghany County
May 18, 1999

You ask several questions regarding the duty of a circuit court clerk to record a list of heirs provided under §§ 64.1-134 and 64.1-135 of the Code of Virginia.

Section 64.1-134 requires the personal representative of a decedent, and the proponent of a will where there is no qualification of a personal representative, to furnish the court or clerk "a list of heirs under oath in accordance with a form provided to each clerk of court by the Office of the Executive Secretary of the Supreme Court or a computer-generated facsimile thereof." If no personal representative qualifies within thirty days following the death, "any heir at law of a decedent who died intestate" may file the form. The clerk shall record such list in the will book and index in the name of the decedent and the heirs. Such list so made and recorded shall be prima facie evidence of the facts therein stated.

Section 64.1-135 applies only "upon the death intestate of a person owning real estate." The section permits any person having an interest in the real estate, including a personal representative, to execute an affidavit setting forth the real estate owned by the decedent within the county or city, the intestacy, and the names and addresses of the heirs at law. As in § 64.1-134, the form is to be provided by the Office of the Executive Secretary of the Supreme Court. The clerk of the court in which deeds are admitted to record in the locality in which the real estate is located is to record and index the form of affidavit the same as wills are recorded and indexed.

You ask first whether a clerk has a duty to record a list of heirs provided under §§ 64.1-134 or § 64.1-135 when the clerk knows that the list is incorrect. You ask also whether a clerk has a duty to record an amended list of heirs which removes the name of an illegitimate child whose name was reported on the original list.

Section 17-59 requires a clerk to record "every writing authorized by law to be recorded." Section 55-106 further requires a clerk to record any such writing that is properly acknowledged or proved as provided by law. Prior opinions of the Attorney General conclude that, if a document is authorized by law to be recorded and is properly
signed and acknowledged, it is not the duty of a clerk to assess the legal sufficiency of the document and that a clerk may not refuse to record the document. 8

It is clear that the lists of heirs you describe are "authorized" by §§ 64.1-134 and 64.1-135 to be recorded. The clerk has no duty to question whether a particular list of heirs is complete or accurate under Virginia's descent and distribution statutes. 9 Rather, if the writings are properly signed and acknowledged on the forms provided by the Office of the Executive Secretary of the Supreme Court, the clerk has a mandatory duty to record the documents. It is further my opinion that the clerk has a duty to record an amended list of heirs, regardless of whether the clerk believes that the original list was correct or erroneous. It is the duty of the court at a subsequent proceeding to determine which of the lists is accurate under the law and facts.

Although the clerk is to record the list(s) of heirs without inquiry into the legal sufficiency of the list(s), a person who intentionally furnishes the clerk under oath or by affidavit a list of heirs knowing that the list is false could be subject to prosecution for perjury. 10 It would be appropriate for the clerk to so inform the person tendering the documents. 11

---

1The list is to be furnished the court or clerk where the personal representative qualifies and the clerk of the circuit court of the locality where real estate of the decedent's estate is located. Section 64.1-134.
2Section 64.1-134.
3As prima facie evidence, a recorded list of heirs suffices as proof of the identity of the heirs until the list is contradicted and overcome by other evidence. See Hyson v. Dodge, 198 Va. 792, 795, 96 S.E.2d 792, 794 (1957). Recording the list of heirs does not, however, operate to establish the truth of the document or overcome the rights of legitimate heirs not included in the list. See, e.g., § 51.1-164 (Virginia Retirement System may make payment to successor of decedent when list of heirs required by § 64.1-134 was duly filed with clerk and with Board of Trustees of Retirement System; while Board is not required to inquire into truth of list, person to whom payment is made remains answerable and accountable to any person having superior right to decedent's estate).
4Section 64.1-135.
5Id.
6You inquire specifically about a situation in which the person submitting the document admits under oath that one of the heirs of the decedent is omitted from the list.
7You indicate that the amended list of heirs states its purpose as removal of the illegitimate heir, without notice to the child or guardian. Section 64.1-5.1(4) provides that no claim of succession based on the relationship of a parent and a child born out of wedlock will be recognized in a settlement of a decedent's estate unless the child or someone acting for the child files an affidavit alleging parenthood within one year of the parent's death. The affidavit is to be filed in the circuit court in the locality where property of the decedent is located. Id. An action seeking adjudication of parenthood also is to be filed in the court within the one-year period. Id. Subject to certain exceptions, the one-year period applies notwithstanding the minority of the child. Id. No language in the statute suggests that the filing of a list of heirs under § 64.1-134 or § 64.1-135 establishes parenthood under § 64.1-5.1(4).
8See Op. Va. Att'y Gen.: 1986-1987 at 159, 160 (clerk must record document that meets basic statutory requirement without inquiry into legal sufficiency of writing); 1984-1985 at 380, 381 (clerk's authority to refuse to record document is very limited; must record document properly signed and acknowledged); id. at 166, 166 & n.1 (clerk has duty to record writing that is properly signed and acknowledged; legal consequences of writing can be determined only by court); 1971-1972 at 65, 65 (it is not within power of clerk to determine whether instrument presented for filing meets requirements of any particular provision of law).
9Sections 64.1-01 to 64.1-17.
See § 18.2-434 (person to whom oath is lawfully administered on any occasion who willfully swears falsely touching any material matter or thing shall be guilty of perjury); Wisniewski v. Johnson, 223 Va. 141, 143, 286 S.E.2d 223, 224 (1982) (by swearing to document, person vouches that contents are true; person who swears falsely may be guilty of felony under § 18.2-434).

Name Index
The Name Index consists of an alphabetical listing of individuals to whom opinions in this report are rendered. This index will be helpful in locating opinions that are cross-referenced in this report.
<table>
<thead>
<tr>
<th>NAME INDEX</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allen, William B.</td>
<td>108</td>
</tr>
<tr>
<td>Anderson, Alfred C.</td>
<td>210</td>
</tr>
<tr>
<td>Baker, D. Gregory</td>
<td>129</td>
</tr>
<tr>
<td>Baker, Thomas G. Jr.</td>
<td>156</td>
</tr>
<tr>
<td>Barlow, William K.</td>
<td>202</td>
</tr>
<tr>
<td>Behm, I. Vincent Jr.</td>
<td>90</td>
</tr>
<tr>
<td>Benedetti, Joseph B.</td>
<td>136</td>
</tr>
<tr>
<td>Black, Richard H.</td>
<td>32, 206</td>
</tr>
<tr>
<td>Bloxom, Robert S.</td>
<td>97</td>
</tr>
<tr>
<td>Bobzien, David P.</td>
<td>78, 126</td>
</tr>
<tr>
<td>Boice, William G.</td>
<td>215</td>
</tr>
<tr>
<td>Byron, Kathy J.</td>
<td>39</td>
</tr>
<tr>
<td>Callahan, Vincent F. Jr.</td>
<td>172</td>
</tr>
<tr>
<td>Cantor, Eric</td>
<td>25, 72</td>
</tr>
<tr>
<td>Conner, Ray A.</td>
<td>188</td>
</tr>
<tr>
<td>Cornwell, James E. Jr.</td>
<td>147</td>
</tr>
<tr>
<td>Cox, M. Kirkland</td>
<td>63</td>
</tr>
<tr>
<td>Cranwell, C. Richard</td>
<td>132</td>
</tr>
<tr>
<td>Davies, John J.</td>
<td>53, 137</td>
</tr>
<tr>
<td>Davis, Rex A.</td>
<td>94</td>
</tr>
<tr>
<td>DeBoer, Jay W.</td>
<td>103</td>
</tr>
<tr>
<td>Draper, Steve M.</td>
<td>69</td>
</tr>
<tr>
<td>Fielder, Marsha Compton</td>
<td>185</td>
</tr>
<tr>
<td>Foreman, Michael M.</td>
<td>124</td>
</tr>
<tr>
<td>Frey, John T.</td>
<td>27, 140</td>
</tr>
<tr>
<td>Fuller, Joyce A.</td>
<td>17</td>
</tr>
<tr>
<td>Greer, Paul D.</td>
<td>80</td>
</tr>
<tr>
<td>Griffith, Charles D. Jr.</td>
<td>85</td>
</tr>
<tr>
<td>Grimes, David N.</td>
<td>150</td>
</tr>
<tr>
<td>Hamilton, Phillip</td>
<td>3, 12, 112, 159</td>
</tr>
<tr>
<td>Hanger, Emmett W. Jr.</td>
<td>28, 48</td>
</tr>
<tr>
<td>Holcomb, Richard D.</td>
<td>133</td>
</tr>
<tr>
<td>Howell, William J.</td>
<td>8</td>
</tr>
<tr>
<td>Ingram, Riley E.</td>
<td>142</td>
</tr>
<tr>
<td>Name</td>
<td>Page(s)</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>---------------</td>
</tr>
<tr>
<td>Kellam, Philip J.</td>
<td>187, 205</td>
</tr>
<tr>
<td>Kornblau, Sam</td>
<td>10</td>
</tr>
<tr>
<td>Landes, R. Steven</td>
<td>60</td>
</tr>
<tr>
<td>Mahoney, Paul M.</td>
<td>20</td>
</tr>
<tr>
<td>Marshall, Robert G.</td>
<td>164</td>
</tr>
<tr>
<td>Mathews, A.D. Sr.</td>
<td>54</td>
</tr>
<tr>
<td>McRoberts, Andrew R.</td>
<td>83</td>
</tr>
<tr>
<td>Meeks, W. Edward III</td>
<td>46</td>
</tr>
<tr>
<td>Mims, William C.</td>
<td>105, 178</td>
</tr>
<tr>
<td>Moss, Thomas W. Jr.</td>
<td>179</td>
</tr>
<tr>
<td>Mugler, Ross A.</td>
<td>198, 211</td>
</tr>
<tr>
<td>Newhart, John R.</td>
<td>24</td>
</tr>
<tr>
<td>Parrish, Harry J.</td>
<td>67, 100</td>
</tr>
<tr>
<td>Perkins, James R.</td>
<td>6</td>
</tr>
<tr>
<td>Petera, Anne P.</td>
<td>165</td>
</tr>
<tr>
<td>Phillips, Clarence E.</td>
<td>44</td>
</tr>
<tr>
<td>Rickman, Brenda B.</td>
<td>193</td>
</tr>
<tr>
<td>Roberts, Jack</td>
<td>200</td>
</tr>
<tr>
<td>Robinett, Thomas R.</td>
<td>59</td>
</tr>
<tr>
<td>Scales, Patricia D.</td>
<td>109</td>
</tr>
<tr>
<td>Simpson, Stephen O.</td>
<td>70</td>
</tr>
<tr>
<td>Slayton, Russell O. Jr.</td>
<td>153</td>
</tr>
<tr>
<td>Spence, William D.</td>
<td>149</td>
</tr>
<tr>
<td>Stanley, Nita K.</td>
<td>195</td>
</tr>
<tr>
<td>Stoffregen, Lee</td>
<td>207</td>
</tr>
<tr>
<td>Stosch, Walter A.</td>
<td>14, 22, 87, 116, 214</td>
</tr>
<tr>
<td>Stroman, Jacob P. IV</td>
<td>199</td>
</tr>
<tr>
<td>Stump, Jackie T.</td>
<td>65</td>
</tr>
<tr>
<td>Talley, W.A. Jr.</td>
<td>31</td>
</tr>
<tr>
<td>Thomas, A. Victor</td>
<td>57</td>
</tr>
<tr>
<td>Ticer, Patricia S.</td>
<td>15</td>
</tr>
<tr>
<td>Van Landingham, Marian</td>
<td>114</td>
</tr>
<tr>
<td>Whipple, Mary Margaret</td>
<td>50</td>
</tr>
<tr>
<td>White-Hurst, John M.</td>
<td>120</td>
</tr>
<tr>
<td>Wilkins, S. Vance Jr.</td>
<td>101</td>
</tr>
<tr>
<td>Williams, James L.</td>
<td>176</td>
</tr>
<tr>
<td>Name</td>
<td>Page</td>
</tr>
<tr>
<td>--------------</td>
<td>------</td>
</tr>
<tr>
<td>Wimbish, William L.</td>
<td>168</td>
</tr>
<tr>
<td>Wolfe, Michael D.</td>
<td>220</td>
</tr>
<tr>
<td>Woods, Jane H.</td>
<td>36</td>
</tr>
</tbody>
</table>
Subject Index
The Subject Index, beginning on page 231, consists of an alphabetical listing of main and secondary headnotes that are associated with the opinions included in this report. The headnotes are derived from the titles (topical), chapters and articles (descriptive) contained within the *Code of Virginia* and the *Virginia Rules Annotated* that correspond with the particular laws and Supreme Court of Virginia rules of practice and procedure about which opinions have been rendered.
ADMINISTRATION OF GOVERNMENT GENERALLY

At-Risk Youth and Families. State pool of funds is to be expended for residential and nonresidential services provided to targeted children and their families. Attorney General defers to interpretation of Comprehensive Services Act for At-Risk Youth and Families by state agency that funds not be used to pay administrative or case management costs. Attorney General has no authority to review determination by state agency review team that services rendered under community care coordination constitute services that are duties of local stakeholder staff and not direct services for children that are reimbursable from state pool of funds ........ 3

Attorney General and Department of Law. Watershed improvement district is political subdivision of Commonwealth, not state department or agency; and has no access to legal services provided by Attorney General unless authorized by specific statute. Watershed improvement district may have access to such legal services if claim is made against district director exercising powers of soil and water conservation district for benefit of watershed improvement district. No charges assessed against property owners of watershed improvement district under county stormwater ordinance if district controls its own stormwater runoff consistent with locality's stormwater program. Watershed improvement district should use form of land book similar to form prescribed by Department of Taxation for commissioner of revenue; must certify land book to county treasurer and file copy in clerk's office annually by September 1 or within 90 days from date real property tax rate is determined, whichever occurs later ........................................ 39

Attorney General and Department of Law (official opinions of the Attorney General). Amendment authorizing ordinance to provide that local animal control officer may determine dog to be dangerous and order owner to comply with ordinance's dangerous dog regulations overrules 1996 opinion ........................................ 20

Attorney General and Department of Law (official opinions of the Attorney General). Attorney General defers to interpretations of law by agency charged with administering law unless interpretation is clearly wrong. Propriety of actions of another entity interpreting matters reserved solely to it is not subject to review by Attorney General ........................................ 3

Attorney General and Department of Law (official opinions of the Attorney General). Attorney General historically has declined to render official opinions on whether particular facts constitute violation of statute or opinions interpreting local ordinances. Application of law to specific set of facts is reserved to Commonwealth's attorney, grand jury or trier of fact and interpretation of ordinance is matter of local concern for determination by local government officials .............. 109

Attorney General and Department of Law (official opinions of the Attorney General). Attorney General historically has declined to render official opinions when request involves question of fact rather than one of law .......... 116, 132, 215
Attorney General and Department of Law (official opinions of the Attorney General). Attorneys General have concluded that § 2.1-118 does not contemplate that opinions be rendered on matters [requiring factual determinations, rather than matters interpreting questions of law] [that do not interpret questions of law] ................................................................. 132, 90

Attorney General and Department of Law (official opinions of the Attorney General). Attorneys General have declined to render opinions when request (1) does not involve question of law, (2) requires interpretation of matter reserved to another entity, (3) involves matter currently in litigation, and (4) involves matter of purely local concern or procedure .................................................. 90, 132, 142

Attorney General and Department of Law (official opinions of the Attorney General). Attorneys General refrain from opining that statute is unconstitutional unless it is clear beyond reasonable doubt that reviewing court would strike down statute ............................................................................................................ 172

Attorney General and Department of Law (official opinions of Attorney General). Department of State Police, and not Attorney General, is appropriate agency to determine whether unattended vehicle parked on paved shoulder of roadway constitutes hazard. Whether such vehicle constitutes hazard is question of fact, to be determined on case-by-case basis, considering factors historically encountered by State Police officers ............................................................... 132

Attorney General and Department of Law (official opinions of Attorney General). General Assembly is presumed to be aware of Attorney General's interpretations of state law/statute(s). Failure of legislature to make corrective amendments evinces legislative acquiescence in Attorney General's view .................. 179, 90, 87, 48

Attorney General and Department of Law (official opinions of the Attorney General). 1980 opinion concluding that exception to open meeting requirement permits city council to meet in executive session to select one of its members to serve as mayor is overruled. To extent 1980 opinion agrees that public body may meet in executive session to discuss personnel matters related to individuals over whom it exercises authority, it is still valid ................................................................................. 15

Attorney General and Department of Law (official opinions of the Attorney General). Office has long-standing policy of not rendering opinions interpreting local ordinances or regulations ................................................................. 69

Attorney General and Department of Law (official opinions of the Attorney General). Office historically has declined to render official opinions on matters solely of purely local concern, and has limited responses to opinion requests to matters concerning interpretation of federal or state law, rule or regulation ........ 90
Attorney General and Department of Law (official opinions of the Attorney General). Request for official opinion [made pursuant to § 2.1-118] concerning propriety of actions of another entity interpreting matters reserved solely to it is not subject to review by Attorney General and must be treated as binding determination with regard to matter ........................................ 132, 142

Department of General Services - Division of Risk Management. Watershed improvement district is political subdivision of Commonwealth, not state department or agency; and has no access to legal services provided by Attorney General unless authorized by specific statute. Watershed improvement district may have access to such legal services if claim is made against district director exercising powers of soil and water conservation district for benefit of watershed improvement district. No charges assessed against property owners of watershed improvement district under county stormwater ordinance if district controls its own stormwater runoff consistent with locality's stormwater program. Watershed improvement district should use form of land book similar to form prescribed by Department of Taxation for commissioner of revenue; must certify land book to county treasurer and file copy in clerk's office annually by September 1 or within 90 days from date real property tax rate is determined, whichever occurs later ................. 39

Privacy Protection Act of 1976. Absence of statutory language requiring parental consent to transfer immunization information about individual children is not sufficient to override obligation of physician or health care provider to maintain confidentiality of patient medical records. Statutes mandating establishment of information systems containing medical records data and reporting of patient information also provide mechanisms for regulating such systems and protecting confidentiality of information ................................................................. 114

Privacy Protection Act of 1976. Applicants for marriage licenses must include their social security numbers or other control numbers issued by Department of Motor Vehicles on applications. Circuit court clerk must refuse to issue marriage license to individual who refuses to provide either number. Clerk may not deny marriage license to nonresident foreign national for whom no statutory basis exists for issuing such numbers. Parties are required to furnish such social security number or control numbers as they actually may have at time application for marriage license is made ........................................................................................................ 124

Privacy Protection Act of 1976. Freedom of Information Act does not require office of commissioner of revenue to copy personal property book. Records custodian may place burden for copying records on requester if custodian has no system or computer database available that is capable of producing copies. Act expressly grants citizens right to copy official records required by law to be open for inspection. Because electronic system for producing copies of book does not exist does not prevent persons within commissioner's office or requester from making copies of book. Privacy Protection Act does not prohibit disclosure of
personal information required to be disclosed under Freedom of Information Act. Only that information required by law to be entered in personal property book is subject to disclosure; other information relating to taxpayer's personal property is protected by secrecy requirements, unless some other authority permits its release ................................................................. 17

Privacy Protection Act of 1976. Local tax official, and not governing body, has discretionary authority to decide whether to require disclosure of taxpayers' social security numbers. City council has no authority to direct commissioner of revenue to ascertain social security numbers of all taxpayers subject to local taxation in city ................................................................. 193

State and Local Government Conflict. Act does not apply to officers and employees who leave state and local government employment; counties have no statutory authority to adopt ordinances restricting postemployment activities of its officers and employees ................................................................. 101

State and Local Government Conflict. Community college employee may not accept additional cash bonus from private corporation for training services provided to corporation by college ................................................................. 6

State and Local Government Conflict. Intent of reporting requirements for Statement of Economic Interests is to establish written record of economic interests which may affect judgment of governmental officers and employees in performance of their official duties ................................................................. 8

State and Local Government Conflict. Loans made by Virginia Housing Development Authority to its employees to finance purchase or improvement of single family homes are considered payments which are excepted from general contract prohibitions of Conflict of Interests Act. HDA employee applicants are not required to disqualify themselves from participating in their loan transactions, to publicly disclose their loans and record their disqualification, and refrain from voting or acting on behalf of HDA with respect to their loans ................................................................. 10

State and Local Government Conflict. Off-duty employment of deputy sheriffs requiring use of their police powers must be authorized by, and consistent with, local ordinance and regulation ................................................................. 69

State and Local Government Conflict. Purpose of disclosure of business or financial relationship at hearing held to consider application for special exception, variance or zoning is to establish public record of economic interests that may affect judgment of governmental officials in performance of their duties. Strict compliance with requirement to disclose such relationship between county official who has power to approve certain land use changes and applicant requesting changes; $200 threshold amount triggers financial relationship that requires disclosure ...... 78
State and Local Government Conflict. School board members and employees designated by ordinance adopted by board of supervisors must file disclosure statement of their personal interests with clerk of school board ........................................ 8

Virginia Freedom of Information Act. Act does not require office of commissioner of revenue to copy personal property book. Records custodian may place burden for copying records on requester if custodian has no system or computer database available that is capable of producing copies. Act expressly grants citizens right to copy official records required by law to be open for inspection. Because electronic system for producing copies of book does not exist does not prevent persons within commissioner's office or requester from making copies of book. Privacy Protection Act does not prohibit disclosure of personal information required to be disclosed under Freedom of Information Act. Only that information required by law to be entered in personal property book is subject to disclosure; other information relating to taxpayer's personal property is protected by secrecy requirements, unless some other authority permits its release ........................................ 17

Virginia Freedom of Information Act. Act is to be construed liberally so that citizens are afforded opportunity to witness operations of government ........................................ 15

Virginia Freedom of Information Act. Act prohibits local governing body from conducting meeting through any communication means where members are not physically assembled; does not prohibit all forms of communication among members when body is not physically assembled or sitting. Transmitting messages by electronic mail does not constitute conducting meeting through electronic means. Act does not prohibit local governing body members from sending electronic mail communications to other members. Official actions of governing body must be conducted at meeting where membership is physically present ........................................ 12

Virginia Freedom of Information Act. Annual meeting at which each school board is required to elect chairman from its membership falls within purview of Act's definition of "meeting" which must be open to public. List of personnel-related actions which school board may discuss in executive session does not include election. Local school board may not meet in executive session to discuss selection of its chairman and vice-chairman ........................................ 15

Virginia Freedom of Information Act. Assuming member of property owners' association identifies purpose of request for minutes of meeting of association's board of directors, availability of minutes is not contingent on board's approval of such minutes ........................................ 164

Virginia Freedom of Information Act. Confidential taxpayer information generally is not subject to disclosure under Act ........................................ 211

Virginia Freedom of Information Act. Distress warrant related to taxes is public record subject to disclosure. Information appearing on warrant pertaining to
transactions, property, income or business of taxpayer is confidential tax information not subject to disclosure, unless information is entered on public assessment book or published in line of duty. Line of duty exception allows disclosure of amount of tax delinquency only to other tax officers and employees. Whether distress warrant related to taxes would be deemed confidential depends on particular facts ................................................................. 21

Virginia Freedom of Information Act. Exception to open meeting requirement allowing private discussion of personnel matters is designed to protect privacy of individual employees of public bodies in matters relating to their employment ...... 15

Virginia Freedom of Information Act. Exception to open meeting requirement is not available for decision regarding which members of school board shall serve as board chairman and vice-chairman; is available only for discussion of personnel considerations regarding individuals employed or appointed by public body ...... 15

Virginia Freedom of Information Act. Members of state board representing quorum of board, who are not committee or acting on behalf of board, may confer informally regarding business of board ......................................................... 14

Virginia Freedom of Information Act. 1980 opinion concluding that exception to open meeting requirement permits city council to meet in executive session to select one of its members to serve as mayor is overruled. To extent 1980 opinion agrees that public body may meet in executive session to discuss personnel matters related to individuals over whom it exercises authority, it is still valid .............. 15

Virginia Freedom of Information Act. Personal property book is public assessment book not encompassed within secrecy provisions of § 58.1-3 and is subject to disclosure ........................................................................................................ 17

ADMINISTRATIVE PROCESS ACT
(See COMMISSIONS, BOARDS AND INSTITUTIONS)

ADOPTION
(See WELFARE (SOCIAL SERVICES))

AGRICULTURAL AND FORESTAL DISTRICTS ACT
(See COUNTIES, CITIES AND TOWNS)

AGRICULTURE, HORTICULTURE AND FOOD

Comprehensive Animal Laws. Dog that attacks, bites or injures persons who intervene in dog's attack on another dog is not excluded from definition of "dangerous dog" for purposes of obtaining summons to require owner to appear in general district court. Whether animal is dangerous dog subject to provisions in ordinance regulating such dogs is question of fact for determination by court after hearing evidence ................................................................. 20
AGRICULTURE, HORTICULTURE AND FOOD (contd.)

Comprehensive Animal Laws. Dog that has inflicted injury on companion animal that is another dog is excluded from "dangerous dog" category ........................................ 20

Comprehensive Animal Laws - Authority of Local Governing Bodies and Licensing of Dogs. Ordinance that prohibits dogs running at large does not prohibit person's right to hunt foxes with dogs on any land with landowner's consent. Fox hunters engaged in chase originating on permitted land may follow their dogs onto prohibited land to retrieve dogs, but not to continue chase. If fox hunters fail to retrieve their dogs from prohibited land, dogs may be deemed to be running at large. Whether particular set of facts would constitute violation of local ordinance prohibiting dogs running at large on prohibited land is issue for determination by local Commonwealth's attorney and trier of fact ........................................... 109

APPROPRIATION ACT

Criminal Justice Services. 1998 Appropriation Act grants Criminal Justice Services Board discretion in determining distribution of funds to state-supported regional criminal justice training academies. Although Board is no longer required to impose specific portion of financial responsibility for operating academies on participating localities, it is not precluded from determining such to be reasonable requirement. Board has discretion to determine whether in-kind services or contributions by entities other than participating localities would satisfy any obligation placed on localities to share in funding of academy's operation .................................... 70

BANKING AND FINANCE

Money and Interest. In loan made by bank, savings institution, industrial loan association or credit union, lenders and borrowers of $5,000 or more may agree in contract of indebtedness to imposition of higher interest rate upon failure of borrower to pay loan. Payment of late charge is not considered payment of interest. Five percent late charge limitation is not applicable to loan in initial principal amount of $5,000 or more ................................................................. 22

Money and Interest. Late charges imposed upon borrowers for failure to make installment loan payments fall within scope of "interest" for purposes of certain federal banking statutes ................................................................. 22

Money and Interest. Payment of late charge is considered not to constitute payment of interest under traditional usury law analysis ........................................... 22

CIVIL REMEDIES AND PROCEDURE

Actions - Unlawful Entry and Detainer. Officer to whom writ of possession has been delivered in unlawful detainer action must provide defendant 72-hour notice of intent to execute writ, notwithstanding court's "immediate possession" direction on writ ................................................................. 24
Evidence - Medical Evidence. Patient medical records may not be disclosed in response to subpoena duces tecum except in compliance with statutory Notice to Provider/Patient provisions ................................................................. 120

Executions and Other Means of Recovery. Broad authority to seize property for delinquent taxes does not extend to seizure of persons. Stopping automobile and detaining person at roadblock constitutes seizure of person. Within limitations imposed by Fourth Amendment, law-enforcement officers may set up roadblocks as exercise of their statutory authority to stop vehicles to inspect equipment or verify registration and licenses. No authority to detain person at roadblock to verify payment of personal property taxes or to detain person for being delinquent in payment of personal property taxes ............................................................. 207

Executions and Other Means of Recovery. Officer to whom writ of possession has been delivered in unlawful detainer action must provide defendant 72-hour notice of intent to execute writ, notwithstanding court’s “immediate possession” direction on writ ........................................................................................................ 24

Executions and Other Means of Recovery. Sheriff, and not private process server, serves 72-hour notice to vacate and may charge each person served with notice $12 fee; may charge additional $12 fee for execution of writ of possession ........ 25

Executions and Other Means of Recovery. Sheriff, as well as local treasurer, is authorized to distrain and sell property to collect delinquent taxes ...................... 207

Judgments and Decrees Generally. Authority created by power to confess judgment should be strictly construed to prevent abuse ................................................. 27

Judgments and Decrees Generally. Only debtor, attorney(s), or other person(s) named in confessed judgment note may confess judgment in circuit court clerk's office. Attorney-in-fact specifically named in note in issue is authorized to confess judgment pursuant to note; individuals named in substitute power of attorney are not so authorized ............................................................................... 27

Medical Malpractice. Ore tenus hearings of medical malpractice review panel must be open to public and media, and are to be closed only during deliberation of panel to reach decision ................................................................. 28

Process. Authority to issue and serve process, as provided for by constitution and statute, must be strictly construed ......................................................... 31

Process. Private process server is considered officer or sheriff for purpose of serving process; enters public area of business to serve process under authority of law. Entry into private offices of business area where there is justifiable expectation of privacy to serve process may constitute unreasonable search or seizure. In such case, process server would not be acting under authority of law and would be liable for trespass. Extent to which portion of business establishment constitutes
PRIVATE area is question of fact. Person acting jointly or in combination with other person(s) to resist or obstruct lawful service of process is guilty of misdemeanor violation. Private process server is not law-enforcement officer against whom any attempt to interfere with execution of service of process would constitute misdemeanor .......................................................... 32

Process. Service by sheriff and service by private process server are of equal force and legitimacy ........................................................................................................................................ 32

Process. Sheriff, and not private process server, serves 72-hour notice to vacate and may charge each person served with notice $12 fee; may charge additional $12 fee for execution of writ of possession ............................................ 25

Process. Strict construction of phrase “member of his family” encompasses relationships of consanguinity to intended recipient of service of process. Relationship with in-law is not relationship of consanguinity. “Member of his family” does not include in-law residing in usual place of abode of party subject to substituted service of process ........................................................................................................ 31

CLEAN WATER ACT OF 1977 (FEDERAL)

Lawful adoption of Virginia Pollutant Discharge Elimination System Permit Regulation and Virginia Water Protection Permit Regulation by State Water Control Board. Authority of Board to define “surface water” by regulation to include “wetlands”; inclusion of “nontidal wetlands” within regulatory definitions of “wetlands.” Authority of Chesapeake Bay Local Assistance Board to establish criteria for protection of water quality within Chesapeake Bay Preservation Areas must not affect authority of State Water Control Board to regulate industrial or sewage discharges pursuant to State Water Control Law. Board’s regulatory authority does not extend beyond § 401 certification over nontidal wetlands .................. 179

CLERKS

Applicants for marriage licenses must include their social security numbers or other control numbers issued by Department of Motor Vehicles on applications. Circuit court clerk must refuse to issue marriage license to individual who refuses to provide either number. Clerk may not deny marriage license to nonresident foreign national for whom no statutory basis exists for issuing such numbers. Parties are required to furnish such social security number or control numbers as they actually may have at time application for marriage license is made.............. 124

Clerk is required to use reasonable or ordinary care in performance of his duties. What constitutes reasonable or ordinary care necessarily depends on particular facts and circumstances present ................................................................. 140

Clerks have no inherent powers; scope of their powers must be determined by reference to applicable statutes ................................................................. 140
Duty of clerk to record document that is authorized by law to be recorded and is properly signed and acknowledged; clerk has no duty to assess legal sufficiency of document and may not refuse to record document .......................................................... 220

Duty of clerk to record list of heirs without inquiry into its legal sufficiency. Duty to record amended list of heirs, regardless of whether clerk believes original list was correct or erroneous. Duty of court at subsequent proceeding to determine accuracy of list. Clerk should inform person who intentionally furnishes under oath or by affidavit false list of heirs that he could be subject to prosecution for perjury .......................................................... 220

No statute directs that applicant’s name on notary commission be full legal name or that commission be in any particular form. Clerk may not require name presented on commission to be in any particular form. Clerk is required to use reasonable or ordinary care in determining whether identification presented by applicant identifies him as individual commissioned by Secretary of Commonwealth. Fact that name on commission does not precisely match name on applicant’s identification is not wholly determinative of identity of applicant .......................................................... 140

Obligation of clerk of court to mail to counsel for accused certificate of analysis to be offered in evidence at hearing or trial of criminal offense. Certificate may be inadmissible if, when request was received, clerk merely notified counsel that case was not on court docket. When counsel requests certificate in specific case not yet docketed in court, preferable procedure would be for clerk to respond to request when and if case is docketed in court .......................................................... 94

Only debtor, attorney(s), or other person(s) named in confessed judgment note may confess judgment in circuit court clerk’s office. Attorney-in-fact specifically named in note in issue is authorized to confess judgment pursuant to note; individuals named in substitute power of attorney are not so authorized ..................... 27

COMMISSIONERS OF THE REVENUE

Authority of locality to impose consumer utility tax must be clear. Because provider of pay telephone service is not “consumer” subject to imposition of tax for services provided by telephone company, owner of pay telephones is not subject to tax ... 198

County-wide rezoning resulting in portion of property being rezoned to more intensive use not requested by owner does not affect continued qualification of property under land-use ordinance. Property once eligible that becomes ineligible for land-use value assessment and taxation is to be assessed at fair market value. Roll-back taxes equal difference between tax levied when land qualified for special assessment and tax that would have been levied had property been subject to fair market value assessment rather than special assessment. County’s inclusion in its determination of roll-back taxes value of rezoned portion of property is consistent with statutes governing roll-back taxes .......................................................... 202
Decision whether company that assembles materials is manufacturer is question of fact to be resolved by commissioner of revenue analyzing such factors as type of materials being assembled, complexity of process, and product resulting from assembly. Locality is not liable for payment of interest on refund of erroneously assessed BPOL taxes for license years prior to January 1, 1997 ........................................ 188

Distress warrant related to taxes is public record subject to disclosure pursuant to Virginia Freedom of Information Act. Information appearing on warrant pertaining to transactions, property, income or business of taxpayer is confidential tax information not subject to disclosure, unless information is entered on public assessment book or published in line of duty. Line of duty exception allows disclosure of amount of tax delinquency only to other tax officers and employees. Whether distress warrant related to taxes would be deemed confidential depends on particular facts .................................................. 211

Fair market value is factual question to be determined by commissioner upon consideration of factors affecting property's value ........................................ 202

For business license tax purposes, funds travel agency disburses on behalf of clients for travel and accommodation are not included in agency's gross receipts. Funds travel agency receives from travel package it purchases and resells to clients at increased price would be included in agency's gross receipts. Determination whether funds travel agency receives from its clients constitute gross receipts lies with commissioner of revenue and depends on nature of transaction among agency, its clients and recipients of funds ........................................ 187

Freedom of Information Act does not require office of commissioner of revenue to copy personal property book. Records custodian may place burden for copying records on requester if custodian has no system or computer database available that is capable of producing copies. Act expressly grants citizens right to copy official records required by law to be open for inspection. Because electronic system for producing copies of book does not exist does not prevent persons within commissioner's office or requester from making copies of book. Privacy Protection Act does not prohibit disclosure of personal information required to be disclosed under Freedom of Information Act. Only that information required by law to be entered in personal property book is subject to disclosure; other information relating to taxpayer's personal property is protected by secrecy requirements, unless some other authority permits its release ........................................ 17

"Line of duty" exclusion to prohibition against commissioner of revenue divulging personal property tax information is applicable to city revenue office employees. Commissioner is not prohibited from disclosing to another city revenue office information regarding year, make, model and assessed value of delinquent taxpayers' vehicles and whether taxes on such vehicles have been prorated or exonerated,
to enable employees to perform duty under city code of collecting delinquent taxes .......................................................... 185

Local tax official, and not governing body, has discretionary authority to decide whether to require disclosure of taxpayers' social security numbers. City council has no authority to direct commissioner of revenue to ascertain social security numbers of all taxpayers subject to local taxation in city ........................................ 193

Real estate cooperative association, and not proprietary lessee with possessory interest in individual cooperative unit, is owner of real estate subject to real estate tax assessment. Tax exemptions for elderly and handicapped are not available to individual proprietary lessee ........................................ 205

Whether business is engaged in manufacturing is question of fact to be resolved on case-by-case basis by commissioner of revenue ........................................ 188

COMMISSIONS, BOARDS AND INSTITUTIONS

Administrative Process Act. Effective date—July 1, 1998—of change in reimbursement policy for Medicare cost sharing for QMBs is consistent with Administrative Process Act and 1998 Appropriation Act. Interpretation by Department of Medical Assistance Services that changes made by federal Balanced Budget Act of 1997 apply to QMBs, as currently defined, is consistent with position of Health Care Financing Administration. Department was authorized to change state policy allowing use of Medicaid rates to determine its payment responsibility for deductibles and coinsurance for QMBs ........................................ 36

Department of Criminal Justice Services. 1998 Appropriation Act grants Criminal Justice Services Board discretion in determining distribution of funds to state-supported regional criminal justice training academies. Although Board is no longer required to impose specific portion of financial responsibility for operating academies on participating localities, it is not precluded from determining such to be reasonable requirement. Board has discretion to determine whether in-kind services or contributions by entities other than participating localities would satisfy any obligation placed on localities to share in funding of academy's operation ........................................ 70

Department of Criminal Justice Services - Private Security Services Businesses. No authority for licensed armed security officer under private contract to advise citizen of his right to receive summons and be released from custody, prior to officer's arresting, taking into custody and transporting citizen to magistrate for issuance of warrant ........................................ 87

COMMONWEALTH'S ATTORNEYS

Court may not assign to home/electronic incarceration habitual offender who is under mandatory sentence of confinement in jail for 12 months ......................... 150
Ordinance that prohibits dogs running at large does not prohibit person's right to hunt foxes with dogs on any land with landowner's consent. Fox hunters engaged in chase originating on permitted land may follow their dogs onto prohibited land to retrieve dogs, but not to continue chase. If fox hunters fail to retrieve their dogs from prohibited land, dogs may be deemed to be running at large. Whether particular set of facts would constitute violation of local ordinance prohibiting dogs running at large on prohibited land is issue for determination by local Commonwealth's attorney and trier of fact .......................................................... 109

Patient medical records may not be disclosed in response to subpoena duces tecum except in compliance with statutory Notice to Provider/Patient provisions .... 120

Prosecution of unlawful hazing is not limited to activities that occur only on campuses at Virginia schools, colleges or universities .................................................. 85

Reasonableness of sheriff's use of drug-sniffing dogs to search person of students attending public school depends on whether facts support suspicionless search that is relatively unobtrusive coupled with government's interest in conducting search ........................................................................ 46

Winchester city attorney may prosecute criminal violations of city ordinances without concurrence of Commonwealth's attorney ............................................. 59

COMPREHENSIVE SERVICES ACT FOR AT-RISK YOUTH AND FAMILIES
(See ADMINISTRATION OF GOVERNMENT GENERALLY: At-Risk Youth and Families)

CONFLICT OF INTERESTS
(See ADMINISTRATION OF GOVERNMENT GENERALLY: State and Local Government Conflict)

CONSERVATION

Chesapeake Bay Preservation Act. Lawful adoption of Virginia Pollutant Discharge Elimination System Permit Regulation and Virginia Water Protection Permit Regulation by State Water Control Board. Authority of Board to define "surface water" by regulation to include "wetlands"; inclusion of "nontidal wetlands" within regulatory definitions of "wetlands." Authority of Chesapeake Bay Local Assistance Board to establish criteria for protection of water quality within Chesapeake Bay Preservation Areas must not affect authority of State Water Control Board to regulate industrial or sewage discharges pursuant to State Water Control Law. Board's regulatory authority does not extend beyond § 401 certification over nontidal wetlands ............................................................................... 179

Flood Protection and Dam Safety - Stormwater Management. Watershed improvement district is political subdivision of Commonwealth, not state department or agency; and has no access to legal services provided by Attorney General unless authorized by specific statute. Watershed improvement district may have access
to such legal services if claim is made against district director exercising powers of soil and water conservation district for benefit of watershed improvement district. No charges assessed against property owners of watershed improvement district under county stormwater ordinance if district controls its own stormwater runoff consistent with locality's stormwater program. Watershed improvement district should use form of land book similar to form prescribed by Department of Taxation for commissioner of revenue; must certify land book to county treasurer and file copy in clerk's office annually by September 1 or within 90 days from date real property tax rate is determined, whichever occurs later .................................................. 39

Flood Protection and Dam Safety - Watershed Improvements Districts. In absence of any legislation to contrary, watershed improvement district, as separate political subdivision, may exercise its statutory powers within its jurisdiction without seeking approval of county .................................................. 39

Flood Protection and Dam Safety - Watershed Improvements Districts. Watershed improvement district is political subdivision of Commonwealth, not state department or agency; and has no access to legal services provided by Attorney General unless authorized by specific statute. Watershed improvement district may have access to such legal services if claim is made against district director exercising powers of soil and water conservation district for benefit of watershed improvement district. No charges assessed against property owners of watershed improvement district under county stormwater ordinance if district controls its own stormwater runoff consistent with locality's stormwater program. Watershed improvement district should use form of land book similar to form prescribed by Department of Taxation for commissioner of revenue; must certify land book to county treasurer and file copy in clerk's office annually by September 1 or within 90 days from date real property tax rate is determined, whichever occurs later .................................................. 39

Forest Resources and the Department of Forestry. Locality may regulate, by ordinance, silvicultural activities but must observe clear and unambiguous statutorily imposed duties and limitations .................................................. 44

Open-Space Land Act. Express statutory authority granted locality to expend portion of revenues derived from imposition of transient occupancy tax to promote and generate tourism confers by implication power to determine how tax revenues are to be spent to achieve purpose of promoting tourism in locality. Whether open-space land purchased with revenues derived from transient occupancy tax promotes tourism and whether land so purchased is preserved for historic or scenic purposes consistent with Act requires factual determination to be made by local governing body .................................................. 200

Soil and Water Conservation - Soil and Water Conservation Districts. Watershed improvement district is political subdivision of Commonwealth, not state department or agency; and has no access to legal services provided by Attorney General
unless authorized by specific statute. Watershed improvement district may have access to such legal services if claim is made against district director exercising powers of soil and water conservation district for benefit of watershed improvement district. No charges assessed against property owners of watershed improvement district under county stormwater ordinance if district controls its own stormwater runoff consistent with locality's stormwater program. Watershed improvement district should use form of land book similar to form prescribed by Department of Taxation for commissioner of revenue; must certify land book to county treasurer and file copy in clerk's office annually by September 1 or within 90 days from date real property tax rate is determined, whichever occurs later ................. 39

CONSTITUTION OF THE UNITED STATES

Double jeopardy clause. When considering multiple punishments for single transaction, controlling factor is legislative intent. Judicial punishment in excess of legislative intent offends double jeopardy clause .................................................. 137

Double jeopardy test. Test as to whether each offense requires proof of fact, which other does not, requires that two offenses be examined in abstract, rather than with reference to facts of particular case under review .................................. 137

Double jeopardy test. Where same act or transaction constitutes violation of two distinct statutory provisions, test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of fact other does not. If each offense requires proof of fact that other does not, applicable test is satisfied, notwithstanding any substantial overlap in proof offered to establish crimes ........................................................... 137

Fifth Amendment. Department of Health must consider land use concerns expressed by county board of supervisors regarding Department's processing of application for reissuance of permit to allow storage of sludge at existing facility within county. Local ordinance regulating alternative on-site sewage systems may not subject such systems to restrictions more stringent than those prescribed by state law or regulation. Analysis of "taking" in relation to Department's denial of permit ................................................................. 116

Fourth Amendment. Bars prosecution of person who refuses to permit warrantless code-enforcement inspection of personal residence .................................................. 32

Fourth Amendment. Broad authority to seize property for delinquent taxes does not extend to seizure of persons. Stopping automobile and detaining person at roadblock constitutes seizure of person. Within limitations imposed by Fourth Amendment, law-enforcement officers may set up roadblocks as exercise of their statutory authority to stop vehicles to inspect equipment or verify registration and licenses. No authority to detain person at roadblock to verify payment of personal property taxes or to detain person for being delinquent in payment of personal property taxes .................................................. 207
CONSTITUTION OF THE UNITED STATES (cont.)

Fourth Amendment. Entry into private offices of business area to serve process constitutes unreasonable search ................................................................. 32

Fourth Amendment. Guarantees privacy and security of individuals against arbitrary invasions by government officials ................................................................. 32

Fourth Amendment. Guarantees right to be secure from intrusions into personal privacy and right to be protected from searches for evidence of criminal action .... 32

Fourth Amendment. Highway sobriety checkpoints are consistent with amendment .......................................................................................................................... 207

Fourth Amendment. In determining constitutionality of stopping vehicle and detaining occupants at roadblock, courts weigh gravity of public concerns served by such seizure, degree to which seizure advances public interest, and severity of interference with individual liberty ................................................................. 207

Fourth Amendment. Private process server is considered officer or sheriff for purpose of serving process; enters public area of business to serve process under authority of law. Entry into private offices of business area where there is justifiable expectation of privacy to serve process may constitute unreasonable search or seizure. In such case, process server would not be acting under authority of law and would be liable for trespass. Extent to which portion of business establishment constitutes private area is question of fact. Person acting jointly or in combination with other person(s) to resist or obstruct lawful service of process is guilty of misdemeanor violation. Private process server is not law-enforcement officer against whom any attempt to interfere with execution of service of process would constitute misdemeanor ................................................................................................................................. 32

Fourth Amendment. Protection from unreasonable official entries upon private property ................................................................................................................................. 32

Fourth Amendment. Random spot checks that place discretion in law-enforcement officers as to which vehicle to stop and where to conduct stop are unconstitutional ................................................................................................................................. 207

Fourth Amendment. Reasonableness of sheriff's use of drug-sniffing dogs to search person of students attending public school depends on whether facts support suspicionless search that is relatively unobtrusive coupled with government's interest in conducting search ................................................................................................................................. 46

Fourth Amendment. Reasonableness of suspicionless search ................................................................................................................................. 46

Fourth Amendment. Stopping automobile and detaining occupants at roadblock constitutes seizure of person and is unreasonable if not based on articulable and reasonable suspicion that laws are being violated. Fixed checkpoint stops are reasonable if procedure is carried out pursuant to plan embodying explicit, neutral limitations on conduct of individual officers. Interference with individual liberty
CONSTITUTION OF THE UNITED STATES (cont.)

in such instances is balanced against state's strong interest in promoting safety on its roads by checking to see that licensing, registration, and vehicle inspection requirements are being met ........................................ 207

CONSTITUTION OF VIRGINIA

Bill of Rights. Department of Health must consider land use concerns expressed by county board of supervisors regarding Department's processing of application for reissuance of permit to allow storage of sludge at existing facility within county. Local ordinance regulating alternative on-site sewage systems may not subject such systems to restrictions more stringent than those prescribed by state law or regulation. Analysis of "taking" in relation to Department's denial of permit .... 116

Constitutionality. No act of legislature should be held unconstitutional unless it is prohibited by state or federal constitution in express terms or by necessary implication, nor should it be construed to bring it into conflict with constitutional provisions unless such construction is unavoidable ........................................ 172

Constitutionality. Presumption of constitutionality attaches to every legislative act of General Assembly. Strict standard applied to constitutional challenges to state statutes. Statute will be upheld if any reasonable doubt exists as to its constitutionality ................................................ 172

Education. Local school board is not permitted to inquire into, or require documentation to verify, student applicant's citizenship or visa status for purpose of ascertaining whether student is bona fide resident qualified to attend free public school in school district ....................................... 105

Education (school boards). Authority for school board to provide insurance coverage for school division is silent as to manner and mode by which such policies may be purchased and serviced. "Reasonable selection of method" rule allows school board discretionary authority to issue agent-of-record letter to insurance company requesting that specific insurance agent be designated agent of record on its policies of insurance ................................................ 101

Executive. Circuit courts of Commonwealth are not "other appropriate authority" entitled to restore felon's civil rights. Restoration of such rights within Commonwealth is linked to clemency power reserved exclusively to Governor. Circuit courts may not be imbued with authority to restore civil rights either by act of General Assembly or by executive order of Governor ......................... 50

Franchise and Officers (qualifications of voters). Circuit courts of Commonwealth are not "other appropriate authority" entitled to restore felon's civil rights. Restoration of such rights within Commonwealth is linked to clemency power reserved exclusively to Governor. Circuit courts may not be imbued with authority to restore civil rights either by act of General Assembly or by executive order of Governor ................................................ 50
CONSTITUTION OF VIRGINIA (CONT'D.)

Franchise and Officers (qualifications of voters). Felon's civil rights may be restored by Governor, or any other appropriate authority, including President, other governors, and pardoning boards with such authority. General Assembly is not "other appropriate authority" authorized to restore felon's voting rights in Virginia .......... 48

Franchise and Officers (qualifications of voters). Loss of civil rights arises by operation of law and is simple consequence of conviction .......................................................... 50

Franchise and Officers (qualifications of voters). Various methods to accomplish restoration of civil rights .......................................................... 50

Judiciary. Patient medical records may not be disclosed in response to subpoena duces tecum except in compliance with statutory Notice to Provider/Patient provisions .......................................................... 120

Local Government. Authority for town to construct, maintain and operate its own electric facilities where no such facilities exist in town. No authority for public electric utility to act as town's agent to construct, maintain and repair electric facilities and handle billings and customer relationships. Town may install and operate its own electric utility in areas of town not served by exclusive franchisee; to do so within certificated territory of exclusive franchisee is subject to constitutional challenge .......................................................... 60

Local Government. City or town may satisfy constitutional requirements by advertising and receiving public bids before awarding franchise to certificated telecommunications providers to use its public rights-of-way for more than five years, notwithstanding fact that amount of bid is related to Public Rights-of-Way Use Fee collected from such providers. Requirement that locality accept highest bid from responsible bidder does not alter this conclusion .......................................................... 172

Local Government. History of advertisement and public bid requirements in relation to grant of franchise for use of municipality's public rights-of-way .......... 172

Local Government. Purpose of advertisement and public bid requirements in relation to grant of franchise for use of municipality's public rights-of-way is to require publicity and not to require acceptance of highest bid .......................................................... 172

Local Government. Purpose of term limit for grant of public easement not permitted to general public is to prevent permanent dedication of publicly owned property to private use. Purpose of notice and bid provisions is to prevent hasty or clandestine disposition of municipally owned real property by city or town council .......................................................... 63

Local Government. Term requirements and notice and bid restrictions generally placed on transfers of city-owned property are not applicable to transfer of such property to water authority. Colonial Heights may grant public easement to Appomattox River Water Authority of which city is member .......................................................... 63
Local Government (county and city officers). Absent specific legislation, local governing bodies have no authority to specify duties of constitutional officers. Local governing bodies have no authority to supervise or intervene in management and control of officer's duties. Constitutional officers are independent of their respective localities' management and control .............................................................. 193

Local Government (county and city officers). County manager for Henrico County lacks authority on his own accord, to amend budget approved by board of supervisors for funding county sheriff's office .......................................................... 54

Local Government (county and city officers). Local tax official, and not governing body, has discretionary authority to decide whether to require disclosure of taxpayers' social security numbers. City council has no authority to direct commissioner of revenue to ascertain social security numbers of all taxpayers subject to local taxation in city ........................................................................................................ 193

Local Government (county and city officers). No statute directs that applicant's name on notary commission be full legal name or that commission be in any particular form. Clerk may not require name presented on commission to be in any particular form. Clerk is required to use reasonable or ordinary care in determining whether identification presented by applicant identifies him as individual commissioned by Secretary of Commonwealth. Fact that name on commission does not precisely match name on applicant's identification is not wholly determinative of identity of applicant ............................................................................................. 140

Local Government (county and city officers). Political subdivisions constituting Southside Regional Jail Authority are City of Emporia and Greensville County. Sheriff of each participating political subdivision must be member of Authority .... 153

Local Government (debt). Board of supervisors elected for four-year term in 1995 may not adopt resolution irrevocably committing its successors in office to expend portion of locality's resources to operate youth services program for fiscal year 2000-2001 ................................................................. 53

Local Government (debt). Contractual provisions which purport to bind locality to fixed obligation to make payments in future years generally are considered to be debts subject to constitutional restrictions ......................................................... 53

CONSUMER PROTECTION
(See TRADE AND COMMERCE: Virginia Consumer Protection Act)

CONTRACTS

Virginia Public Procurement Act. Act prohibits former public employees having responsibility for procurement transactions from accepting employment with bidder, offeror or contractor for one year after cessation of public employment .... 101
Virginia Public Procurement Act. Public recreational facilities authority has statutory authority to purchase insurance for construction project through owner-controlled insurance program which provides for workers' compensation general and excess liability, professional liability, pollution liability, force majeure/debt service guarantee, and contractor default (in lieu of surety coverage). Such insurance coverage satisfies statutory obligation to provide workers' compensation insurance and payment and performance bonds. Public recreational facilities authority that contracts with independent contractor to perform work within authority's trade, business or occupation is "statutory employer" of employees employed by construction contractors and subcontractors. Sole remedy for employees is provided by Workers' Compensation Act .................................................. 72

Virginia Public Procurement Act. Retirement System, and not Attorney General, is appropriate agency to determine whether city retiree may continue to receive retirement benefits during his employment by city as independent contractor performing substantially same duties he performed as full-time city employee. Retirement System has determined that because contract position is not eligible for coverage under Retirement System, retiree employed under contract to city may continue to receive retirement allowance. City must open application process for contract employment to all qualified independent contractors; may not offer contract for employment to single contractor. Retiree under contract to city who is not eligible to participate in Retirement System does not meet definition of employee carrying out functions of government. City is not authorized to fill position covered under Retirement System with independent contract retiree receiving retirement allowance, who is not eligible to participate in System, but is afforded all other benefits provided to city employees ........................................ 142

COUNTIES, CITIES AND TOWNS

Agricultural and Forestal Districts Act. Locality may regulate, by ordinance, silvicultural activities but must observe clear and unambiguous statutorily imposed duties and limitations ................................................................. 44

Boundary Changes of Towns and Cities. Watershed improvement district is political subdivision of Commonwealth, not state department or agency; and has no access to legal services provided by Attorney General unless authorized by specific statute. Watershed improvement district may have access to such legal services if claim is made against district director exercising powers of soil and water conservation district for benefit of watershed improvement district. No charges assessed against property owners of watershed improvement district under county stormwater ordinance if district controls its own stormwater runoff consistent with locality's stormwater program. Watershed improvement district should use form of land book similar to form prescribed by Department of Taxation for commissioner of revenue; must certify land book to county treasurer and file copy in
clerk’s office annually by September 1 or within 90 days from date real property tax rate is determined, whichever occurs later ................................................................. 39

Budgets, Audits and Reports. Board of supervisors elected for four-year term in 1995 may not adopt resolution irrevocably committing its successors in office to expend portion of locality’s resources to operate youth services program for fiscal year 2000-2001 .................................................................................................................. 53

Budgets, Audits and Reports. Budgets adopted by local governing bodies are for planning and informative purposes and are statutorily distinguished from appropriations. Local governing body may disburse money only pursuant to appropriation for contemplated expenditure ........................................................................ 53

Budgets, Audits and Reports. County manager for Henrico County lacks authority, on his own accord, to amend budget approved by board of supervisors for funding county sheriff’s office ........................................................................................................ 54

Budgets, Audits and Reports. Local governing body has no power or authority to take actions that irrevocably bind its successors in office, unless such binding action is expressly authorized by statute .............................................................. 53

Buildings, Monuments and Lands Generally - Parks, Recreation Facilities and Playgrounds. Prohibiting operation of motor vehicles on trails established by locality on land it owns, leases, or receives permission to use for hiking, biking and horseback riding is consistent with statutory purpose of protecting property interests of persons who have permitted locality to use their property. Grant of authority to localities to regulate its system of trails encompasses barring of motor vehicles on such trails. Offenses related to operation of motor vehicle on highways in Commonwealth may not be enforced on greenways. Other driving-related offenses occurring on greenways must be reviewed and prosecuted in light of their governing statutes ........................................................................................................ 57

Certain Local Government Officers. Retirement System, and not Attorney General, is appropriate agency to determine whether city retiree may continue to receive retirement benefits during his employment by city as independent contractor performing substantially same duties he performed as full-time city employee. Retirement System has determined that because contract position is not eligible for coverage under Retirement System, retiree employed under contract to city may continue to receive retirement allowance. City must open application process for contract employment to all qualified independent contractors; may not offer contract for employment to single contractor. Retiree under contract to city who is not eligible to participate in Retirement System does not meet definition of employee carrying out functions of government. City is not authorized to fill position covered under Retirement System with independent contract retiree receiving retirement allowance, who is not eligible to participate in System, but is afforded all other benefits provided to city employees ........................................................................ 142
COUNTIES, CITIES AND TOWNS (cont.)

Certain Local Government Officers. Retirement System Board of Trustees has construed statutory language governing member contributions to require that any locality electing to pay member contribution for its employees must do so for all employees. Attorney General defers to Board's interpretation. County must either discontinue payments of employee's share of county administrator's Retirement System contribution or pay member contributions for all county employees ........................................... 147

Certain Local Government Officers. Winchester city attorney may prosecute criminal violations of city ordinances without concurrence of Commonwealth's attorney .... 59

Constitutional officers. Absent specific legislation, local governing bodies have no authority to specify duties of such officers. Local governing bodies have no authority to supervise or intervene in management and control of officer's duties. Officers are independent of their respective localities' management and control ... 193

County Manager Form of Government. County manager for Henrico County lacks authority, on his own accord, to amend budget approved by board of supervisors for funding county sheriff's office ...................................................... 54

Dillon Rule. Local governments have only those powers expressly granted, those fairly and necessarily implied from expressly granted powers, and those that are indispensable and essential ................................................................. 57

Franchises, Public Property, Utilities. Authority for town to construct, maintain and operate its own electric facilities where no such facilities exist in town. No authority for public electric utility to act as town's agent to construct, maintain and repair electric facilities and handle billings and customer relationships. Town may install and operate its own electric utility in areas of town not served by exclusive franchisee; to do so within certificated territory of exclusive franchisee is subject to constitutional challenge ....................................................... 60

Franchises, Public Property, Utilities. City or town may satisfy constitutional requirements by advertising and receiving public bids before awarding franchise to certificated telecommunications providers to use its public rights-of-way for more than five years, notwithstanding fact that amount of bid is related to Public Rights-of-Way Use Fee collected from such providers. Requirement that locality accept highest bid from responsible bidder does not alter this conclusion .......... 172

Franchises, Public Property, Utilities. Department of Health must consider land use concerns expressed by county board of supervisors regarding Department's processing of application for reissuance of permit to allow storage of sludge at existing facility within county. Local ordinance regulating alternative on-site sewage systems may not subject such systems to restrictions more stringent than those prescribed by state law or regulation. Analysis of “taking” in relation to Department's denial of permit ................................................................. 116
Franchises, Public Property, Utilities. Purpose of term limit for grant of public easement not permitted to general public is to prevent permanent dedication of publicly owned property to private use. Purpose of notice and bid provisions is to prevent hasty or clandestine disposition of municipally owned real property by city or town council ................................................................. 63

Franchises, Public Property, Utilities. Term requirements and notice and bid restrictions generally placed on transfers of city-owned property are not applicable to transfer of such property to water authority. Colonial Heights may grant public easement to Appomattox River Water Authority of which city is member ............ 63

Franchises, Public Property, Utilities. Watershed improvement district is political subdivision of Commonwealth, not state department or agency; and has no access to legal services provided by Attorney General unless authorized by specific statute. Watershed improvement district may have access to such legal services if claim is made against district director exercising powers of soil and water conservation district for benefit of watershed improvement district. No charges assessed against property owners of watershed improvement district under county stormwater ordinance if district controls its own stormwater runoff consistent with locality's stormwater program. Watershed improvement district should use form of land book similar to form prescribed by Department of Taxation for commissioner of revenue; must certify land book to county treasurer and file copy in clerk's office annually by September 1 or within 90 days from date real property tax rate is determined, whichever occurs later .................................................. 39

General Powers and Procedures of Counties. Department of Health must consider land use concerns expressed by county board of supervisors regarding Department's processing of application for reissuance of permit to allow storage of sludge at existing facility within county. Local ordinance regulating alternative on-site sewage systems may not subject such systems to restrictions more stringent than those prescribed by state law or regulation. Analysis of "taking" in relation to Department's denial of permit ................................................................. 116

General Powers and Procedures of Counties. Local ordinances adopted under broad police power granted to counties must not be inconsistent with state law .... 116

Industrial Development and Revenue Bond Act. Appalachian School of Law is nonstock, nonprofit corporation located in Buchanan County. Act permits industrial development authorities to make loans to corporations to promote development of facilities that provide graduate education in Commonwealth. Buchanan County Industrial Development Authority has legal authority to make loan to Appalachian School of Law to enable completion of law library ......................... 65

Industrial Development and Revenue Bond Act. Without express or implied language in Act that may be interpreted to authorize such transaction, industrial development authority may not be designated as general contractor for construc-
COUNTIES, CITIES AND TOWNS (CONT.)

<table>
<thead>
<tr>
<th>Page</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>67</td>
<td>Movement of manufacturing plant to enable manufacturer to construct plant without paying state sales and use tax on construction materials</td>
</tr>
<tr>
<td>54</td>
<td>Local Constitutional Officers, etc. – Compensation Board Generally. County manager for Henrico County lacks authority, on his own accord, to amend budget approved by board of supervisors for funding county sheriff’s office</td>
</tr>
<tr>
<td>54</td>
<td>Local Constitutional Officers, etc. – Sheriff. County manager for Henrico County lacks authority, on his own accord, to amend budget approved by board of supervisors for funding county sheriff’s office</td>
</tr>
<tr>
<td>54</td>
<td>Local Constitutional Officers, etc. – Sheriff. Locality has no authority to dictate or control operation of sheriff’s office. Locality’s reduction in operating budget of sheriff’s office, if properly authorized, does not constitute illegal infringement on sheriff’s authority to operate his office</td>
</tr>
<tr>
<td>109</td>
<td>Ordinance may not conflict with state law; ordinance and statutes must be harmonized if possible</td>
</tr>
<tr>
<td>136</td>
<td>Ordinances. Authority of local governing body expressed in statute to adopt ordinance incorporating another statute by reference is limited to statute so designated</td>
</tr>
<tr>
<td>116</td>
<td>Ordinances. Local ordinances adopted under broad police power granted to counties must not be inconsistent with state law</td>
</tr>
<tr>
<td>136</td>
<td>Ordinances. Penal ordinances are to be strictly construed and are not to be extended by implication</td>
</tr>
<tr>
<td>136</td>
<td>Ordinances. Statutory authority allowing local governing body to incorporate certain statute(s) by reference in ordinance is limited to statute(s) so designated. Local governing body has no authority to adopt ordinance incorporating by reference crimes classified as misdemeanors</td>
</tr>
<tr>
<td>116</td>
<td>Planning, Subdivision of Land and Zoning. Department of Health must consider land use concerns expressed by county board of supervisors regarding Department’s processing of application for reissuance of permit to allow storage of sludge at existing facility within county. Local ordinance regulating alternative on-site sewage systems may not subject such systems to restrictions more stringent than those prescribed by state law or regulation. Analysis of “taking” in relation to Department’s denial of permit</td>
</tr>
<tr>
<td>69</td>
<td>Police and Public Order. Off-duty employment of deputy sheriffs requiring use of their police powers must be authorized by, and consistent with, local ordinance and regulation</td>
</tr>
</tbody>
</table>
|      | Police and Public Order – Criminal Justice Training Academies. 1998 Appropriation Act grants Criminal Justice Services Board discretion in determining distribu-
tion of funds to state-supported regional criminal justice training academies. Although Board is no longer required to impose specific portion of financial responsibility for operating academies on participating localities, it is not precluded from determining such to be reasonable requirement. Board has discretion to determine whether in-kind services or contributions by entities other than participating localities would satisfy any obligation placed on localities to share in funding of academy's operation 70

Police powers. General grant of police powers to counties is construed broadly when dealing with local ordinances regulating traditional aspects of public safety and morals 57

Public Recreational Facilities Authorities Act. Public recreational facilities authority has statutory authority to purchase insurance for construction project through owner-controlled insurance program which provides for workers’ compensation general and excess liability, professional liability, pollution liability, force majeure/debt service guarantee, and contractor default (in lieu of surety coverage). Such insurance coverage satisfies statutory obligation to provide workers’ compensation insurance and payment and performance bonds. Such authority that contracts with independent contractor to perform work within authority’s trade, business or occupation is “statutory employer” of employees employed by construction contractors and subcontractors. Sole remedy for employees is provided by Workers’ Compensation Act 72

Transition of Towns to Cities. Political subdivisions constituting Southside Regional Jail Authority are City of Emporia and Greensville County. Sheriff of each participating political subdivision must be member of Authority 153

Transition of Towns to Cities. Transition of Town of Emporia to city of second class. Change in title of town/city sergeant to city sheriff. Qualified voters in city transitioned from town elect city sheriff every four years at city elections and are entitled to vote for Greensville County sheriff at county elections 153

Urban County Executive Form of Government. Purpose of disclosure of business or financial relationship at hearing held to consider application for special exception, variance or zoning is to establish public record of economic interests that may affect judgment of governmental officials in performance of their duties. Strict compliance with requirement to disclose such relationship between county official who has power to approve certain land use changes and applicant requesting changes; $200 threshold amount triggers financial relationship that requires disclosure 78

Urban County Executive Form of Government - Human Rights. Localities with fair housing law ordinances in effect on January 1, 1991, may continue to enforce and amend such ordinances; authority for localities with no such ordinance in effect on that date to enact ordinance in conformance with Virginia Fair Housing
COUNTIES, CITIES AND TOWNS (CONT.)

Law before September 30, 1992. Express authority for localities to submit amended ordinances to HUD for determination of substantial equivalency ........ 126

Virginia Water and Waste Authorities Act. Term requirements and notice and bid restrictions generally placed on transfers of city-owned property are not applicable to transfer of such property to water authority. Colonial Heights may grant public easement to Appomattox River Water Authority of which city is member .......... 63

COURTS NOT OF RECORD

Jurisdiction and Procedure, Criminal Matters. Patient medical records may not be disclosed in response to subpoena duces tecum except in compliance with statutory Notice to Provider/Patient provisions ................................................................. 120

Juvenile and Domestic Relations District Courts. Patient medical records may not be disclosed in response to subpoena duces tecum except in compliance with statutory Notice to Provider/Patient provisions ................................................................. 120

Juvenile and Domestic Relations District Courts. Preliminary protective order issued to protect welfare of child in any matter before court remains part of case over which court's jurisdiction has been invoked. Disposition of adult case during which court issued order to protect child from abuse or neglect does not terminate preliminary protective order ................................................................. 80

Juvenile and Domestic Relations District Courts. State tribunal that issues child support order is only body that may modify order so long as obligor, obligee or child remains resident of issuing state, unless all parties consent to modification. Virginia tribunal may modify registered foreign order if obligor, obligee or child no longer resides in issuing state, person seeking modification is nonresident, and Virginia court has jurisdiction over respondent; or child is subject to personal jurisdiction of Virginia tribunal and all parties in issuing tribunal have consented in writing for Virginia tribunal to modify and assume continuing, exclusive jurisdiction over order. If all parties reside in Commonwealth and child does not reside in issuing state, Virginia tribunal has jurisdiction to enforce and modify issuing state's child support order in proceeding to register order ....................... 97

Juvenile and Domestic Relations District Courts – Intake, Petition and Notice. Psychiatric Inpatient Treatment of Minors Act controls involuntary commitment of minors in need of psychiatric treatment. Magistrate may issue temporary detention order for juvenile believed to be in need of treatment for mental illness without petition being filed in juvenile court and without intervention of juvenile intake officer; may not issue emergency custody order if person believed to be in need of such treatment is minor ................................................................. 129

Juvenile and Domestic Relations District Courts – Psychiatric Inpatient Treatment of Minors Act. Act controls involuntary commitment of minors in need of psychiat-
COURTS NOT OF RECORD (cont.)

Ric treatment. Magistrate may issue temporary detention order for juvenile believed to be in need of treatment for mental illness without petition being filed in juvenile court and without intervention of juvenile intake officer; may not issue emergency custody order if person believed to be in need of such treatment is minor ................................................................. 129

COURTS OF RECORD

Circuit courts of Commonwealth are not “other appropriate authority” entitled to restore felon’s civil rights. Restoration of such rights within Commonwealth is linked to clemency power reserved exclusively to Governor. Circuit courts may not be imbued with authority to restore civil rights either by act of General Assembly or by executive order of Governor ........................................ 50

Clerks, Clerks' Offices and Records. Duty of clerk to record document that is authorized by law to be recorded and is properly signed and acknowledged; clerk has no duty to assess legal sufficiency of document and may not refuse to record document ................................................................. 220

Clerks, Clerks' Offices and Records. Duty of clerk to record list of heirs without inquiry into its legal sufficiency. Duty to record amended list of heirs, regardless of whether clerk believes original list was correct or erroneous. Duty of court at subsequent proceeding to determine accuracy of list. Clerk should inform person who intentionally furnishes under oath or by affidavit false list of heirs that he could be subject to prosecution for perjury ........................................ 220

Clerks, Clerks' Offices and Records – Fees. Sheriff, and not private process server, serves 72-hour notice to vacate and may charge each person serve with notice $12 fee; may charge additional $12 fee for execution of writ of possession .......... 25

CRIMES AND OFFENSES GENERALLY

Crimes Against Peace and Order. Private process server is considered officer or sheriff for purpose of serving process; enters public area of business to serve process under authority of law. Entry into private offices of business area where there is justifiable expectation of privacy to serve process may constitute unreasonable search or seizure. In such case, process server would not be acting under authority of law and would be liable for trespass. Extent to which portion of business establishment constitutes private area is question of fact. Person acting jointly or in combination with other person(s) to resist or obstruct lawful service of process is guilty of misdemeanor violation. Private process server is not law-enforcement officer against whom any attempt to interfere with execution of service of process would constitute misdemeanor ........................................ 32

Crimes Against Property - Trespass to Realty. Ordinance that prohibits dogs running at large does not prohibit person's right to hunt foxes with dogs on any land
CRIMES AND OFFENSES GENERALLY (CONT'D.)

with landowner's consent. Fox hunters engaged in chase originating on permitted land may follow their dogs onto prohibited land to retrieve dogs, but not to continue chase. If fox hunters fail to retrieve their dogs from prohibited land, dogs may be deemed to be running at large. Whether particular set of facts would constitute violation of local ordinance prohibiting dogs running at large on prohibited land is issue for determination by local Commonwealth's attorney and trier of fact ................................................................. 109

Crimes Against Property - Trespass to Realty. Person is not guilty of trespass if he has good faith belief that he has legal right or authorization to be on premises. Whether person has good faith belief that he has right to be on premises is factual issue ................................................................. 32

Crimes Against Property - Trespass to Realty. Person lawfully entering property who exceeds authority for which entry was granted is liable for trespass .......... 32

Crimes Against Property - Trespass to Realty. Private process server is considered officer or sheriff for purpose of serving process; enters public area of business to serve process under authority of law. Entry into private offices of business area where there is justifiable expectation of privacy to serve process may constitute unreasonable search or seizure. In such case, process server would not be acting under authority of law and would be liable for trespass. Extent to which portion of business establishment constitutes private area is question of fact. Person acting jointly or in combination with other person(s) to resist or obstruct lawful service of process is guilty of misdemeanor violation. Private process server is not law-enforcement officer against whom any attempt to interfere with execution of service of process would constitute misdemeanor ................................................................. 32

Crimes Against the Administration of Justice. Private process server is considered officer or sheriff for purpose of serving process; enters public area of business to serve process under authority of law. Entry into private offices of business area where there is justifiable expectation of privacy to serve process may constitute unreasonable search or seizure. In such case, process server would not be acting under authority of law and would be liable for trespass. Extent to which portion of business establishment constitutes private area is question of fact. Person acting jointly or in combination with other person(s) to resist or obstruct lawful service of process is guilty of misdemeanor violation. Private process server is not law-enforcement officer against whom any attempt to interfere with execution of service of process would constitute misdemeanor ................................................................. 32

Crimes Against the Administration of Justice. Requirement that employees, other than criminal defendants, not suffer any adverse employment action resulting from their compliance with summons or subpoena to serve on jury or appear in court of law includes cases heard in juvenile, state/federal, and out-of-state courts .... 83
CRIMES AND OFFENSES GENERALLY (contd.)

Crimes Against the Administration of Justice - Perjury. By swearing to document, person vouches that contents are true; person who swears falsely may be guilty of felony ................................................................. 220

Crimes Against the Administration of Justice - Perjury. Duty of clerk to record list of heirs without inquiry into its legal sufficiency. Duty to record amended list of heirs, regardless of whether clerk believes original list was correct or erroneous. Duty of court at subsequent proceeding to determine accuracy of list. Clerk should inform person who intentionally furnishes under oath or by affidavit false list of heirs that he could be subject to prosecution for perjury ................................. 220

Crimes Against the Person - Assaults and Bodily Woundings. Prosecution of unlawful hazing is not limited to activities that occur only on campuses at Virginia schools, colleges or universities ........................................................................ 85

Crimes Involving Health and Safety - Driving Motor Vehicle, etc., While Intoxicated. Court may not assign to home/electronic incarceration habitual offender who is under mandatory sentence of confinement in jail for 12 months .............. 150

Crimes Involving Health and Safety - Driving Motor Vehicle, etc., While Intoxicated. One-year suspension of driver's license of Virginia resident convicted in federal court for refusing to consent to blood or breath test upon being arrested for driving under influence of drugs or alcohol. Assignment of demerit points for convictions of federal offenses pertaining to operator or operation of motor vehicle....133

Crimes Involving Health and Safety - Driving Motor Vehicle, etc., While Intoxicated. Purpose of license suspension is not to punish driver but to protect public from intoxicated drivers and to reduce alcohol-related accidents ......................... 133

Crimes Involving Health and Safety - Driving Motor Vehicle, etc., While Intoxicated. Statutory authority allowing local governing body to incorporate certain statute(s) by reference in ordinance is limited to statute(s) so designated. Local governing body has no authority to adopt ordinance incorporating by reference crimes classified as misdemeanors ................................................. 136

In General - Classification of Criminal Offenses and Punishment Therefor. Statutory authority allowing local governing body to incorporate certain statute(s) by reference in ordinance is limited to statute(s) so designated. Local governing body has no authority to adopt ordinance incorporating by reference crimes classified as misdemeanors ................................................. 136

Misdemeanors. Statutory authority allowing local governing body to incorporate certain statute(s) by reference in ordinance is limited to statute(s) so designated. Local governing body has no authority to adopt ordinance incorporating by reference crimes classified as misdemeanors ................................................. 136

Perjury (see supra Crimes Against the Administration of Justice)
Trespass (see supra Crimes Against Property – Trespass to Realty)

CRIMINAL JUSTICE SERVICES

(See (1) COMMISSIONS, BOARDS AND INSTITUTIONS: Department of Criminal Justice Services; (2) COUNTIES, CITIES AND TOWNS: Police and Public Order – Criminal Justice Training Academies)

CRIMINAL PROCEDURE

Arrest. Arresting officer has wide discretion in deciding whether to issue summons or obtain warrant .................................................. 87

Arrest. No authority for licensed armed security officer under private contract to advise citizen of his right to receive summons and be released from custody, prior to officer's arresting, taking into custody and transporting citizen to magistrate for issuance of warrant .................................................. 87

Arrest. No liberty interest in receiving notice of charges by way of summons instead of being taken before magistrate .................................. 87

Bail and Recognizances. Off-duty employment of deputy sheriffs requiring use of their police powers must be authorized by, and consistent with, local ordinance and regulation .................................................. 69

Inspection Warrants. Computer models that assign points to identify specific risk factors for building deterioration may be used to form basis for probable cause to issue administrative search warrant for inspection purposes. Officials undertaking investigatory searches should seek court-approved inspection warrants. Warrant application must provide circuit court judge with factual allegations sufficient to justify independent determination that inspection program is based on reasonable legislative or administrative standards that are applied in neutral and nondiscriminatory manner. Circuit court judge has exclusive jurisdiction to determine whether, in any given situation, computer model may be used to form basis for probable cause to issue administrative search warrant .................................. 90

Preliminary Hearing. Evidence that is subject to valid hearsay objection must be construed strictly against Commonwealth and in favor of accused ......................... 94

Preliminary Hearing. Obligation of clerk of court to mail to counsel for accused certificate of analysis to be offered in evidence at hearing or trial of criminal offense. Certificate may be inadmissible if, when request was received, clerk merely notified counsel that case was not on court docket. When counsel requests certificate in specific case not yet docketed in court, preferable procedure would be for clerk to respond to request when and if case is docketed in court ..................... 94

Sentence; Judgement; Execution of Sentence. Court is without discretion to deviate from mandatory sentencing provisions imposed by General Assembly .... 150
Sentence; Judgement; Execution of Sentence. Court may not assign to home/electronic incarceration habitual offender who is under mandatory sentence of confinement in jail for 12 months .......................................................... 150
Sentence; Judgement; Execution of Sentence. Court’s authority to suspend sentence is regulated by statute .......................................................... 150
Sentence; Judgement; Execution of Sentence. Mandatory periods of incarceration prescribed by legislature absolve trial court of sentencing discretion ............... 150
Sentence; Judgement; Execution of Sentence. Mandatory sentence prescribed by General Assembly divests trial judge of discretion regarding punishment .......... 150

DEFINITIONS
Acknowledged before me .......................................................... 165
Alien ........................................................................ 105
All ........................................................................ 147
And ........................................................................ 195
Assessment .................................................................... 188
Association ................................................................... 205
Authority facilities ................................................................. 67
Business or financial relationship .............................................. 78
Certificated provider of telecommunications service .................. 172
Civil rights .................................................................... 50
Clemency .................................................................... 50
Collaborative agreement ....................................................... 159
Consumer ..................................................................... 198
Contract .................................................................... 10
Cooperative (real estate) ....................................................... 205
Cooperative interest (real estate) ............................................ 205
Cost ........................................................................ 72
Court of law .................................................................... 83
Dangerous dog .................................................................. 20
Data subjects ................................................................... 114
Domicile ....................................................................... 105
Domiciliary intent ................................................................. 105
Dual eligibles .................................................................... 36
Electronic mail .................................................................. 12
<table>
<thead>
<tr>
<th>Term</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electronic signature</td>
<td>165</td>
</tr>
<tr>
<td>Eligible employees</td>
<td>142</td>
</tr>
<tr>
<td>Emergency situation</td>
<td>36</td>
</tr>
<tr>
<td>Eminent domain</td>
<td>116</td>
</tr>
<tr>
<td>Employ</td>
<td>142</td>
</tr>
<tr>
<td>Employee</td>
<td>142</td>
</tr>
<tr>
<td>Employer</td>
<td>142</td>
</tr>
<tr>
<td>Employment</td>
<td>142</td>
</tr>
<tr>
<td>Ex parte</td>
<td>80</td>
</tr>
<tr>
<td>Facilities</td>
<td>65</td>
</tr>
<tr>
<td>Fair market value</td>
<td>202</td>
</tr>
<tr>
<td>Family</td>
<td>31</td>
</tr>
<tr>
<td>Geographic</td>
<td>214</td>
</tr>
<tr>
<td>Geography</td>
<td>214</td>
</tr>
<tr>
<td>Good faith</td>
<td>168</td>
</tr>
<tr>
<td>Greenway</td>
<td>57</td>
</tr>
<tr>
<td>Greenway corridors</td>
<td>57</td>
</tr>
<tr>
<td>Gross receipts</td>
<td>187</td>
</tr>
<tr>
<td>Haze</td>
<td>85</td>
</tr>
<tr>
<td>Health care plan</td>
<td>156</td>
</tr>
<tr>
<td>Health care provider</td>
<td>112</td>
</tr>
<tr>
<td>Health maintenance organization</td>
<td>156</td>
</tr>
<tr>
<td>Highway</td>
<td>57</td>
</tr>
<tr>
<td>Hunting foxes with dogs</td>
<td>109</td>
</tr>
<tr>
<td>In loco parentis</td>
<td>112</td>
</tr>
<tr>
<td>Inspection warrant</td>
<td>90</td>
</tr>
<tr>
<td>Insurance company</td>
<td>156</td>
</tr>
<tr>
<td>Landlord</td>
<td>168</td>
</tr>
<tr>
<td>Law-enforcement officers</td>
<td>32</td>
</tr>
<tr>
<td>Licensed institutional health care provider</td>
<td>112</td>
</tr>
<tr>
<td>Loans (industrial development authority)</td>
<td>65</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>188</td>
</tr>
<tr>
<td>May – permissive, discretionary</td>
<td>193</td>
</tr>
<tr>
<td>TERM</td>
<td>PAGE</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>------</td>
</tr>
<tr>
<td>Medicaid</td>
<td>36</td>
</tr>
<tr>
<td>Medicaid per diem</td>
<td>36</td>
</tr>
<tr>
<td>Medicare</td>
<td>36</td>
</tr>
<tr>
<td>Meeting(s)</td>
<td>12, 14</td>
</tr>
<tr>
<td>Member of his family</td>
<td>31</td>
</tr>
<tr>
<td>Minutes</td>
<td>164</td>
</tr>
<tr>
<td>Nongovernmental contractors</td>
<td>142</td>
</tr>
<tr>
<td>Nonprofessional services</td>
<td>142</td>
</tr>
<tr>
<td>Occasional</td>
<td>199</td>
</tr>
<tr>
<td>Occasional sale</td>
<td>199</td>
</tr>
<tr>
<td>Official records</td>
<td>17</td>
</tr>
<tr>
<td>Open-space land</td>
<td>200</td>
</tr>
<tr>
<td>Or</td>
<td>195</td>
</tr>
<tr>
<td>Ore tenus</td>
<td>28</td>
</tr>
<tr>
<td>Origin</td>
<td>214</td>
</tr>
<tr>
<td>Owner</td>
<td>109</td>
</tr>
<tr>
<td>Paramedic</td>
<td>112</td>
</tr>
<tr>
<td>Participating localities</td>
<td>70</td>
</tr>
<tr>
<td>Patient</td>
<td>156</td>
</tr>
<tr>
<td>Payment</td>
<td>10</td>
</tr>
<tr>
<td>Payphone service</td>
<td>198</td>
</tr>
<tr>
<td>Person</td>
<td>178</td>
</tr>
<tr>
<td>Personal information</td>
<td>114</td>
</tr>
<tr>
<td>Personal interest</td>
<td>10</td>
</tr>
<tr>
<td>Private process server</td>
<td>32</td>
</tr>
<tr>
<td>Probable cause</td>
<td>90</td>
</tr>
<tr>
<td>Processing</td>
<td>188</td>
</tr>
<tr>
<td>Professional services</td>
<td>142</td>
</tr>
<tr>
<td>Project</td>
<td>72</td>
</tr>
<tr>
<td>Proprietary lease</td>
<td>205</td>
</tr>
<tr>
<td>Public body</td>
<td>14, 200</td>
</tr>
<tr>
<td>Public contract</td>
<td>142</td>
</tr>
<tr>
<td>Public records</td>
<td>211</td>
</tr>
</tbody>
</table>
DEFINITIONS (contd.)

Qualified medicare beneficiaries (QMBs) ................................................................. 36
Quimbies (including "pure quimbies") ................................................................. 36
Quorum .................................................................................................................. 14
Reasonable selection of method rule ................................................................. 72, 101
Reckless driving .................................................................................................... 137
Record, patient medical ........................................................................................ 114
Residence ............................................................................................................. 105
Retirement allowance ............................................................................................ 142
Roll-back taxes .................................................................................................... 202
Run[ning] at large (dogs) ...................................................................................... 109
School crossing zone ............................................................................................ 137
Seizure .................................................................................................................. 207
Service address ..................................................................................................... 195
Services .................................................................................................................. 142
Shall - directory ..................................................................................................... 168
Shall - mandatory .................................................................................................. 6, 15, 22, 27, 28, 39, 87, 100, 132, 137
Shall - mandatory, imperative or limited ............................................................. 15
Shall - mandatory, rather than permissive or directive ....................................... 8, 44, 59, 179
Shelter .................................................................................................................... 215
Silvicultural activity ............................................................................................... 44
Statutory employer ................................................................................................. 72
Taking ..................................................................................................................... 116
Taxable purchase .................................................................................................... 198
Trade, business or occupation ............................................................................. 72
Tribunal .................................................................................................................. 97
Unit (real estate cooperative) ............................................................................... 205
Urban area ............................................................................................................ 200
Wetlands ............................................................................................................... 179

DELINEQUENCY PREVENTION AND YOUTH DEVELOPMENT ACT
(See YOUTH AND FAMILY SERVICES)

DOMESTIC RELATIONS

Desertion and Non Support. Sheriff of jurisdiction in which jail is managed by regional jail authority has no authority to operate alternative incarceration program for individuals convicted of desertion or non support ........................................ 149
DOMESTIC RELATIONS (cont.)

Uniform Interstate Family Support Act. Purposes of Act are to ensure that child support orders issued in one state are enforced in other states and that there is only one controlling child support order between parties, although parties may live in different states ................................................................. 97

Uniform Interstate Family Support Act. Registering another state tribunal's support order for enforcement in Virginia does not give juvenile court authority to modify order ................................................................. 97

Uniform Interstate Family Support Act. State tribunal that issues child support order is only body that may modify order so long as obligor, obligee or child remains resident of issuing state, unless all parties consent to modification. Virginia tribunal may modify registered foreign order if obligor, obligee or child no longer resides in issuing state, person seeking modification is nonresident, and Virginia court has jurisdiction over respondent; or child is subject to personal jurisdiction of Virginia tribunal and all parties in issuing tribunal have consented in writing for Virginia tribunal to modify and assume continuing, exclusive jurisdiction over order. If all parties reside in Commonwealth and child does not reside in issuing state, Virginia tribunal has jurisdiction to enforce and modify issuing state's child support order in proceeding to register order ......................................... 97

DRAINAGE, SOIL CONSERVATION, ETC.

Sanitary Districts. Only specified number of qualified voters of proposed district may petition circuit court for establishment of sanitary district. County may not request circuit court to designate entire county to be sanitary district.............. 100

DRUG CONTROL ACT
(See PROFESSIONS AND OCCUPATIONS)

EDUCATION

Community college employee. Acceptance of additional cash bonus from private corporation for training services provided to corporation by college constitutes prohibited conflict of interests ................................................................. 6

Powers and Duties of School Boards. Annual meeting at which each school board is required to elect chairman from its membership falls within purview of Act's definition of "meeting" which must be open to public. List of personnel-related actions which school board may discuss in executive session does not include election. Local school board may not meet in executive session to discuss selection of its chairman and vice-chairman ................................................................. 15

Powers and Duties of School Boards. Authority for school board to provide insurance coverage for school division is silent as to manner and mode by which such policies may be purchased and serviced. "Reasonable selection of method" rule allows school board discretionary authority to issue agent-of-record letter to insur-
Public schools. Reasonableness of sheriff's use of drug-sniffing dogs to search person of students attending public school depends on whether facts support suspicionless search that is relatively unobtrusive coupled with government's interest in conducting search ........................................ 46

School board members and employees designated by ordinance adopted by board of supervisors must file disclosure statement of their personal interests with clerk of school board ................................................................. 8

School boards. Local school board is not permitted to inquire into, or require documentation to verify, student applicant's citizenship or visa status for purpose of ascertaining whether student is bona fide resident qualified to attend free public school in school district ................................................................. 105

School Boards; Selection, etc. Authority for school board to provide insurance coverage for school division is silent as to manner and mode by which such policies may be purchased and serviced. "Reasonable selection of method" rule allows school board discretionary authority to issue agent-of-record letter to insurance company requesting that specific insurance agent be designated agent of record on its policies of insurance ......................................................... 101

School Boards; Selection, etc. Change from appointed to elected school board in City of Petersburg. Members elected at large to replace 9-member appointed board in city comprised of seven established election districts. Preclearance by U.S. Department of Justice under Voting Rights Act. Election of school board from single-member election districts would require authorization from General Assembly ................................................................. 103

School Boards; Selection, etc. Optional authority granted to boards of supervisors to create at-large seats includes implied authority to abolish those seats ................................................................. 103
or visa status for purpose of ascertaining whether student is bona fide resident qualified to attend free public school in school district ........................................ 105

System of Public Schools; General Provisions. Residency for attending public schools is determined in reference to legal guardianship of student ......................... 105

System of Public Schools; General Provisions. Visa holders may be required to establish they are bona fide residents of school district before qualifying for free public schooling in jurisdiction; visa status does not presumptively exclude foreign nationals ........................................ 105

EDUCATIONAL INSTITUTIONS

Tuition Assistance Grant Act. Act is program of financial aid, and not tuition subsidy, granted to individual student recipients at nonsectarian private institutions of higher education in Virginia ........................................ 108

ELECTIONS

Campaign Finance Disclosure Act. Purpose of Act is to provide public record of campaign contributions to candidates for public office ........................................ 78

Campaign Finance Disclosure Act. Purpose of disclosure of business or financial relationship at hearing held to consider application for special exception, variance or zoning is to establish public record of economic interests that may affect judgment of governmental officials in performance of their duties. Strict compliance with requirement to disclose such relationship between county official who has power to approve certain land use changes and applicant requesting changes; $200 threshold amount triggers financial relationship that requires disclosure ...... 78

Federal, Commonwealth, and Local Officers. Board of supervisors elected for four-year term in 1995 may not adopt resolution irrevocably committing its successors in office to expend portion of locality's resources to operate youth services program for fiscal year 2000-2001 ........................................ 53

School board. Change from appointed to elected school board in City of Petersburg. Members elected at large to replace 9-member appointed board in city comprised of seven established election districts. Preclearance by U.S. Department of Justice under Voting Rights Act. Election of school board from single-member election districts would require authorization from General Assembly .......... 103

ELECTRIC UTILITY RESTRUCTURING ACT, VIRGINIA
(See PUBLIC SERVICE COMPANIES: Virginia Electric Utility Restructuring Act)

FAIR HOUSING LAW, VIRGINIA
(See HOUSING: Virginia Fair Housing Law)

FORESTAL DISTRICTS ACT, AGRICULTURAL AND
(See COUNTIES, CITIES AND TOWNS: Agricultural and Forestal Districts Act)
FREEDOM OF INFORMATION

(See ADMINISTRATION OF GOVERNMENT GENERALLY: Virginia Freedom of Information Act)

GAME, INLAND FISHERIES AND BOATING

Wildlife and Fish Laws - Hunting and Trapping. Hunting of game is regulated at state, rather than local, level. Locality may not adopt ordinances that alter state-established game management practices. Exclusive state authority over hunting and game management must be interpreted consistently with express powers granted localities ................................................................. 109

Wildlife and Fish Laws - Hunting and Trapping. Ordinance that prohibits dogs running at large does not prohibit person's right to hunt foxes with dogs on any land with landowner's consent. Fox hunters engaged in chase originating on permitted land may follow their dogs onto prohibited land to retrieve dogs, but not to continue chase. If fox hunters fail to retrieve their dogs from prohibited land, dogs may be deemed to be running at large. Whether particular set of facts would constitute violation of local ordinance prohibiting dogs running at large on prohibited land is issue for determination by local Commonwealth's attorney and trier of fact ................................................................. 109

GENERAL ASSEMBLY

Amendment. Presumption that General Assembly does not intend to do vain or useless thing in enacting and amending legislation ................................................................. 133

Amendment. Presumption that, in adding amendment to existing legislation, legislature acted with full knowledge of, and in reference to, existing law on same subject and construction placed upon it by courts. Presumed further that legislature acted purposefully with intent to change existing law ................................................................. 10

Amendments. When General Assembly adds new provisions to existing legislation, it intends to change existing law ................................................................. 114

Amendments. When new provisions are added to existing legislation, presumption arises that, in making amendment legislature acted with full knowledge of, and in reference to, existing law on same subject and court's construction of law. It is presumed further that legislature acted purposefully with intent to change existing law ................................................................. 168

Enactment. Presumption that General Assembly does not intend to do vain or useless thing in enacting and amending legislation ................................................................. 133

Enactments. When General Assembly intends to enact mandatory requirement, it knows how to express its intention ................................................................. 168

Incarceration. By setting mandatory periods of incarceration, legislature absolves trial court of sentencing discretion ................................................................. 150
Incarceration. Court is without discretion to deviate from mandatory sentencing provisions imposed by General Assembly ................................................................. 150

Incarceration. When General Assembly prescribes mandatory sentence, it divests trial judge of discretion regarding punishment ......................................................... 150

Intent. When General Assembly intends to enact mandatory requirement, it knows how to express its intention .................................................................................. 168

Legislature is presumed to have had knowledge of Attorney General's interpretation of statutes, and its failure to make corrective amendments evinces legislative acquiescence in Attorney General's view ................................................................. 179

Mandatory requirement. When General Assembly intends to enact mandatory requirement, it knows how to express its intention ......................................................... 168

Presumed to be aware of Attorney General's interpretations of state law/statute(s). Failure of legislature to make corrective amendments evinces legislative acquiescence in Attorney General's view ......................................................... 179, 90, 87, 48

Presumed to be aware of law existing at time it adopts statute; also presumed to be aware of its own previous enactments ................................................................. 165

When General Assembly intends statute to impose requirements, it knows how to express its intention ......................................................................................... 10

Where General Assembly has enacted several statutes that appear to bear on same issue, task is to ascertain legislative intent ..................................................................... 179

GENERAL PROVISIONS

Common Law, Statutes and Rules of Construction (ordinances). Ordinance may not conflict with state law; ordinance and statutes must be harmonized if possible .... 109

HEALTH

Disease Prevention and Control. Absence of statutory language requiring parental consent to transfer immunization information about individual children is not sufficient to override obligation of physician or health care provider to maintain confidentiality of patient medical records. Statutes mandating establishment of information systems containing medical records data and reporting of patient information also provide mechanisms for regulating such systems and protecting confidentiality of information ................................................................. 114

Disease Prevention and Control. Paramedic of local fire department is not “licensed institutional health care provider” authorized to obtain access to immunization records maintained in state health department data base system, should such system be established in future. Term designates those facilities, and not persons, licensed to provide health care ........................................................................... 112
Environmental Health Services - Sewage Disposal. Department of Health must consider land use concerns expressed by county board of supervisors regarding Department's processing of application for reissuance of permit to allow storage of sludge at existing facility within county. Local ordinance regulating alternative on-site sewage systems may not subject such systems to restrictions more stringent than those prescribed by state law or regulation. Analysis of "taking" in relation to Department's denial of permit .......................................................... 116

Health care provider owes duty to patient not to disclose information gained from patient during course of treatment without patient's authorization; violation of that duty gives rise to action in tort .................................................. 114

Medical information disclosure. Health care provider owes duty to patient not to disclose information gained from patient during course of treatment without patient's authorization; violation of that duty gives rise to action in tort .......... 114

Patient information disclosure. Health care provider owes duty to patient not to disclose information gained from patient during course of treatment without patient's authorization; violation of that duty gives rise to action in tort .......... 114

Regulation of Medical Care Facilities. Absence of statutory language requiring parental consent to transfer immunization information about individual children is not sufficient to override obligation of physician or health care provider to maintain confidentiality of patient medical records. Statutes mandating establishment of information systems containing medical records data and reporting of patient information also provide mechanisms for regulating such systems and protecting confidentiality of information .................................................. 114

Regulation of Medical Care Facilities. Paramedic of local fire department is not "licensed institutional health care provider" authorized to obtain access to immunization records maintained in state health department data base system, should such system be established in future. Term designates those facilities, and not persons, licensed to provide health care .......................................................... 112

Regulation of Medical Care Facilities. Patient medical records may not be disclosed in response to subpoena duces tecum except in compliance with statutory Notice to Provider/Patient provisions .................................................. 120

Sewage Disposal (see supra Environmental Health Services)

Vital Records. Applicants for marriage licenses must include their social security numbers or other control numbers issued by Department of Motor Vehicles on applications. Circuit court clerk must refuse to issue marriage license to individual who refuses to provide either number. Clerk may not deny marriage license to nonresident foreign national for whom no statutory basis exists for issuing such numbers. Parties are required to furnish such social security number or control
HEALTH (contd.)

numbers as they actually may have at time application for marriage license is made .......................................................... 124

HOTELS, RESTAURANTS, SUMMER CAMPS, ETC.

Exemptions. Governing body may adopt by ordinance reasonable and uniformly applied definition of term "occasional" for purposes of food and beverage tax exemption .......................................................... 199

HOUSING

Virginia Fair Housing Law. Localities with fair housing law ordinances in effect on January 1, 1991, may continue to enforce and amend such ordinances; authority for localities with no such ordinance in effect on that date to enact ordinance in conformance with Virginia Fair Housing Law before September 30, 1992. Express authority for localities to submit amended ordinances to HUD for determination of substantial equivalency .................................................. 126

Virginia Housing Development Authority Act. Loans made by HDA to its employees to finance purchase or improvement of single family homes are considered payments which are excepted from general contract prohibitions of State and Local Government Conflict of Interests Act. HDA employee applicants are not required to disqualify themselves from participating in their loan transactions, to publicly disclose their loans and record their disqualification, and refrain from voting or acting on behalf of HDA with respect to their loans ................................. 10

INDUSTRIAL DEVELOPMENT AND REVENUE BOND ACT
(See COUNTIES, CITIES AND TOWNS)

INDUSTRIAL DEVELOPMENT AUTHORITIES
(See COUNTIES, CITIES AND TOWNS: Industrial Development and Revenue Bond Act)

INSURANCE

Health Maintenance Organizations. Whether violation of practice of medicine and other specialties has occurred requires factual determination by Board of Medicine or other appropriate regulatory authority. Physician-patient contract establishing prepayment plan for provision of professional services is not health services plan or health care plan established by health maintenance organization that is subject to insurance licensure and regulation by State Corporation Commission .......................................................... 156

Health Services Plans. Whether violation of practice of medicine and other specialties has occurred requires factual determination by Board of Medicine or other appropriate regulatory authority. Physician-patient contract establishing prepayment plan for provision of professional services is not health services plan or
health care plan established by health maintenance organization that is subject to insurance licensure and regulation by State Corporation Commission .......................... 156

Medicaid/Medicare. Effective date—July 1, 1998—of change in reimbursement policy for Medicare cost sharing for QMBs is consistent with Administrative Process Act and 1998 Appropriation Act. Interpretation by Department of Medical Assistance Services that changes made by federal Balanced Budget Act of 1997 apply to QMBs, as currently defined, is consistent with position of Health Care Financing Administration. Department was authorized to change state policy allowing use of Medicaid rates to determine its payment responsibility for deductibles and coinsurance for QMBs .................................................. 36

Public recreational facilities authority has statutory authority to purchase insurance for construction project through owner-controlled insurance program which provides for workers' compensation general and excess liability, professional liability, pollution liability, force majeure/debt service guarantee, and contractor default (in lieu of surety coverage). Such insurance coverage satisfies statutory obligation to provide workers' compensation insurance and payment and performance bonds. Public recreational facilities authority that contracts with independent contractor to perform work within authority's trade, business or occupation is "statutory employer" of employees employed by construction contractors and subcontractors. Sole remedy for employees is provided by Workers' Compensation Act .............. 72

LABOR AND EMPLOYMENT

Employer/employee relationship. Common law test used for determining existence of employer/employee relationship ................................................................. 142

Requirement that employees, other than criminal defendants, not suffer any adverse employment action resulting from their compliance with summons or subpoena to serve on jury or appear in court of law includes cases heard in juvenile, state/federal, and out-of-state courts .................................................. 83

LANDLORD AND TENANT ACT, VIRGINIA RESIDENTIAL
(See PROPERTY AND CONVEYANCES: Residential Landlord and Tenant Act)

MEDICAID/MEDICARE
(See INSURANCE)

MEDICINE AND OTHER HEALING ARTS
(See PROFESSIONS AND OCCUPATIONS)

MENTAL HEALTH GENERALLY

Admissions and Dispositions in General. Psychiatric Inpatient Treatment of Minors Act controls involuntary commitment of minors in need of psychiatric treatment. Magistrate may issue temporary detention order for juvenile believed to be in need of treatment for mental illness without petition being filed in juvenile court
and without intervention of juvenile intake officer; may not issue emergency custody order if person believed to be in need of such treatment is minor .................. 129

MOTOR VEHICLES

Abandoned, Immobilized, Unattended and Trespassing Vehicles; Parking. Department of State Police, and not Attorney General, is appropriate agency to determine whether unattended vehicle parked on paved shoulder of roadway constitutes hazard. Whether such vehicle constitutes hazard is question of fact, to be determined on case-by-case basis, considering factors historically encountered by State Police officers ..................................................................................................................... 132

Habitual Offenders (see infra Licensure of Drivers)

Licensure of Drivers. Applicants for marriage licenses must include their social security numbers or other control numbers issued by Department of Motor Vehicles on applications. Circuit court clerk must refuse to issue marriage license to individual who refuses to provide either number. Clerk may not deny marriage license to nonresident foreign national for whom no statutory basis exists for issuing such numbers. Parties are required to furnish such social security number or control numbers as they actually may have at time application for marriage license is made ........................................................................................................................................ 124

Licensure of Drivers. One-year suspension of driver's license of Virginia resident convicted in federal court for refusing to consent to blood or breath test upon being arrested for driving under influence of drugs or alcohol. Assignment of demerit points for convictions of federal offenses pertaining to operator or operation of motor vehicle ..................................................................................................................................... 133

Licensure of Drivers. Purpose of license suspension for driving motor vehicle while intoxicated is not to punish driver but to protect public from intoxicated drivers and to reduce alcohol-related accidents ..................................................................................................................................... 133

Licensure of Drivers - Habitual Offenders. Court may not assign to home/electronic incarceration habitual offender who is under mandatory sentence of confinement in jail for 12 months ..................................................................................................................................... 150

Powers of Local Governments. Prohibiting operation of motor vehicles on trails established by locality on land it owns, leases, or receives permission to use for hiking, biking and horseback riding is consistent with statutory purpose of protecting property interests of persons who have permitted locality to use their property. Grant of authority to localities to regulate its system of trails encompasses barring of motor vehicles on such trails. Offenses related to operation of motor vehicle on highways in Commonwealth may not be enforced on greenways. Other driving-related offenses occurring on greenways must be reviewed and prosecuted in light of their governing statutes ..................................................................................................................................... 57
MOTOR VEHICLES (contd.)

Powers of Local Governments. Statutory authority allowing local governing body to incorporate certain statute(s) by reference in ordinance is limited to statute(s) so designated. Local governing body has no authority to adopt ordinance incorporating by reference crimes classified as misdemeanors ................................................................. 136

Regulation of Traffic - Reckless Driving and Improper Driving. Driver may be charged, prosecuted, and punished for violation of two different statutes when legislature intends each such violation to be separate offense ........................................ 137

Regulation of Traffic - Reckless Driving and Improper Driving. Individual driving 68 miles per hour in 35 mile-per-hour school zone may be charged with reckless driving and traffic infraction .................................................................................................................. 137

Titling and Registration of Motor Vehicles. Broad authority to seize property for delinquent taxes does not extend to seizure of persons. Stopping automobile and detaining person at roadblock constitutes seizure of person. Within limitations imposed by Fourth Amendment, law-enforcement officers may set up roadblocks as exercise of their statutory authority to stop vehicles to inspect equipment or verify registration and licenses. No authority to detain person at roadblock to verify payment of personal property taxes or to detain person for being delinquent in payment of personal property taxes ........................................................................................................ 207

Titling and Registration of Motor Vehicles. State has strong interest in promoting safety on its roads by checking to see that licensing, registration, and vehicle inspection requirements are being met ................................................................. 207

NOTARIES AND OUT-OF-STATE COMMISSIONERS

Virginia Notary Act. No statute directs that applicant's name on notary commission be full legal name or that commission be in any particular form. Clerk may not require name presented on commission to be in any particular form. Clerk is required to use reasonable or ordinary care in determining whether identification presented by applicant identifies him as individual commissioned by Secretary of Commonwealth. Fact that name on commission does not precisely match name on applicant's identification is not wholly determinative of identity of applicant ... 140

PAY TELEPHONE REGISTRATION ACT
(See PUBLIC SERVICE COMPANIES)

PENSIONS, BENEFITS, AND RETIREMENT

Virginia Retirement System. Retirement System, and not Attorney General, is appropriate agency to determine whether city retiree may continue to receive retirement benefits during his employment by city as independent contractor performing substantially same duties he performed as full-time city employee. Retirement System has determined that because contract position is not eligible for coverage under Retirement System, retiree employed under contract to city
PENSIONS, BENEFITS, AND RETIREMENT (contd.)

may continue to receive retirement allowance. City must open application process for contract employment to all qualified independent contractors; may not offer contract for employment to single contractor. Retiree under contract to city who is not eligible to participate in Retirement System does not meet definition of employee carrying out functions of government. City is not authorized to fill position covered under Retirement System with independent contract retiree receiving retirement allowance, who is not eligible to participate in System, but is afforded all other benefits provided to city employees ................. 142

Virginia Retirement System - Contributions. Board of Trustees has construed statutory language governing member contributions to require that any locality electing to pay member contribution for its employees must do so for all employees. Attorney General defers to Board's interpretation. County must either discontinue payments of employee's share of county administrator's retirement contribution or pay member contributions for all county employees ........................................... 147

PHARMACY
(See PROFESSIONS AND OCCUPATIONS)

POLICE (STATE)

Department of State Police, Department, and not Attorney General, is appropriate agency to determine whether unattended vehicle parked on paved shoulder of roadway constitutes hazard. Whether such vehicle constitutes hazard is question of fact, to be determined on case-by-case basis, considering factors historically encountered by State Police officers ......................................................... 132

PRISONS AND OTHER METHODS OF CORRECTION

Local Correctional Facilities - Prisoner Programs and Treatment. Court may not assign to home/electronic incarceration habitual offender who is under mandatory sentence of confinement in jail for 12 months ......................................................... 150

Local Correctional Facilities - Prisoner Programs and Treatment. Offenders assigned to home/electronic incarceration are not confined in jail for purposes of awarding good conduct credit ........................................................................ 150

Local Correctional Facilities - Prisoner Programs and Treatment. Sheriff of jurisdiction in which jail is managed by regional jail authority has no authority to operate alternative incarceration program for individuals convicted of desertion or nonsupport ............................................................... 149

Local Correctional Facilities - Regional Jails and Jail Farms. Political subdivisions constituting Southside Regional Jail Authority are City of Emporia and Greensville County. Sheriff of each participating political subdivision must be member of Authority ......................................................................... 153
Local Correctional Facilities – Regional Jails and Jail Farms. Sheriff has authority over jails in his jurisdiction other than regional jails and jail farms............................ 149

Local Correctional Facilities – Regional Jails and Jail Farms. Sheriff of jurisdiction in which jail is managed by regional jail authority has no authority to operate alternative incarceration program for individuals convicted of desertion or nonsupport................................................................. 149

Regional jails (see supra Local Correctional Facilities - Regional Jails and Jail Farms)

PRIVACY ACT OF 1974 (FEDERAL)

Applicants for marriage licenses must include their social security numbers or other control numbers issued by Department of Motor Vehicles on applications. Circuit court clerk must refuse to issue marriage license to individual who refuses to provide either number. Clerk may not deny marriage license to nonresident foreign national for whom no statutory basis exists for issuing such numbers. Parties are required to furnish such social security number or control numbers as they actually may have at time application for marriage license is made............ 124

PRIVACY PROTECTION ACT OF 1976
(See ADMINISTRATION OF GOVERNMENT GENERALLY)

PROCUREMENT ACT, VIRGINIA PUBLIC
(See CONTRACTS: Virginia Public Procurement Act)

PROFESSIONS AND OCCUPATIONS

Drug Control Act. Pharmacist's authority to substitute drug therapy is limited to physician's prescriptive order in treatment protocol contained in collaborative agreement; any deviation or inconsistency with prescribed treatment constitutes grounds for disciplinary action. Proposed emergency regulations promulgated by Boards of Medicine and Pharmacy mirror statutory limitations regarding pharmacist's authority to dispense drugs pursuant to collaborative agreement and treatment protocol prescribed by physician. Boards' interpretation of regulations is entitled to great weight................................................................. 159

Medicine and Other Healing Arts. Pharmacist's authority to substitute drug therapy is limited to physician's prescriptive order in treatment protocol contained in collaborative agreement; any deviation or inconsistency with prescribed treatment constitutes grounds for disciplinary action. Proposed emergency regulations promulgated by Boards of Medicine and Pharmacy mirror statutory limitations regarding pharmacist's authority to dispense drugs pursuant to collaborative agreement and treatment protocol prescribed by physician. Boards' interpretation of regulations is entitled to great weight................................................................. 159

Medicine and Other Healing Arts. Whether violation of practice of medicine and other specialties has occurred requires factual determination by Board of Medicine
or other appropriate regulatory authority. Physician-patient contract establishing prepayment plan for provision of professional services is not health services plan or health care plan established by health maintenance organization that is subject to insurance licensure and regulation by State Corporation Commission .......... 156

Pharmacy. Pharmacist's authority to substitute drug therapy is limited to physician's prescriptive order in treatment protocol contained in collaborative agreement; any deviation or inconsistency with prescribed treatment constitutes grounds for disciplinary action. Proposed emergency regulations promulgated by Boards of Medicine and Pharmacy mirror statutory limitations regarding pharmacist's authority to dispense drugs pursuant to collaborative agreement and treatment protocol prescribed by physician. Boards' interpretation of regulations is entitled to great weight .......................................................... 159

PROPERTY AND CONVEYANCES

Property Owners' Association Act. Assuming member of property owners' association identifies purpose of request for minutes of meeting of association's board of directors, availability of minutes is not contingent on board's approval of such minutes .......................................................... 164

Recordation of Documents. Duty of clerk to record document that is authorized by law to be recorded and is properly signed and acknowledged; clerk has no duty to assess legal sufficiency of document and may not refuse to record document .... 220

Recordation of Documents. Duty of clerk to record list of heirs without inquiry into its legal sufficiency. Duty to record amended list of heirs, regardless of whether clerk believes original list was correct or erroneous. Duty of court at subsequent proceeding to determine accuracy of list. Clerk should inform person who intentionally furnishes under oath or by affidavit false list of heirs that he could be subject to prosecution for perjury ........................................... 220

Recordation of Documents - Uniform Recognition of Acknowledgments Act. Person acknowledging instrument must appear before person taking acknowledgment. Notary public may not acknowledge "electronic signature" ....................... 165

Residential Landlord and Tenant Act. Individual meeting statutory definition of "landlord" may file unlawful detainer action in general district court seeking payment of rent into court escrow account, judgment against tenant, and possession of leased premises; landlord representing only his interest in court would not be engaging in unauthorized practice of law. Procedural requirement that court determine veracity of tenant's good faith defense does not necessarily require scheduling of evidentiary hearing. Court may accept tenant's oath of good faith defense on return date, prior to actual trial, and grant continuance without escrowed funds or set case for contested trial ........................................... 168
PROPERTY AND CONVEYANCES (CONTD.)

Uniform Recognition of Acknowledgments Act (see supra Recordation of Documents)

Virginia Real Estate Cooperative Act. Real estate cooperative association, and not proprietary lessee with possessory interest in individual cooperative unit, is owner of real estate subject to real estate tax assessment. Tax exemptions for elderly and handicapped are not available to individual proprietary lessee .......................... 205

PROPERTY OWNERS’ ASSOCIATION ACT
(See PROPERTY AND CONVEYANCES)

PSYCHIATRIC INPATIENT TREATMENT OF MINORS ACT
(See COURTS NOT OF RECORD: Juvenile and Domestic Relations Courts)

PUBLIC PROCUREMENT ACT, VIRGINIA
(See CONTRACTS: Virginia Public Procurement Act)

PUBLIC RECREATIONAL FACILITIES AUTHORITIES ACT
(See COUNTIES, CITIES AND TOWNS)

PUBLIC SERVICE COMPANIES

Pay Telephone Registration Act. Authority of locality to impose consumer utility tax must be clear. Because provider of pay telephone service is not “consumer” subject to imposition of tax for services provided by telephone company, owner of pay telephones is not subject to tax .................................................... 198

Telegraph and Telephone Companies. City or town may satisfy constitutional requirements by advertising and receiving public bids before awarding franchise to certificated telecommunications providers to use its public rights-of-way for more than five years, notwithstanding fact that amount of bid is related to Public Rights-of-Way Use Fee collected from such providers. Requirement that locality accept highest bid from responsible bidder does not alter this conclusion .......... 172

Telegraph and Telephone Companies. Locality may impose public rights-of-way use fee and business license tax on telephone company providing telephone exchange service in locality ......................................................... 176

Telegraph and Telephone Companies. Public rights-of-way use fee and business license tax distinguished ......................................................... 176

Utility Facilities Act. Authority for town to construct, maintain and operate its own electric facilities where no such facilities exist in town. No authority for public electric utility to act as town's agent to construct, maintain and repair electric facilities and handle billings and customer relationships. Town may install and operate its own electric utility in areas of town not served by exclusive franchisee; to do so within certificated territory of exclusive franchisee is subject to constitutional challenge .................................................................. 60
PUBLIC SERVICE COMPANIES (contd.)

Virginia Electric Utility Restructuring Act. Act's definition of "person" may encompass real estate investment trusts formed as legal entities for purpose of allowing public investment in stock issued by entities. Each entity specified in definition is "person" for purposes of Act ................................. 178

Virginia Electric Utility Restructuring Act. Purpose of Act is to permit all retail electricity customers in Commonwealth to purchase electric energy from provider of their choice .......................................................... 178

REAL ESTATE COOPERATIVE ACT, VIRGINIA
(See PROPERTY AND CONVEYANCES: Virginia Real Estate Cooperative Act)

RECREATIONAL FACILITIES AUTHORITIES ACT, PUBLIC
(See COUNTIES, CITIES AND TOWNS: Public Recreational Facilities Authorities Act)

RESIDENTIAL LANDLORD AND TENANT ACT, VIRGINIA
(See PROPERTY AND CONVEYANCES)

RETAIL SALES AND USE TAX ACT, VIRGINIA
(See TAXATION: Retail Sales and Use Tax)

RETIREMENT SYSTEM, VIRGINIA
(See PENSIONS, BENEFITS, AND RETIREMENT: Virginia Retirement System)

RULES OF SUPREME COURT OF VIRGINIA

Criminal Practice and Procedure (subpoena). Patient medical records may not be disclosed in response to subpoena duces tecum except in compliance with statutory Notice to Provider/Patient provisions ......................................................... 120

General District Court-In General. Individual meeting statutory definition of "landlord" may file unlawful detainer action in general district court seeking payment of rent into court escrow account, judgment against tenant, and possession of leased premises; landlord representing only his interest in court would not be engaging in unauthorized practice of law. Procedural requirement that court determine veracity of tenant's good faith defense does not necessarily require scheduling of evidentiary hearing. Court may accept tenant's oath of good faith defense on return date, prior to actual trial, and grant continuance without escrowed funds or set case for contested trial ......................................................... 168

Integration of the State Bar - Unauthorized Practice Rules and Considerations. Individual meeting statutory definition of "landlord" may file unlawful detainer action in general district court seeking payment of rent into court escrow account, judgment against tenant, and possession of leased premises; landlord representing only his interest in court would not be engaging in unauthorized practice of law. Procedural requirement that court determine veracity of tenant's good faith defense does not necessarily require scheduling of evidentiary hearing. Court may accept
RULES OF SUPREME COURT OF VIRGINIA (contd.)

tenant’s oath of good faith defense on return date, prior to actual trial, and grant continuance without escrowed funds or set case for contested trial ........................................ 168

Integration of the State Bar – Unauthorized Practice Rules and Considerations. Non-lawyers may represent themselves in court, provided they are not engaging in unauthorized practice of law ......................................................... 168

Practice and Procedure in Actions at Law. Individual meeting statutory definition of “landlord” may file unlawful detainer action in general district court seeking payment of rent into court escrow account, judgment against tenant, and possession of leased premises; landlord representing only his interest in court would not be engaging in unauthorized practice of law. Procedural requirement that court determine veracity of tenant’s good faith defense does not necessarily require scheduling of evidentiary hearing. Court may accept tenant’s oath of good faith defense on return date, prior to actual trial, and grant continuance without escrowed funds or set case for contested trial ........................................ 168

SALES AND USE TAX ACT, VIRGINIA RETAIL
(See TAXATION: Retail Sales and Use Tax)

SHERIFFS

Authority to distrain and sell property to collect delinquent taxes ....................... 207

Broad authority to seize property for delinquent taxes does not extend to seizure of persons. Stopping automobile and detaining person at roadblock constitutes seizure of person. Within limitations imposed by Fourth Amendment, law-enforcement officers may set up roadblocks as exercise of their statutory authority to stop vehicles to inspect equipment or verify registration and licenses. No authority to detain person at roadblock to verify payment of personal property taxes or to detain person for being delinquent in payment of personal property taxes .......... 207

County manager for Henrico County lacks authority, on his own accord, to amend budget approved by board of supervisors for funding county sheriff’s office ........................................................................................................... 54

Locality has no authority to dictate or control operation of sheriff’s office. Locality’s reduction in operating budget of sheriff’s office, if properly authorized, does not constitute illegal infringement on sheriff’s authority to operate his office .................. 54

May not seize vehicle at roadblock for nonpayment of personal taxes ................ 207

1998 Appropriation Act grants Criminal Justice Services Board discretion in determining distribution of funds to state-supported regional criminal justice training academies. Although Board is no longer required to impose specific portion of financial responsibility for operating academies on participating localities, it is not precluded from determining such to be reasonable requirement. Board has discretion to determine whether in-kind services or contributions by entities
other than participating localities would satisfy any obligation placed on localities to share in funding of academy's operation ................................................................. 70

Off-duty employment of deputy sheriffs requiring use of their police powers must be authorized by, and consistent with, local ordinance and regulation .......... 69

Officer to whom writ of possession has been delivered in unlawful detainer action must provide defendant 72-hour notice of intent to execute writ, notwithstanding court's "immediate possession" direction on writ .................................. 24

Political subdivisions constituting Southside Regional Jail Authority are City of Emporia and Greensville County. Sheriff of each participating political subdivision must be member of Authority .......................................................... 153

Private process server is considered officer or sheriff for purpose of serving process; enters public area of business to serve process under authority of law. Entry into private offices of business area where there is justifiable expectation of privacy to serve process may constitute unreasonable search or seizure. In such case, process server would not be acting under authority of law and would be liable for trespass. Extent to which portion of business establishment constitutes private area is question of fact. Person acting jointly or in combination with other person(s) to resist or obstruct lawful service of process is guilty of misdemeanor violation. Private process server is not law-enforcement officer against whom any attempt to interfere with execution of service of process would constitute misdemeanor ....... 32

Reasonableness of sheriff's use of drug-sniffing dogs to search person of students attending public school depends on whether facts support suspicionless search that is relatively unobtrusive coupled with government's interest in conducting search .................................................................................................................. 46

Sheriff, and not private process server, serves 72-hour notice to vacate and may charge each person served with notice $12 fee; may charge additional $12 fee for execution of writ of possession ................................................................. 25

Sheriff has authority over jails in his jurisdiction other than regional jails and jail farms .......................................................................................................................... 149

Sheriff of jurisdiction in which jail is managed by regional jail authority has no authority to operate alternative incarceration program for individuals convicted of desertion or nonsupport .............................................................. 149

Sheriff operating in civil matters in same capacity as private process server has only authority of private process server; has no authority to threaten management or employees with charge of obstruction of justice .................................................. 32

Transition of Town of Emporia to city of second class. Change in title of town/city sergeant to city sheriff. Qualified voters in city transitioned from town elect
city sheriff every four years at city elections and are entitled to vote for Greensville County sheriff at county elections ................................................................. 153

**STATE AND LOCAL GOVERNMENT CONFLICT OF INTERESTS ACT**
*(See ADMINISTRATION OF GOVERNMENT GENERALLY: State and Local Government Conflict)*

**STATE WATERS, PORTS AND HARBORS**

State Water Control Law. Department of Health must consider land use concerns expressed by county board of supervisors regarding Department's processing of application for reissuance of permit to allow storage of sludge at existing facility within county. Local ordinance regulating alternative on-site sewage systems may not subject such systems to restrictions more stringent than those prescribed by state law or regulation. Analysis of "taking" in relation to Department's denial of permit ................................................................. 116

State Water Control Law. Lawful adoption of Virginia Pollutant Discharge Elimination System Permit Regulation and Virginia Water Protection Permit Regulation by State Water Control Board. Authority of Board to define "surface water" by regulation to include "wetlands"; inclusion of "nontidal wetlands" within regulatory definitions of "wetlands." Authority of Chesapeake Bay Local Assistance Board to establish criteria for protection of water quality within Chesapeake Bay Preservation Areas must not affect authority of State Water Control Board to regulate industrial or sewage discharges pursuant to State Water Control Law. Board's regulatory authority does not extend beyond § 401 certification over nontidal wetlands ............................................. 179

**STATUTORY CONSTRUCTION**

Absurdity. Statutes should not be interpreted in ways that produce absurd or irrational consequences .............................................................................. 8, 15, 215

Accepted meaning. In absence of statutory definition, term should be given its common, ordinary and accepted meaning ........................................ 31

Administrative interpretation. Considerable freedom to exercise discretion and judgment must be accorded those who administer legislation ..................................... 3

Administrative interpretation. Construction given to statute by public officials charged with its enforcement is entitled to great weight and, in doubtful cases, will be regarded as decisive .................................................. 28

Administrative interpretation. Construction of statute by agency/public official(s) charged with its administration/enforcement is entitled to great weight [and, (in doubtful cases, will be regarded as decisive) (unless clearly wrong, will not be disturbed. Rule is particularly persuasive when statute is part of complex system administered by agency)] ....................................... 3, 142, 147, 156, 159, 179
Agency interpretation. Construction placed on law by agencies charged with administrative duties in connection with law are entitled to great weight, especially when agency has been charged by General Assembly with construing individual statutes that constitute part of complex statutory scheme ........................................ 188

Ambiguity. When there is no ambiguity in statute, statute is to be given effect in accordance with its plain meaning .......................................................... 150

Ambiguity. Where statutory language is clear and plain, we cannot look for ambiguities under guise of applying liberal construction ........................................ 215

Amendment. Presumption that, in adding amendment to existing legislation, legislature acted with full knowledge of, and in reference to, existing law on same subject and construction placed upon it by courts. Presumed further that legislature acted purposefully with intent to change existing law .............................................. 10

Amendments. When General Assembly adds new provisions to existing legislation, it intends to change existing law .............................................................. 114

Amendments. When statute begins with phrase “notwithstanding any other provision of law,” it is presumed General Assembly intended to override any potential conflicts with earlier legislation ...................................................... 44

And. Use of conjunctive “and” generally indicates connection between words whereas use of disjunctive “or” indicates two separate instances .................... 195

Clarity. Language of statute that is plain and unambiguous, and its meaning clear and definite, must be given effect .................. 6, 8, 44, 65, 87, 100, 101, 137, 142, 165

Clarity. Manifest intention of legislature, clearly disclosed by its language, must be applied .......................................................... 149

Clear, plain language. Where statutory language is clear and plain, we cannot look for ambiguities under guise of applying liberal construction ........................................ 215

Clear, unambiguous language. Effect must be given to plain and ordinary meaning where language of statute is clear and unambiguous. Resort to rules of statutory construction is unnecessary ........................................... 57, 140

Clear, unambiguous language. Language of statute that is clear and unambiguous must be given plain and ordinary meaning. Primary object of statutory construction is to ascertain and give effect to legislative intent .................................................... 164

Clear, unambiguous language. Statute that is clear and unambiguous is not subject to interpretation .......................................................... 147

Clear, unambiguous meaning. Language of statute that is plain should be given its clear and unambiguous meaning ........................................... 22, 27, 193

Clear, unambiguous words must be accorded their plain meaning ........................................... 57, 214
Common meaning. In determining legislative intent from statutory language, words should be given their ordinary meaning. Words in statute are to be given their common meaning unless contrary legislative intent is manifest .................. 83

Common meaning. Words used in statute are to be given their common meanings unless contrary legislative intent is manifest .................................................. 85

Common, ordinary, accepted meaning. In absence of statutory definition, term should be given its common, ordinary and accepted meaning .................. 31

Conflict. Ordinance may not conflict with state law; ordinance and statutes must be harmonized if possible .............................................................. 109

Conflict. Phrase "notwithstanding any other provision(s) of law," indicates legislative intent to override any potential conflicts with earlier legislation .......... 44, 172

Conflict. Statutes dealing with same subject matter should be construed together to achieve harmonious result, resolving conflicts to give effect to each statute, to maximum extent possible .................................................. 165

Consistency. Local ordinances adopted under broad police power granted to counties must not be inconsistent with state law ........................................ 116

Constitutionality. No act of legislature should be held unconstitutional unless it is prohibited by state or federal constitution in express terms or by necessary implication, nor should it be construed to bring it into conflict with constitutional provisions unless such construction is unavoidable .................................................. 172

Constitutionality. Presumption of constitutionality attaches to every legislative act of General Assembly. Strict standard applied to constitutional challenges to state statutes. Statute will be upheld if any reasonable doubt exists as to its constitutionality .............................................................. 172

Definitions. In absence of statutory definition, plain and ordinary meaning of term is controlling .............................................................. 10

Definitions. Term/Words used in statute must be given [common,] ordinary [and accepted] meaning [within statutory context] .................. 31, 85, 142, 214

Dillon Rule. Powers of local governing bodies [generally] are limited to those conferred expressly by law or by necessary implication from [express grants] [such conferred powers]. ["Reasonable selection of method" rule may be applied to decide whether there may be implied authority to execute power in particular manner chosen. Rule permits local public bodies to exercise discretionary authority where grant of power is silent upon its mode or manner of execution before rule comes into play] .............................................................. 53, 72, 101, 193, 198, 200

Dillon Rule requires narrow construction of powers conferred on and exercised by local governments in Virginia, because such powers are delegated powers.
| Localities/Municipal corporations have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable | 60, 136 |
| Directory language. Statute directing mode of proceeding by public officers is to be deemed directory, and precise compliance is not to be deemed essential to validity of proceedings, unless so declared by statute | 168 |
| Enactment. When General Assembly intends statute to impose requirements, it knows how to express its intention | 10 |
| Exclusion. Mention of one thing in statute implies exclusion of another | 179, 215 |
| Exclusion. Statute specifying method by which something shall be done indicates legislative intent that it not be done otherwise | 69 |
| Exclusion. When General Assembly includes one item in statute, it intends to exclude omitted items from scope of statute | 129 |
| Exclusion. Where statute specifies certain things, intention to exclude that which is not specified may be inferred. When statute specifically mentions items to be included within its purview, it may be implied that omitted items were not intended to be included within scope of statute. Mention of one thing in statute implies exclusion of another | 215 |
| Exemptions. Statutes granting exemptions from state sales and use tax are to be narrowly construed | 199 |
| Exemptions. Statutes granting tax exemptions must be strictly construed | 195 |
| Exemptions. Statutes granting taxing power to localities are to be narrowly construed | 199 |
| Exemptions. Tax exemptions are to be narrowly construed and, in doubtful cases, resolved against recognition of exemption | 205 |
| Express terms. Analysis of legislative intent includes appraisal of subject matter and purpose of statute, in addition to its express terms | 65 |
| Harmony. Ordinance may not conflict with state law; ordinance and statutes must be harmonized if possible | 109 |
| Harmony. Statutes dealing with same subject matter must be read together to give effect to legislative intent. Such statutes should not be considered in isolation, but must be construed to produce harmonious result, giving effect to all provisions if possible | 22 |
| Harmony. Statutes dealing with same subject matter should be construed together to achieve harmonious result, resolving conflicts to give effect to each statute, to maximum extent possible | 165 |
Harmony. Statutes must be harmonized with other existing statutes, [if possible, to produce consistently logical result that gives effect to legislative intent] ... 168, 195

Harmony. Statutes relating to same subject are not to be considered as isolated fragments of law, but as whole, or as parts of great connected, homogeneous system, or single and complete statutory arrangement. Such statutes must be construed to operate in harmony with system if their terms, fairly and reasonably considered, will permit such construction .................................................. 22

Harmony. Statutes relating to same subject are not to be considered in isolation but must be construed together to produce harmonious result that gives effect to all provisions if possible ............................................................. 165

Harmony. When construing statutes on same subject, each section should be considered in conjunction with every other section to produce harmonious result ............................................................. 137

Illogical result. Statutes are to be interpreted to avoid illogical result .......... 215

Illogical result. To ascertain and give effect to intention of legislature, intent must be gathered from words used, unless literal construction would involve manifest absurdity. Plain, obvious, and rational meaning of statute is always to be preferred to any curious, narrow, or constrained construction. Statutes should not be construed to frustrate their purpose .................................................. 178

Illogical result frustrates purpose of statute ........................................ 59, 179, 215

Implied authority. In determining whether authority to exercise statutorily created power in particular manner may be implied from statute, statute must be examined for language containing guidance on manner in which power is be exercised ...... 72

Implied authority. Questions concerning implied legislative authority are resolved by analyzing legislative intent ........................................................................ 72

Inconsistency. Local ordinances adopted under broad police power granted to counties must not be inconsistent with state law ........................................... 116

\textit{In pari materia.} Statutes relating to same subject should be considered \textit{in pari materia} ........................................................................ 25

Irrationality. Statutes should not be interpreted in ways that produce absurd or irrational consequences .................................................. 8, 15, 215

Isolation. Statutes dealing with same subject matter must be read together to give effect to legislative intent. Such statutes should not be considered in isolation, but must be construed to produce harmonious result, giving effect to all provisions if possible .................................................. 22
STATUTORY CONSTRUCTION (contd.)

Isolation. Statutes relating to same subject are not to be considered as isolated fragments of law, but as whole, or as parts of great connected, homogeneous system, or single and complete statutory arrangement. [Such statutes must be construed to operate in harmony with system if their terms, fairly and reasonably considered, will permit such construction] .................................................. 22, 168

Isolation. Statutes relating to same subject are not to be considered in isolation but must be construed together to produce harmonious result that gives effect to all provisions if possible .................................................. 165

Legislative intent. Analysis of legislative intent includes appraisal of subject matter and purpose of statute, in addition to its express terms .......... 15, 65, 100, 142

Legislative intent. Any construction that would impair purpose or defeat object of statute is to be avoided .......................................................... 129

Legislative intent. Ascertainment of legislative intention involves appraisal of subject matter, purposes, objects and effects of statute, in addition to its express terms .................................................. 85

Legislative intent. In ascertaining and giving effect to intent of legislature, statute is to be considered as whole and in conjunction with other statutes bearing on same subject matter .......................................................... 80

Legislative intent. In determining legislative intent from statutory language, words should be given their ordinary meaning. Words in statute are to be given their common meaning unless contrary legislative intent is manifest ......................... 83

Legislative intent. In determining legislative intent, statutes dealing with same subject matter should be construed together in order to give effect to all acts of legislature ........................................................................ 24

Legislative intent. In determining whether authority to exercise statutorily created power in particular manner may be implied from statute, statute must be examined for language containing guidance on manner in which power is to be exercised .... 72

Legislative intent. Liberal construction requirement does not mean enlargement of scope of statute to include cases or objects not manifestly within legislative contemplation .......................................................... 67

Legislative intent. Manifest intention of legislature, clearly disclosed by its language, must be applied .......................................................... 149, 168

Legislative intent. One must look to entire statute to ascertain legislative intent .... 85

Legislative intent. Presumption that, in adding amendment to existing legislation, legislature acted with full knowledge of, and in reference to, existing law on same subject and construction placed upon it by courts. Presumed further that legislature acted purposefully with intent to change existing law .................................................. 10
Legislative intent. Presumption that legislature intended what it plainly expressed when language of statute is plain and unambiguous, and statutory construction is unnecessary ........................................................................ 20, 72, 108, 200, 205

Legislative intent. Primary goal of statutory construction is to interpret statutes in accordance with legislature's intent ........................................................................................................ 198

Legislative intent. Primary purpose of statutory construction is to ascertain/discern and give effect to legislative intent .............................................................. 15, 20, 24, 27, 44, 57, 65, 83, 100, 108, 116, ................................................................. 126, 129, 142, 150, 164, 165, 200, 214, 215

Legislative intent. Purpose underlying statute's enactment is particularly significant in construing it ........................................................................ 8, 15, 65

Legislative intent. Questions concerning implied legislative authority are resolved by analyzing legislative intent ........................................................................................................... 72

Legislative intent. Statute specifying method by which something shall be done indicates legislative intent that it not be done otherwise ...................................................... 69

Legislative intent. Statutes dealing with same subject matter must be read together to give effect to legislative intent. Such statutes should not be considered in isolation, but must be construed to produce harmonious result, giving effect to all provisions if possible ...................................................................................................................... 22

Legislative intent. Statutes should be harmonized with other existing statutes, if possible, to produce consistently logical result that gives effect to legislative intent .... 168

Legislative intent. To ascertain and give effect to intention of legislature, intent must be gathered from words used, unless literal construction would involve manifest absurdity ............................................................................................................. 178

Legislative intent. To derive true purpose of act, statute should be construed to give effect to its component parts ................................................................................. 85

Legislative intent. When General Assembly adds new provisions to existing legislation, it intends to change existing law ................................................................. 114

Legislative intent. Where General Assembly has enacted several statutes that appear to bear on same issue, task is to ascertain legislative intent ................................................................. 179

Legislative intent. Where statute is unambiguous, plain meaning is to be accepted without resort to rules of statutory interpretation. Manifest intention of legislature, clearly disclosed by its language, must be applied. Take words as written and give them their plain meaning ............................................................................................................. 159

Legislative intent. Words used in statute are to be given their common meanings unless contrary legislative intent is manifest ......................................................................................... 85
STATUTORY CONSTRUCTION (contd.)

Liberal construction. Where statutory language is clear and plain, we cannot look for ambiguities under guise of applying liberal construction ........................................ 215

Liberal construction requirement does not mean scope of act may be enlarged to include cases or objects not manifestly within legislative contemplation ................. 67

Literal construction. To ascertain and give effect to intention of legislature, intent must be gathered from words used, unless literal construction would involve manifest absurdity. Plain, obvious, and rational meaning of statute is always to be preferred to any curious, narrow, or constrained construction. Statutes should not be construed to frustrate their purpose ........................................ 178

"May" indicates statute is permissive and discretionary, rather than mandatory .... 193

Narrow construction. Dillon Rule requires narrow construction of all powers conferred on and exercised by local governments in Virginia, because such powers are delegated powers. Localities/Municipal corporations have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable ........................................ 60, 136

Narrow construction. Plain, obvious, and rational meaning of statute is always preferred to any curious, narrow, or constrained construction. Statutes should not be construed to frustrate their purpose ................................. 59, 178, 215

Narrow construction. Tax exemptions are to be narrowly construed and, in doubtful cases, resolved against recognition of exemption ........................................ 205

"Notwithstanding any other provision(s) of law." Phrase indicates legislative intent to override any potential conflicts with earlier legislation .............................. 44, 172

Obvious, rational meaning. Plain, obvious, and rational meaning of statute is always preferred to any curious, narrow, or constrained construction. Statutes should not be construed to frustrate their purpose ................................. 59, 178, 215

Omissions. When General Assembly includes one item in statute, it intends to exclude omitted items from scope of statute ........................................ 129

Omissions. Where statute specifies certain things, intention to exclude that which is not specified may be inferred. When statute specifically mentions items to be included within its purview, it may be implied that omitted items were not intended to be included within scope of statute. Mention of one thing in statute implies exclusion of another ........................................ 215

Or. Use of conjunctive "and" generally indicates connection between words whereas use of disjunctive "or" indicates two separate instances ......................................... 195

Ordinary, accepted meaning. In absence of statutory definition, term should be given its common, ordinary and accepted meaning ........................................ 31
STATUTORY CONSTRUCTION (CONT'D.)

Ordinary meaning. In absence of statutory definition, plain and ordinary meaning of term is controlling ................................................................. 10

Ordinary meaning. [In absence of statutory definition,] term/words used in statute must be given ordinary meaning within statutory context 85, 214

Ordinary meaning. In determining legislative intent from statutory language, words should be given their ordinary meaning. Words in statute are to be given their common meaning unless contrary legislative intent is manifest .................... 83

Penal statute. Strict compliance with statute carrying criminal penalties ............... 78

Penal statute is to be strictly construed against state and in favor of citizen's liberty; cannot be extended by implication or construction, or be made to embrace cases which are not within letter and spirit of such statute. Penal statutes are not to be so strictly construed as to defeat obvious intent of General Assembly .............. 85

Penal statute(s) must be strictly construed [and are not to be extended by implication] ......................................................... 83, 136

Plain language. Language of statute that is plain should be given its clear and unambiguous meaning ........................................... 22, 27, 193

Plain meaning. Clear, unambiguous words of statute must be accorded their plain meaning ..................................................... 57, 214

Plain meaning. Primary goal of statutory construction is to ascertain and give effect to legislative intent. Take words as written and determine their plain meaning ...................... 168

Plain meaning. Statute which is plain needs no interpretation ................. 8

Plain meaning. When there is no ambiguity in statute, statute is to be given effect in accordance with its plain meaning .............................. 150

Plain meaning. Where statute is unambiguous, plain meaning is to be accepted without resort to rules of statutory interpretation. Manifest intention of legislature, clearly disclosed by its language, must be applied. Take words as written and give them their plain meaning .............................................. 159

Plain meaning, intent. Statute's plain meaning and intent govern when language of statute is plain and unambiguous 44, 87, 100, 142, 215

Plain, obvious, and rational meaning of statute is always preferred to any curious, narrow, or constrained construction. Statutes should not be construed to frustrate their purpose .................................................... 59, 178, 215

Plain, ordinary meaning. In absence of statutory definition, plain and ordinary meaning of term is controlling ........................................ 10
1999 REPORT OF THE ATTORNEY GENERAL

STATUTORY CONSTRUCTION (cont’d.)

Plain, ordinary meaning. Language of statute that is clear and unambiguous must be given plain and ordinary meaning ................................................................. 140, 164

Plain, unambiguous language. Language of statute that is plain and unambiguous [and its meaning clear and definite,] must be given effect .... 6, 8, 44, 65, 87, 100, 101, .................................................................................................................. 137, 142, 165, 215

Plain, unambiguous language. Presumption that legislature intended what it plainly expressed when language of statute is plain and unambiguous, and statutory construction is unnecessary ........................................ 20, 72, 108, 200, 205

Procedural statute. Statute directing mode of proceeding by public officers is to be deemed directory, and precise compliance is not to be deemed essential to validity of proceedings, unless so declared by statute ............................................. 168

Rational meaning. Plain, obvious, and rational meaning of statute is always preferred to any curious, narrow, or constrained construction. Statutes should not be construed to frustrate their purpose ........................................................................ 59, 178, 215

Rationality. Statutes should not be interpreted in ways that produce absurd or irrational consequences ...................................................................................... 8

Same subject. In ascertaining and giving effect to intent of legislature, statute is to be considered as whole and in conjunction with other statutes bearing on same subject matter ........................................................................ 80

Same subject. Laws relating to same subject are to be interpreted so as to give effect to each provision to extent possible ................................................................. 133

Same subject. Provisions in statute which are omitted in another statute relating to same subject are applicable to proceeding under other statute, when not inconsistent with its purposes ........................................................................ 80

Same subject. Statutes dealing with same subject matter should be construed together to achieve harmonious result, resolving conflicts to give effect to each statute, to maximum extent possible ................................................. 165

Same subject. Statutes dealing with same subject matter should be construed together to give effect to intent of legislature ........................................................................ 22, 24, 120

Same subject. Statutes relating to same subject are not to be considered as isolated fragments of law, but as whole, or as parts of great connected, homogenous system, or single and complete statutory arrangement. [Such statutes must be construed to operate in harmony with system if their terms, fairly and reasonably considered, will permit such construction] ......................................................... 22, 168

Same subject. Statutes relating to same subject are not to be considered in isolation but must be construed together to produce harmonious result that gives effect to all provisions if possible ................................................................. 22, 165
STATUTORY CONSTRUCTION (CONT.)

Same subject. Statutes relating to same subject should be [considered in pari materia] [construed together] ................................................................. 25, 164

Same subject. When construing statutes on same subject, each section should be considered in conjunction with every other section to produce harmonious result ..................................................................................................................... 137

Same subject. When statutes provide different procedures on same subject matter, [and it is not clear which statute applies, more specific statute prevails over more general] [more general gives way to more specific] ........................................... 120, 165

Same subject. Where General Assembly has enacted several statutes that appear to bear on same issue, task is to ascertain legislative intent ................................................. 179

"Shall" generally indicates procedures are intended to be mandatory, imperative or limited ........................................................................................................... 15

"Shall" implies/indicates procedures/terms of statute are intended to be mandatory, rather than permissive or directive ........................................... 6, 8, 44, 59, 100, 179

"Shall" in statute implies/indicates procedures/provisions are [intended to be] mandatory ........................................................................................................... 6, 15, 22, 27, 28, 39, 87, 132, 137

"Shall" in statute requiring action by public official is directory and not mandatory unless statute manifests contrary intent ................................................. 168

"Shall" is to be deemed directory when it is used in statute to direct mode of proceeding by public officers, and precise compliance is not to be deemed essential to validity of proceedings, unless so declared by statute ................................................. 168

"Shall" is word of command, used in connection with mandate ................................................. 15

Specific grant of authority in statute exists only to extent plainly/specifically granted ........................................................................................................... 28, 44, 59, 85, 87, 100, 142, 168, 179

Specific statute. Where statute specifies certain things, intention to exclude that which is not specified may be inferred. When statute specifically mentions items to be included within its purview, it may be implied that omitted items were not intended to be included within scope of statute. Mention of one thing in statute implies exclusion of another ........................................................................................................... 215

Specific vs. general statute. Specific statutes mandating sentence for particular crime prevail over general statute authorizing court to suspend sentence .......... 150

Specific vs. general statute. When it is not clear which of two statutes applies, more specific statute prevails over more general ................................................. 165

Specific vs. general statute. When statutes provide different procedures on same subject matter, [and it is not clear which statute applies, more specific statute prevails over more general] [more general gives way to more specific] .................. 120, 165
### STATUTORY CONSTRUCTION (contd.)

| Specific vs. general statute. Where both general and specific statutes appear to address subject, specific statute controls | 179 |
| Specificity. When one statute adopts another by specific reference, only those particular parts of statute referred to are incorporated | 136 |
| Statutes should not be construed to frustrate their purpose | 59, 179 |
| Strict compliance with penal statute | 78 |
| Strict construction. Authority to issue and serve process, as provided for by constitution and statute, must be strictly construed | 31 |
| Strict construction. Penal statute is to be strictly construed against state and in favor of citizen's liberty; cannot be extended by implication or construction, or be made to embrace cases which are not within letter and spirit of such statute. Penal statutes are not to be so strictly construed as to defeat obvious intent of General Assembly | 85 |
| Strict construction. Penal statutes must be strictly construed [and are not to be extended by implication] | 83, 136 |
| Strict construction. Statutes granting power of taxation to localities are to be strictly construed, with reasonable doubt to be resolved against taxation. [Authority of locality to impose tax must be clear] | 195, 198 |
| Strict construction. Statutes granting tax exemptions must be strictly construed | 195 |
| Strict construction. Tax exemptions must be strictly construed and, in doubtful cases, resolved against recognition of exemption | 205 |
| Strict construction of terms in statute requires limited application | 31 |
| Tax exemptions. Manufacturing exemption is to be liberally construed in furtherance of state's public policy of encouraging manufacturing in Commonwealth | 188 |
| Tax exemptions. Statutes granting exemptions from state sales and use tax are to be narrowly construed | 199 |
| Tax exemptions. Statutes granting tax exemptions must be strictly construed | 195 |
| Tax exemptions. Statutes granting taxing power to localities are to be narrowly construed | 199 |
| Tax exemptions are to be narrowly construed and, in doubtful cases, resolved against recognition of exemption | 205 |
| Taxation. Statutes granting power of taxation to localities are to be strictly construed, with reasonable doubt to be resolved against taxation. [Authority of locality to impose tax must be clear] | 195, 198 |
Taxation. Whenever there is doubt as to meaning or scope of laws imposing tax, such laws are to be construed against government and in favor of citizen........... 198

Unambiguous language. It is unnecessary to resort to any rules of statutory construction when language of statute is unambiguous ............................................. 44

Unambiguous language. Presumption that legislature intended what it plainly expressed when language of statute is plain and unambiguous. Statutory construction is unnecessary ........................................ 20, 72, 108, 200, 205

Unambiguous language. Statute that is clear and unambiguous [is not subject to interpretation] [must be given plain and ordinary meaning] ............ 147, 164

Unambiguous meaning. Language of statute that is plain and unambiguous, and its meaning clear and definite, must be given effect ...... 6, 8, 44, 65, 87, 100, 101, ......................................................... 137, 142, 165, 215

Unambiguous meaning. Language of statute that is plain should be given its clear and unambiguous meaning ........................................ 22, 27, 193

Unambiguous statute. Plain meaning is to be accepted without resort to rules of statutory interpretation. Manifest intention of legislature, clearly disclosed by its language, must be applied. Take words as written and give them their plain meaning.............................................................. 159

Unambiguous words. Clear, unambiguous words of statute must be accorded their plain [and ordinary] meaning............................. 57, 140, 214

TAXATION

Consumer Utility Taxes (see infra Miscellaneous Taxes)

Exemptions. Manufacturing exemption is to be liberally construed in furtherance of state's public policy of encouraging manufacturing in Commonwealth .......... 188

Food and Beverage Tax (see infra Miscellaneous Taxes)

General Provisions of Title 58.1. "Line of duty" exclusion to prohibition against commissioner of revenue divulging personal property tax information is applicable to city revenue office employees. Commissioner is not prohibited from disclosing to another city revenue office information regarding year, make, model and assessed value of delinquent taxpayers' vehicles and whether taxes on such vehicles have been prorated or exonerated, to enable employees to perform duty under city code of collecting delinquent taxes .......................................................... 185

General Provisions of Title 58.1 (secrecy of information). Confidential taxpayer information generally is not subject to disclosure under Virginia Freedom of Information Act ................................................................. 211
TAXATION (contd.)

General Provisions of Title 58.1 (secrecy of information). Distress warrant related to taxes is public record subject to disclosure pursuant to Virginia Freedom of Information Act. Information appearing on warrant pertaining to transactions, property, income or business of taxpayer is confidential tax information not subject to disclosure, unless information is entered on public assessment book or published in line of duty. Line of duty exception allows disclosure of amount of tax delinquency only to other tax officers and employees. Whether distress warrant related to taxes would be deemed confidential depends on particular facts .......... 211

General Provisions of Title 58.1 (secrecy of information). Freedom of Information Act does not require office of commissioner of revenue to copy personal property book. Records custodian may place burden for copying records on requester if custodian has no system or computer database available that is capable of producing copies. Act expressly grants citizens right to copy official records required by law to be open for inspection. Because electronic system for producing copies of book does not exist does not prevent persons within commissioner's office or requester from making copies of book. Privacy Protection Act does not prohibit disclosure of personal information required to be disclosed under Freedom of Information Act. Only that information required by law to be entered in personal property book is subject to disclosure; other information relating to taxpayer's personal property is protected by secrecy requirements, unless some other authority permits its release ................................................................. 17

General Provisions of Title 58.1 (secrecy of information). Personal property book is public assessment book not encompassed within secrecy provisions of § 58.1-3 and is subject to disclosure ................................................................. 17

License Taxes. Decision whether company that assembles materials is manufacturer is question of fact to be resolved by commissioner of revenue analyzing such factors as type of materials being assembled, complexity of process, and product resulting from assembly. Locality is not liable for payment of interest on refund of erroneously assessed BPOL taxes for license years prior to January 1, 1997 ........... 188

License Taxes. For business license tax purposes, funds travel agency disburses on behalf of clients for travel and accommodation are not included in agency's gross receipts. Funds travel agency receives from travel package it purchases and resells to clients at increased price would be included in agency's gross receipts. Determination whether funds travel agency receives from its clients constitute gross receipts lies with commissioner of revenue and depends on nature of transaction among agency, its clients and recipients of funds ................................................................. 187

License Taxes. Gross receipts are not subject to local gross receipts tax when taxpayer acts as agent or fiduciary for another in receiving and disbursing money on behalf of other person or entity ................................................................. 187
License Taxes. Locality may impose public rights-of-way use fee and business license tax on telephone company providing telephone exchange service in locality ... 176

License Taxes. Public rights-of-way use fee and business license tax distinguished ..... 176

License Taxes. Test for considering whether business activities constitute manufacturing for tax exemption purposes ................................................................. 188

Local Officers - Commissioners of the Revenue. Freedom of Information Act does not require office of commissioner of revenue to copy personal property book. Records custodian may place burden for copying records on requester if custodian has no system or computer database available that is capable of producing copies. Act expressly grants citizens right to copy official records required by law to be open for inspection. Because electronic system for producing copies of book does not exist does not prevent persons within commissioner's office or requester from making copies of book. Privacy Protection Act does not prohibit disclosure of personal information required to be disclosed under Freedom of Information Act. Only that information required by law to be entered in personal property book is subject to disclosure; other information relating to taxpayer's personal property is protected by secrecy requirements, unless some other authority permits its release .... 17

Local Officers - Commissioners of the Revenue. Personal property book is public assessment book not encompassed within secrecy provisions of § 58.1-3 and is subject to disclosure ........................................ 17

Local Taxes. Collection of personal property taxes during calendar year of January 1 assessment. Taxes collected annually in October by county that imposes tax on calendar year basis are those assessed previously in January of same year. Change from annual to semiannual collection in May and October results in installment payment of taxes assessed in January of same calendar year ......................... 206

Local Taxes. Local tax official, and not governing body, has discretionary authority to decide whether to require disclosure of taxpayers' social security numbers. City council has no authority to direct commissioner to ascertain social security numbers of all taxpayers subject to local taxation in city ................................................................................ 193

Local Taxes. Taxes may not be prepaid during current year for ensuing year .... 206

Miscellaneous Taxes - Consumer Utility Taxes. Authority of locality to impose consumer utility tax must be clear. Because provider of pay telephone service is not "consumer" subject to imposition of tax for services provided by telephone company, owner of pay telephones is not subject to tax ........................................ 198
TAXATION (cont'd.)

Miscellaneous Taxes - Consumer Utility Taxes. Town has authority to impose consumer utility tax on its residents. County in which town is located may not impose its consumer utility tax on residents of town if town also imposes tax and provides police or fire protection and water or sewer services, or formerly provided latter services now furnished by county per county/town agreement 195

Miscellaneous Taxes - Food and Beverage Tax. Governing body may adopt by ordinance reasonable and uniformly applied definition of term “occasional” for purposes of food and beverage tax exemption 199

Miscellaneous Taxes - Transient Occupancy Tax. Express statutory authority granted locality to expend portion of revenues derived from imposition of transient occupancy tax to promote and generate tourism confers by implication power to determine how tax revenues are to be spent to achieve purpose of promoting tourism in locality. Whether open-space land purchased with revenues derived from transient occupancy tax promotes tourism and whether land so purchased is preserved for historic or scenic purposes consistent with Act requires factual determination to be made by local governing body 200

Real Property Tax. County-wide rezoning resulting in portion of property being rezoned to more intensive use not requested by owner does not affect continued qualification of property under land-use ordinance. Property once eligible that becomes ineligible for land-use value assessment and taxation is to be assessed at fair market value. Roll-back taxes equal difference between tax levied when land qualified for special assessment and tax that would have been levied had property been subject to fair market value assessment rather than special assessment. County's inclusion in its determination of roll-back taxes value of rezoned portion of property is consistent with statutes governing roll-back taxes 202

Real Property Tax. Real estate cooperative association, and not proprietary lessee with possessory interest in individual cooperative unit, is owner of real estate subject to real estate tax assessment. Tax exemptions for elderly and handicapped are not available to individual proprietary lessee 205

Real Property Tax. Watershed improvement district is political subdivision of Commonwealth, not state department or agency; and has no access to legal services provided by Attorney General unless authorized by specific statute. Watershed improvement district may have access to such legal services if claim is made against district director exercising powers of soil and water conservation district for benefit of watershed improvement district. No charges assessed against property owners of watershed improvement district under county stormwater ordinance if district controls its own stormwater runoff consistent with locality's stormwater program. Watershed improvement district should use form of land book similar to form prescribed by Department of Taxation for commissioner of revenue; must certify land book to county treasurer and file copy in clerk's office annually by Septem-
ber 1 or within 90 days from date real property tax rate is determined, whichever occurs later .......................................................... 39

Retail Sales and Use Tax. Statutes granting exemptions from tax are to be narrowly construed .......................................................... 199

Retail Sales and Use Tax. Without express or implied language in Act that may be interpreted to authorize such transaction, industrial development authority may not be designated as general contractor for construction of manufacturing plant to enable manufacturer to construct plant without paying state sales and use tax on construction materials .................................................. 67

Review of Local Taxes. Broad authority to seize property for delinquent taxes does not extend to seizure of persons. Stopping automobile and detaining person at roadblock constitutes seizure of person. Within limitations imposed by Fourth Amendment, law-enforcement officers may set up roadblocks as exercise of their statutory authority to stop vehicles to inspect equipment or verify registration and licenses. No authority to detain person at roadblock to verify payment of personal property taxes or to detain person for being delinquent in payment of personal property taxes .......................................................... 207

Review of Local Taxes. Collection of personal property taxes during calendar year of January 1 assessment. Taxes collected annually in October by county that imposes tax on calendar year basis are those assessed previously in January of same year. Change from annual to semiannual collection in May and October results in installment payment of taxes assessed in January of same calendar year .......... 206

Review of Local Taxes. Decision whether company that assembles materials is manufacturer is question of fact to be resolved by commissioner of revenue analyzing such factors as type of materials being assembled, complexity of process, and product resulting from assembly. Locality is not liable for payment of interest on refund of erroneously assessed BPOL taxes for license years prior to January 1, 1997 ...................................................................................... 188

Review of Local Taxes. Distress warrant related to taxes is public record subject to disclosure pursuant to Virginia Freedom of Information Act. Information appearing on warrant pertaining to transactions, property, income or business of taxpayer is confidential tax information not subject to disclosure, unless information is entered on public assessment book or published in line of duty. Line of duty exception allows disclosure of amount of tax delinquency only to other tax officers and employees. Whether distress warrant related to taxes would be deemed confidential depends on particular facts .................................................. 211

Review of Local Taxes. In absence of statutory authority allowing payment of interest, interest is not recoverable from government upon refund of taxes erroneously assessed, collected and ordered refunded .................................................. 188
TAXATION (cont'd.)

Review of Local Taxes. Penalty and interest, when imposed, are considered part of tax assessment ............................................................... 210

Review of Local Taxes. Remedies available to taxpayer aggrieved by local assessment are limited by statutes; Code does not authorize taxpayer to determine own tax liability and pay taxes accordingly ........................................ 210

Review of Local Taxes. Taxpayer may not use accord and satisfaction methods of Uniform Commercial Code to remedy disputed local tax liability. Tax Code provides administrative and judicial remedies for resolution of disputed tax assessments. No statutory authority permits taxpayer to resolve disputed tax liability by withholding payment of penalty and interest from check submitted to treasurer accompanied by statement that acceptance of partial payment of taxes constitutes full satisfaction of assessment ............................................................... 210

Tax exemptions are to be narrowly construed and, in doubtful cases, resolved against recognition of exemption ........................................ 205

Tax laws. Whenever there is doubt as to meaning or scope of laws imposing tax, such laws are to be construed against government and in favor of citizen .......... 198

Tax laws are to be strictly construed, with reasonable doubt to be resolved against taxation ........................................................................ 198

Transient Occupancy Tax (see supra Miscellaneous Taxes)

TRADE AND COMMERCE

Electronic Signatures. Person acknowledging instrument must appear before person taking acknowledgment. Notary public may not acknowledge "electronic signature" .......................................................... 165

Virginia Consumer Protection Act. Misrepresentation of geographic origin of final assembly of automobile constitutes violation of Act. Described practice of automobile manufacturers' requiring franchisees to charge destination charges for delivery of vehicles from final assembly point, which includes cost of shipping components to that point, does not violate Act ........................................ 214

Virginia Consumer Protection Act. Supplier's misrepresentation of geographic origin of goods or services constitutes violation of Act ........................................ 214

TREASURERS

Authority to distrain and sell property to collect delinquent taxes .......... 207

Broad statutory power to seize property for delinquent taxes; no statutory authority to seize persons for failure to pay their taxes. Roadblock constitutes seizure of person and is beyond statutory authority granted treasurers to seize property. Seizure would not pass Fourth Amendment scrutiny because there is no connection
between failure of taxpayer to timely pay taxes on his vehicle and promotion of safety on roads ................................................................. 207

Distress warrant related to taxes is public record subject to disclosure pursuant to Virginia Freedom of Information Act. Information appearing on warrant pertaining to transactions, property, income or business of taxpayer is confidential tax information not subject to disclosure, unless information is entered on public assessment book or published in line of duty. Line of duty exception allows disclosure of amount of tax delinquency only to other tax officers and employees. Whether distress warrant related to taxes would be deemed confidential depends on particular facts ................................................................. 211

Locality may impose public rights-of-way use fee and business license tax on telephone company providing telephone exchange service in locality .................. 176

May distraint property for taxes without warrant based on tax bill alone, may remove property from premises as essential part of power to distraint property, and may sell property to satisfy delinquent taxes ................................................................. 207

Taxpayer may not use accord and satisfaction methods of Uniform Commercial Code to remedy disputed local tax liability. Tax Code provides administrative and judicial remedies for resolution of disputed tax assessments. No statutory authority permits taxpayer to resolve disputed tax liability by withholding payment of penalty and interest from check submitted to treasurer accompanied by statement that acceptance of partial payment of taxes constitutes full satisfaction of assessment ................................................................. 210

UNIFORM COMMERCIAL CODE

Negotiable Instruments - Enforcement of Instruments. Taxpayer may not use accord and satisfaction methods of Uniform Commercial Code to remedy disputed local tax liability. Tax Code provides administrative and judicial remedies for resolution of disputed tax assessments. No statutory authority permits taxpayer to resolve disputed tax liability by withholding payment of penalty and interest from check submitted to treasurer accompanied by statement that acceptance of partial payment of taxes constitutes full satisfaction of assessment ........... 210

UNIFORM RECOGNITION OF ACKNOWLEDGMENTS ACT
(See PROPERTY AND CONVEYANCES: Recordation of Documents)

UTILITY FACILITIES ACT
(See PUBLIC SERVICE COMPANIES)

VIRGINIA CONSUMER PROTECTION ACT
(See TRADE AND COMMERCE)

VIRGINIA FAIR HOUSING LAW
(See HOUSING)
VIRGINIA FREEDOM OF INFORMATION ACT
(See ADMINISTRATION OF GOVERNMENT GENERALLY)

VIRGINIA HOUSING DEVELOPMENT AUTHORITY ACT
(See HOUSING)

VIRGINIA NOTARY ACT
(See NOTARIES AND OUT-OF-STATE COMMISSIONERS)

VIRGINIA PROPERTY OWNERS' ASSOCIATION ACT
(See PROPERTY AND CONVEYANCES: Property Owners' Association Act)

VIRGINIA PUBLIC PROCUREMENT ACT
(See CONTRACTS)

VIRGINIA REAL ESTATE COOPERATIVE ACT
(See PROPERTY AND CONVEYANCES)

VIRGINIA RESIDENTIAL LANDLORD AND TENANT ACT
(See PROPERTY AND CONVEYANCES: Residential Landlord and Tenant Act)

VIRGINIA RETAIL SALES AND USE TAX ACT
(See TAXATION: Retail Sales and Use Tax)

VIRGINIA RETIREMENT SYSTEM
(See PENSIONS, BENEFITS, AND RETIREMENT)

VIRGINIA WATER AND WASTE AUTHORITIES ACT
(See COUNTIES, CITIES AND TOWNS)

VIRGINIA WORKERS COMPENSATION ACT
(See WORKERS' COMPENSATION)

VOTING RIGHTS ACT OF 1965 (FEDERAL)

Change from appointed to elected school board in City of Petersburg. Members elected at large to replace 9-member appointed board in city comprised of seven established election districts. Preclearance by U.S. Department of Justice under Voting Rights Act. Election of school board from single-member election districts would require authorization from General Assembly .................................................. 103

WATER AND WASTE AUTHORITIES ACT, VIRGINIA
(See COUNTIES, CITIES AND TOWNS: Virginia Water and Waste Authorities Act)

WELFARE (SOCIAL SERVICES)

Adoption. Exchange of property for adoption generally prohibited. Payment by adoptive parents permitted for certain insurance premiums; for food, shelter and clothing expenses for birth mother and her dependents, when she is unable to work due to pregnancy-related medical reasons; for transportation expenses incident to court appearance, medical treatment and adoption process. Whether expenses associated with shelter for birth mother are reasonable and necessary
requires factual determination that Attorney General has no authority to provide. Extent to which birth mother can support herself in limited manner may be taken into consideration in determining amount of adoptive parents' payment(s) for reasonable and necessary expenses related to her support. Payment for expenses incurred for automobile repairs and insurance premiums and for regular monthly telephone bills is not authorized. Juvenile judge may exercise his authority and discretion in setting forth reasonable accounting requirements relating to payment or reimbursement of reasonable and necessary adoption expenses ........................................ 2\text{15}

Adoption in Virginia is solely creature of statute. Adoption statutes should be liberally construed to carry out beneficent purposes of adoption. Courts must construe statutes according to language used by legislature ........................................ 2\text{15}

\textbf{WILLS AND DECEDENTS' ESTATES}

Administration of Estates - Virginia Small Estate Act. Duty of clerk to record list of heirs without inquiry into its legal sufficiency. Duty to record amended list of heirs, regardless of whether clerk believes original list was correct or erroneous. Duty of court at subsequent proceeding to determine accuracy of list. Clerk should inform person who intentionally furnishes under oath or by affidavit false list of heirs that he could be subject to prosecution for perjury ........................................ 2\text{20}

Administration of Estates - Virginia Small Estate Act. Recorded list of heirs suffices as proof of identity of heirs until list is contradicted and overcome by other evidence. Recording list of heirs does not operate to establish truth of document or overcome rights of legitimate heirs not included in list ........................................ 2\text{20}

Descent and Distribution. Duty of clerk to record list of heirs without inquiry into its legal sufficiency. Duty to record amended list of heirs, regardless of whether clerk believes original list was correct or erroneous. Duty of court at subsequent proceeding to determine accuracy of list. Clerk should inform person who intentionally furnishes under oath or by affidavit false list of heirs that he could be subject to prosecution for perjury ........................................ 2\text{20}

Descent and Distribution. Recorded list of heirs suffices as proof of identity of heirs until list is contradicted and overcome by other evidence. Recording list of heirs does not operate to establish truth of document or overcome rights of legitimate heirs not included in list ........................................ 2\text{20}

\textbf{WORKERS' COMPENSATION}

Insurance and Self-Insurance. Public recreational facilities authority has statutory authority to purchase insurance for construction project through owner-controlled insurance program which provides for workers' compensation general and excess liability, professional liability, pollution liability, force majeure/debt service guarantee, and contractor default (in lieu of surety coverage). Such insurance coverage satisfies statutory obligation to provide workers' compensation insurance and
payment and performance bonds. Public recreational facilities authority that contracts with independent contractor to perform work within authority's trade, business or occupation is "statutory employer" of employees employed by construction contractors and subcontractors. Sole remedy for employees is provided by Workers' Compensation Act...................................................... 72

YOUTH AND FAMILY SERVICES

Delinquency Prevention and Youth Development Act. Board of supervisors elected for four-year term in 1995 may not adopt resolution irrevocably committing its successors in office to expend portion of locality's resources to operate youth services program for fiscal year 2000-2001................................. 53
STATUTORY AND CONSTITUTIONAL PROVISIONS AND RULES OF COURT
This index provides a numerical listing of statutory and constitutional provisions and rules of court cited in opinions within this report. Unless otherwise noted, opinions issued January through June cite Virginia law effective through the 1998 Session of the General Assembly, and opinions issued July through December cite Virginia law effective through the 1999 Session of the General Assembly.
ACTS OF ASSEMBLY

ACTS OF 1962
Ch. 623 .......................................................... 156

ACTS OF 1968
Ch. 78 .......................................................... 155

ACTS OF 1971
Ch. 68 .......................................................... 156
Ch. 155 .......................................................... 155, 156
Ch. 158 .......................................................... 156

ACTS OF 1975
Ch. 345 .......................................................... 128

ACTS OF 1976
Ch. 611 .......................................................... 30

ACTS OF 1981
Ch. 609 .......................................................... 84

ACTS OF 1982
Ch. 684 .......................................................... 71, 72

ACTS OF 1984
Ch. 675 .......................................................... 204
Ch. 755 .......................................................... 71, 72

ACTS OF 1985
Ch. 436 .......................................................... 84

ACTS OF 1986
Ch. 643 .......................................................... 72

ACTS OF 1987
Ch. 1 .......................................................... 12

ACTS OF 1988
Ch. 137 .......................................................... 60
Ch. 415 .......................................................... 84
Ch. 608 .......................................................... 185
Ch. 800 .......................................................... 72
H.B. 1037 .......................................................... 184

ACTS OF 1990
Ch. 972 .......................................................... 72

ACTS OF 1991
Ch. 557 .......................................................... 128

ACTS OF 1992
Ch. 837 .......................................................... 5
Ch. 880 .......................................................... 5
Ch. 893 .......................................................... 72
# Acts of Assembly (contd.)

<table>
<thead>
<tr>
<th>Acts of 1994</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ch. 965</td>
<td>72</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Acts of 1996</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ch. 67</td>
<td>115</td>
</tr>
<tr>
<td>Ch. 173</td>
<td>128</td>
</tr>
<tr>
<td>Ch. 369</td>
<td>128</td>
</tr>
<tr>
<td>Ch. 533</td>
<td>115</td>
</tr>
<tr>
<td>Ch. 715</td>
<td>193</td>
</tr>
<tr>
<td>Ch. 720</td>
<td>193</td>
</tr>
<tr>
<td>Ch. 912</td>
<td>72</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Acts of 1997</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ch. 587</td>
<td>148, 155</td>
</tr>
<tr>
<td>Ch. 682</td>
<td>123</td>
</tr>
<tr>
<td>Ch. 794</td>
<td>126</td>
</tr>
<tr>
<td>Ch. 892</td>
<td>21</td>
</tr>
<tr>
<td>Ch. 898</td>
<td>126</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Acts of 1998</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ch. 464</td>
<td>39, 72</td>
</tr>
<tr>
<td>Ch. 541</td>
<td>155</td>
</tr>
<tr>
<td>Ch. 750</td>
<td>25</td>
</tr>
<tr>
<td>Ch. 817</td>
<td>21</td>
</tr>
<tr>
<td>Ch. 872</td>
<td>56</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Acts of 1999</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ch. 296</td>
<td>96</td>
</tr>
<tr>
<td>Ch. 382</td>
<td>171</td>
</tr>
<tr>
<td>Ch. 506</td>
<td>171</td>
</tr>
<tr>
<td>Ch. 669</td>
<td>6</td>
</tr>
<tr>
<td>Ch. 744</td>
<td>44</td>
</tr>
<tr>
<td>Ch. 895</td>
<td>163</td>
</tr>
<tr>
<td>Ch. 945</td>
<td>152</td>
</tr>
<tr>
<td>Ch. 987</td>
<td>152</td>
</tr>
<tr>
<td>Ch. 1011</td>
<td>163</td>
</tr>
<tr>
<td>H.J. Res. 605</td>
<td>50, 52</td>
</tr>
</tbody>
</table>

## Code of Virginia

<table>
<thead>
<tr>
<th>Section/Title</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1-13.17</td>
<td>112, 120</td>
</tr>
<tr>
<td>§ 1-16</td>
<td>152</td>
</tr>
<tr>
<td>§ 2.1-2.2</td>
<td>35</td>
</tr>
<tr>
<td>§ 2.1-116.1(1)</td>
<td>35</td>
</tr>
<tr>
<td>§ 2.1-117</td>
<td>40</td>
</tr>
<tr>
<td>Section/Title</td>
<td>Page</td>
</tr>
<tr>
<td>-----------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>§ 2.1-118</td>
<td>86, 93, 128, 132, 143, 148, 155, 156, 213</td>
</tr>
<tr>
<td>§ 2.1-121</td>
<td>40, 41</td>
</tr>
<tr>
<td>§§ 2.1-340 to -346.1</td>
<td>12, 16, 17, 213</td>
</tr>
<tr>
<td>§ 2.1-340.1</td>
<td>16</td>
</tr>
<tr>
<td>§ 2.1-341</td>
<td>13, 14, 16, 19, 213</td>
</tr>
<tr>
<td>§ 2.1-342</td>
<td>18, 20</td>
</tr>
<tr>
<td>§ 2.1-342(A)</td>
<td>17, 18, 19, 20, 212</td>
</tr>
<tr>
<td>§ 2.1-342(A)(3)</td>
<td>213</td>
</tr>
<tr>
<td>§ 2.1-342(A)(4)</td>
<td>19</td>
</tr>
<tr>
<td>§ 2.1-342(B)(3)</td>
<td>18</td>
</tr>
<tr>
<td>§ 2.1-342(B)(22)</td>
<td>19</td>
</tr>
<tr>
<td>§ 2.1-342.01(A)(2)</td>
<td>212</td>
</tr>
<tr>
<td>§ 2.1-343</td>
<td>16</td>
</tr>
<tr>
<td>§ 2.1-343(G)</td>
<td>15</td>
</tr>
<tr>
<td>§ 2.1-343(I)</td>
<td>165</td>
</tr>
<tr>
<td>§ 2.1-343.1</td>
<td>13</td>
</tr>
<tr>
<td>§ 2.1-343.1(A)</td>
<td>12, 13</td>
</tr>
<tr>
<td>§ 2.1-343.2</td>
<td>13</td>
</tr>
<tr>
<td>§ 2.1-344(A)(1)</td>
<td>15, 16</td>
</tr>
<tr>
<td>§§ 2.1-377 to -386</td>
<td>19, 115</td>
</tr>
<tr>
<td>§ 2.1-378(B)</td>
<td>115</td>
</tr>
<tr>
<td>§ 2.1-378(B)(9)</td>
<td>18</td>
</tr>
<tr>
<td>§ 2.1-379(2)</td>
<td>115</td>
</tr>
<tr>
<td>§ 2.1-379(3)</td>
<td>115</td>
</tr>
<tr>
<td>§ 2.1-380(1)</td>
<td>19</td>
</tr>
<tr>
<td>§ 2.1-382</td>
<td>115</td>
</tr>
<tr>
<td>§ 2.1-385</td>
<td>124, 194</td>
</tr>
<tr>
<td>§ 2.1-526.8(E)</td>
<td>41, 43</td>
</tr>
<tr>
<td>Tit. 2.1, ch. 40.1, §§ 2.1-639.1 to -639.24</td>
<td>8, 9, 10, 69, 80, 103</td>
</tr>
<tr>
<td>§ 2.1-639.1</td>
<td>8, 9, 80</td>
</tr>
<tr>
<td>§ 2.1-639.2</td>
<td>8, 10, 12</td>
</tr>
<tr>
<td>§ 2.1-639.3</td>
<td>8</td>
</tr>
<tr>
<td>§ 2.1-639.4</td>
<td>7</td>
</tr>
<tr>
<td>§ 2.1-639.4(1)</td>
<td>7, 8, 70</td>
</tr>
<tr>
<td>§ 2.1-639.6</td>
<td>11</td>
</tr>
<tr>
<td>§ 2.1-639.6(A)</td>
<td>10, 11</td>
</tr>
<tr>
<td>§ 2.1-639.9</td>
<td>11</td>
</tr>
<tr>
<td>§ 2.1-639.9(A)(1)</td>
<td>12</td>
</tr>
<tr>
<td>§ 2.1-639.9(A)(3)-(5)</td>
<td>12</td>
</tr>
<tr>
<td>§ 2.1-639.9(A)(7)</td>
<td>11, 12</td>
</tr>
<tr>
<td>§ 2.1-639.14(A)</td>
<td>8, 9</td>
</tr>
</tbody>
</table>
### Code of Virginia (cont'd.)

<table>
<thead>
<tr>
<th>Section/Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 2.1-639.14(C)</td>
<td>9</td>
</tr>
<tr>
<td>§ 2.1-639.15</td>
<td>8, 9</td>
</tr>
<tr>
<td>§ 2.1-639.17</td>
<td>80</td>
</tr>
<tr>
<td>§ 2.1-639.18(A)</td>
<td>80</td>
</tr>
<tr>
<td>§ 2.1-639.18(B)</td>
<td>80</td>
</tr>
<tr>
<td>§ 2.1-639.23(B)</td>
<td>70</td>
</tr>
<tr>
<td>§§ 2.1-745 to -759.1</td>
<td>5</td>
</tr>
<tr>
<td>§ 2.1-745</td>
<td>5</td>
</tr>
<tr>
<td>§ 2.1-746</td>
<td>5</td>
</tr>
<tr>
<td>§ 2.1-746(1)</td>
<td>5</td>
</tr>
<tr>
<td>§ 2.1-746(3)</td>
<td>6</td>
</tr>
<tr>
<td>§ 2.1-746(4)</td>
<td>5</td>
</tr>
<tr>
<td>§ 2.1-746(7)</td>
<td>6</td>
</tr>
<tr>
<td>§ 2.1-746(15)</td>
<td>6</td>
</tr>
<tr>
<td>§ 2.1-747</td>
<td>5</td>
</tr>
<tr>
<td>§ 2.1-748</td>
<td>5</td>
</tr>
<tr>
<td>§ 2.1-748(2)</td>
<td>5</td>
</tr>
<tr>
<td>§§ 2.1-750 to -752</td>
<td>6</td>
</tr>
<tr>
<td>§ 2.1-751</td>
<td>6</td>
</tr>
<tr>
<td>§§ 2.1-753 to -755</td>
<td>6</td>
</tr>
<tr>
<td>§ 2.1-754</td>
<td>4</td>
</tr>
<tr>
<td>§ 2.1-757(A)</td>
<td>3, 6</td>
</tr>
<tr>
<td>§ 2.1-757(B)</td>
<td>4, 6</td>
</tr>
<tr>
<td>§ 2.1-757(B)(1)-(5)</td>
<td>4</td>
</tr>
<tr>
<td>§ 2.1-757(C)</td>
<td>6</td>
</tr>
<tr>
<td>§ 2.1-759(A)</td>
<td>3, 6</td>
</tr>
<tr>
<td>§ 2.1-759(A)(1)</td>
<td>6</td>
</tr>
<tr>
<td>§ 2.1-759(A)(2)</td>
<td>6</td>
</tr>
<tr>
<td>§ 3.1-796.66</td>
<td>35, 112</td>
</tr>
<tr>
<td>§ 3.1-796.93</td>
<td>110, 111, 112</td>
</tr>
<tr>
<td>§ 3.1-796.93:1</td>
<td>20, 21</td>
</tr>
<tr>
<td>§ 3.1-796.93:1(A)</td>
<td>20</td>
</tr>
<tr>
<td>§ 3.1-796.93:1(B)</td>
<td>20, 21</td>
</tr>
<tr>
<td>§ 3.1-796.93:1(C)</td>
<td>20</td>
</tr>
<tr>
<td>§ 3.1-796.93:1(C)(1)</td>
<td>20, 21</td>
</tr>
<tr>
<td>§ 3.1-796.93:1(C)(2)</td>
<td>21</td>
</tr>
<tr>
<td>§ 3.1-796.93:1(C)(3)</td>
<td>21</td>
</tr>
<tr>
<td>§ 3.1-796.93:1(C)(5)</td>
<td>21</td>
</tr>
<tr>
<td>§ 3.1-796.93:1(E)</td>
<td>21</td>
</tr>
<tr>
<td>§ 3.1-796.95</td>
<td>112</td>
</tr>
<tr>
<td>Tit. 6.1, ch. 7.3</td>
<td>22</td>
</tr>
<tr>
<td>Section/Title</td>
<td>Page</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>§§ 6.1-330.49 to -330.90</td>
<td>23</td>
</tr>
<tr>
<td>§ 6.1-330.55</td>
<td>22, 23</td>
</tr>
<tr>
<td>§ 6.1-330.61</td>
<td>22, 23</td>
</tr>
<tr>
<td>§ 6.1-330.80</td>
<td>22, 23</td>
</tr>
<tr>
<td>§ 6.1-330.80(A)</td>
<td>22, 23</td>
</tr>
<tr>
<td>§ 8.01-3</td>
<td>123</td>
</tr>
<tr>
<td>§§ 8.01-124 to -130</td>
<td>25</td>
</tr>
<tr>
<td>§ 8.01-126</td>
<td>25</td>
</tr>
<tr>
<td>§ 8.01-127</td>
<td>25</td>
</tr>
<tr>
<td>§ 8.01-129</td>
<td>24, 25</td>
</tr>
<tr>
<td>§ 8.01-225</td>
<td>113</td>
</tr>
<tr>
<td>§ 8.01-293</td>
<td>26, 34</td>
</tr>
<tr>
<td>§ 8.01-293(A)</td>
<td>33</td>
</tr>
<tr>
<td>§ 8.01-293(A)(2)</td>
<td>33</td>
</tr>
<tr>
<td>§ 8.01-293(B)</td>
<td>26</td>
</tr>
<tr>
<td>§ 8.01-296</td>
<td>31, 32</td>
</tr>
<tr>
<td>§ 8.01-296(1)</td>
<td>31</td>
</tr>
<tr>
<td>§ 8.01-296(2)(a)</td>
<td>31, 32</td>
</tr>
<tr>
<td>§ 8.01-413</td>
<td>123</td>
</tr>
<tr>
<td>§ 8.01-413(B)</td>
<td>122, 123</td>
</tr>
<tr>
<td>§ 8.01-413(C)</td>
<td>122, 123</td>
</tr>
<tr>
<td>§ 8.01-413(D)</td>
<td>123</td>
</tr>
<tr>
<td>§ 8.01-432</td>
<td>28</td>
</tr>
<tr>
<td>§ 8.01-435</td>
<td>27, 28</td>
</tr>
<tr>
<td>§ 8.01-470</td>
<td>24, 25, 26</td>
</tr>
<tr>
<td>§ 8.01-492</td>
<td>209</td>
</tr>
<tr>
<td>Tit. 8.01, ch. 21.1, art. 1, §§ 8.01-581.1 to -581.12:2</td>
<td>29</td>
</tr>
<tr>
<td>§ 8.01-581.1</td>
<td>113</td>
</tr>
<tr>
<td>§ 8.01-581.2(A)</td>
<td>29</td>
</tr>
<tr>
<td>§ 8.01-581.3</td>
<td>30</td>
</tr>
<tr>
<td>§ 8.01-581.5</td>
<td>29, 30</td>
</tr>
<tr>
<td>§ 8.01-581.11</td>
<td>30</td>
</tr>
<tr>
<td>Tit. 8.1 to 8.11</td>
<td>211</td>
</tr>
<tr>
<td>§ 8.1-102(2)(a)</td>
<td>211</td>
</tr>
<tr>
<td>§ 8.3A-311</td>
<td>210, 211</td>
</tr>
<tr>
<td>§ 8.3A-311(a)</td>
<td>211</td>
</tr>
<tr>
<td>§ 8.3A-311(b)</td>
<td>211</td>
</tr>
<tr>
<td>§ 8.3A-311(d)</td>
<td>211</td>
</tr>
<tr>
<td>§§ 9-6.14:1 to -6.14:25</td>
<td>39</td>
</tr>
<tr>
<td>§ 9-6.14:4.1(C)(5)</td>
<td>36, 37, 39</td>
</tr>
<tr>
<td>Tit. 9, ch. 1.1:1, art. 2</td>
<td>37, 39</td>
</tr>
<tr>
<td>Section/Title</td>
<td>Page</td>
</tr>
<tr>
<td>---------------</td>
<td>------</td>
</tr>
<tr>
<td>§ 9-6.14:9(B)</td>
<td>36</td>
</tr>
<tr>
<td>§ 9-169(9)</td>
<td>35</td>
</tr>
<tr>
<td>§ 9-183.8</td>
<td>87, 88, 89</td>
</tr>
<tr>
<td>§ 10-262.3(2)</td>
<td>184</td>
</tr>
<tr>
<td>§ 10-262.4</td>
<td>184</td>
</tr>
<tr>
<td>§ 10.1-501.1</td>
<td>41</td>
</tr>
<tr>
<td>Tit. 10.1, ch. 5, art. 3, §§ 10.1-506 to -559</td>
<td>43</td>
</tr>
<tr>
<td>Tit. 10.1, ch. 6, art. 1.1, §§ 10.1-603.1 to -603.15</td>
<td>44</td>
</tr>
<tr>
<td>§ 10.1-603.3</td>
<td>44</td>
</tr>
<tr>
<td>§ 10.1-603.4</td>
<td>44</td>
</tr>
<tr>
<td>Tit. 10.1, ch. 6, art. 3, §§ 10.1-614 to -635</td>
<td>40</td>
</tr>
<tr>
<td>§ 10.1-614</td>
<td>40</td>
</tr>
<tr>
<td>§§ 10.1-615 to -620</td>
<td>43</td>
</tr>
<tr>
<td>§ 10.1-620</td>
<td>40</td>
</tr>
<tr>
<td>§ 10.1-623</td>
<td>43</td>
</tr>
<tr>
<td>§ 10.1-624</td>
<td>43</td>
</tr>
<tr>
<td>§ 10.1-625</td>
<td>40</td>
</tr>
<tr>
<td>§ 10.1-626(B)</td>
<td>43, 44</td>
</tr>
<tr>
<td>§ 10.1-627</td>
<td>44</td>
</tr>
<tr>
<td>§ 10.1-628</td>
<td>43</td>
</tr>
<tr>
<td>§ 10.1-632</td>
<td>40</td>
</tr>
<tr>
<td>§ 10.1-633</td>
<td>43</td>
</tr>
<tr>
<td>§ 10.1-1126.1</td>
<td>45</td>
</tr>
<tr>
<td>§ 10.1-1126.1(B)</td>
<td>44, 45</td>
</tr>
<tr>
<td>§ 10.1-1181.1</td>
<td>45</td>
</tr>
<tr>
<td>Tit. 10.1, ch. 17, §§ 10.1-1700 to -1705</td>
<td>202</td>
</tr>
<tr>
<td>§ 10.1-1700</td>
<td>202</td>
</tr>
<tr>
<td>§ 10.1-1701</td>
<td>201</td>
</tr>
<tr>
<td>§ 10.1-1701(i)</td>
<td>202</td>
</tr>
<tr>
<td>§ 10.1-1703</td>
<td>202</td>
</tr>
<tr>
<td>Tit. 10.1, ch. 21, §§ 10.1-2100 to -2116</td>
<td>185</td>
</tr>
<tr>
<td>§ 10.1-2102</td>
<td>185</td>
</tr>
<tr>
<td>§ 10.1-2107(A)</td>
<td>185</td>
</tr>
<tr>
<td>§ 10.1-2107(B)</td>
<td>185</td>
</tr>
<tr>
<td>§ 10.1-2113</td>
<td>185</td>
</tr>
<tr>
<td>§§ 11-35 to -80</td>
<td>78, 103, 144</td>
</tr>
<tr>
<td>§ 11-35(D)</td>
<td>144</td>
</tr>
<tr>
<td>§ 11-37</td>
<td>144, 146</td>
</tr>
<tr>
<td>§ 11-41</td>
<td>144</td>
</tr>
<tr>
<td>§ 11-41(A)</td>
<td>146</td>
</tr>
<tr>
<td>§ 11-41(D)</td>
<td>146</td>
</tr>
<tr>
<td>Section/Title</td>
<td>Page</td>
</tr>
<tr>
<td>---------------</td>
<td>------</td>
</tr>
<tr>
<td>§ 11-46.3</td>
<td>75, 77</td>
</tr>
<tr>
<td>§ 11-46.3(A)</td>
<td>75, 78</td>
</tr>
<tr>
<td>§ 11-46.3(C)</td>
<td>78</td>
</tr>
<tr>
<td>§ 11-58</td>
<td>75, 77</td>
</tr>
<tr>
<td>§ 11-58(A)</td>
<td>75</td>
</tr>
<tr>
<td>§ 11-58(A)(1)</td>
<td>78</td>
</tr>
<tr>
<td>§ 11-58(A)(2)</td>
<td>78</td>
</tr>
<tr>
<td>§ 11-76</td>
<td>103</td>
</tr>
<tr>
<td>Tit. 14.1</td>
<td>56</td>
</tr>
<tr>
<td>§ 14.1-11.4</td>
<td>56</td>
</tr>
<tr>
<td>§ 14.1-50</td>
<td>56</td>
</tr>
<tr>
<td>§ 14.1-51</td>
<td>56</td>
</tr>
<tr>
<td>§ 14.1-73</td>
<td>56</td>
</tr>
<tr>
<td>§ 14.1-79</td>
<td>56</td>
</tr>
<tr>
<td>§ 14.1-105</td>
<td>26</td>
</tr>
<tr>
<td>Tit. 15</td>
<td>156</td>
</tr>
<tr>
<td>Tit. 15.1</td>
<td>155, 156</td>
</tr>
<tr>
<td>§ 15.1-7.3</td>
<td>147, 148</td>
</tr>
<tr>
<td>§ 15.1-73.4</td>
<td>80</td>
</tr>
<tr>
<td>§ 15.1-292(A)</td>
<td>63</td>
</tr>
<tr>
<td>§§ 15.1-307 to -310</td>
<td>65</td>
</tr>
<tr>
<td>§ 15.1-783.1</td>
<td>128</td>
</tr>
<tr>
<td>§ 15.1-796.1</td>
<td>153, 154, 155</td>
</tr>
<tr>
<td>§§ 15.1-978 to -1010</td>
<td>156</td>
</tr>
<tr>
<td>§§ 15.1-985 to -989</td>
<td>156</td>
</tr>
<tr>
<td>§ 15.1-989</td>
<td>154, 156</td>
</tr>
<tr>
<td>§ 15.1-991</td>
<td>156</td>
</tr>
<tr>
<td>§ 15.1-994</td>
<td>156</td>
</tr>
<tr>
<td>§ 15.1-998</td>
<td>156</td>
</tr>
<tr>
<td>§ 15.1-1032.2</td>
<td>43, 44</td>
</tr>
<tr>
<td>Tit. 15.2</td>
<td>56, 145, 155, 194</td>
</tr>
<tr>
<td>§§ 15.2-600 to -642</td>
<td>55</td>
</tr>
<tr>
<td>§ 15.2-604</td>
<td>56</td>
</tr>
<tr>
<td>§ 15.2-609</td>
<td>55</td>
</tr>
<tr>
<td>§ 15.2-612</td>
<td>56</td>
</tr>
<tr>
<td>§ 15.2-635</td>
<td>56</td>
</tr>
<tr>
<td>§ 15.2-638</td>
<td>55, 56</td>
</tr>
<tr>
<td>§ 15.2-852</td>
<td>78, 79, 80</td>
</tr>
<tr>
<td>§ 15.2-852(A)</td>
<td>79, 80</td>
</tr>
<tr>
<td>§ 15.2-852(C)</td>
<td>80</td>
</tr>
<tr>
<td>§ 15.2-853</td>
<td>128</td>
</tr>
<tr>
<td>Section/Title</td>
<td>Page</td>
</tr>
<tr>
<td>---------------</td>
<td>------</td>
</tr>
<tr>
<td>§ 15.2-854</td>
<td>128</td>
</tr>
<tr>
<td>§ 15.2-1200</td>
<td>118, 120</td>
</tr>
<tr>
<td>§ 15.2-1414.2</td>
<td>219</td>
</tr>
<tr>
<td>§ 15.2-1500</td>
<td>145</td>
</tr>
<tr>
<td>§ 15.2-1517</td>
<td>147, 148</td>
</tr>
<tr>
<td>§ 15.2-1542(D)</td>
<td>59</td>
</tr>
<tr>
<td>§ 15.2-1600</td>
<td>141</td>
</tr>
<tr>
<td>§ 15.2-1605.1</td>
<td>56</td>
</tr>
<tr>
<td>§ 15.2-1609</td>
<td>155</td>
</tr>
<tr>
<td>§ 15.2-1609.2(B)</td>
<td>56</td>
</tr>
<tr>
<td>§ 15.2-1609.7</td>
<td>56</td>
</tr>
<tr>
<td>§ 15.2-1627(B)</td>
<td>60</td>
</tr>
<tr>
<td>§ 15.2-1636.7</td>
<td>56</td>
</tr>
<tr>
<td>§ 15.2-1636.8</td>
<td>56</td>
</tr>
<tr>
<td>§ 15.2-1712</td>
<td>69, 70</td>
</tr>
<tr>
<td>§ 15.2-1806(A)</td>
<td>57, 58</td>
</tr>
<tr>
<td>§ 15.2-1806(B)</td>
<td>57, 58</td>
</tr>
<tr>
<td>§§ 15.2-2100 to -2102</td>
<td>65</td>
</tr>
<tr>
<td>§§ 15.2-2100 to -2105</td>
<td>63, 64, 65</td>
</tr>
<tr>
<td>§ 15.2-2100</td>
<td>64</td>
</tr>
<tr>
<td>§§ 15.2-2101 to -2105</td>
<td>64</td>
</tr>
<tr>
<td>§ 15.2-2102</td>
<td>173, 175</td>
</tr>
<tr>
<td>§ 15.2-2106</td>
<td>63</td>
</tr>
<tr>
<td>§ 15.2-2109(A)</td>
<td>61, 63</td>
</tr>
<tr>
<td>§ 15.2-2109(B)</td>
<td>63</td>
</tr>
<tr>
<td>§ 15.2-2114</td>
<td>42</td>
</tr>
<tr>
<td>§ 15.2-2114(B)</td>
<td>42</td>
</tr>
<tr>
<td>§ 15.2-2117</td>
<td>61</td>
</tr>
<tr>
<td>§§ 15.2-2500 to -2507</td>
<td>55</td>
</tr>
<tr>
<td>§ 15.2-2503</td>
<td>54, 55</td>
</tr>
<tr>
<td>§ 15.2-2506</td>
<td>54, 55, 56</td>
</tr>
<tr>
<td>§ 15.2-2507</td>
<td>56</td>
</tr>
<tr>
<td>§ 15.2-2507(A)</td>
<td>55, 56</td>
</tr>
<tr>
<td>§ 15.2-3201</td>
<td>44</td>
</tr>
<tr>
<td>§§ 15.2-3800 to -3834</td>
<td>156</td>
</tr>
<tr>
<td>Tit. 15.2, ch. 49</td>
<td>67</td>
</tr>
<tr>
<td>§§ 15.2-4900 to -4920</td>
<td>66, 68</td>
</tr>
<tr>
<td>§ 15.2-4901</td>
<td>66, 67, 68</td>
</tr>
<tr>
<td>§ 15.2-4902</td>
<td>66, 67, 68</td>
</tr>
<tr>
<td>§ 15.2-4903</td>
<td>42, 68</td>
</tr>
<tr>
<td>§ 15.2-4905</td>
<td>68</td>
</tr>
<tr>
<td>Section/Title</td>
<td>Page</td>
</tr>
<tr>
<td>---------------</td>
<td>------</td>
</tr>
<tr>
<td>§ 15.2-4905(4)-(6)</td>
<td>68</td>
</tr>
<tr>
<td>§ 15.2-4905(7)</td>
<td>68</td>
</tr>
<tr>
<td>§ 15.2-4905(10)</td>
<td>67</td>
</tr>
<tr>
<td>§ 15.2-4905(13)</td>
<td>66, 67, 69</td>
</tr>
<tr>
<td>§ 15.2-5101</td>
<td>65</td>
</tr>
<tr>
<td>§§ 15.2-5103 to -5124</td>
<td>64</td>
</tr>
<tr>
<td>§ 15.2-5102(A)</td>
<td>65</td>
</tr>
<tr>
<td>§ 15.2-5114(14)</td>
<td>63</td>
</tr>
<tr>
<td>§ 15.2-5148</td>
<td>64, 65</td>
</tr>
<tr>
<td>§ 15.2-5158</td>
<td>42</td>
</tr>
<tr>
<td>Tit. 15.2, ch. 56, §§ 15.2-5600 to -5616</td>
<td>76</td>
</tr>
<tr>
<td>§ 15.2-5601</td>
<td>73, 76, 77</td>
</tr>
<tr>
<td>§ 15.2-5602</td>
<td>76</td>
</tr>
<tr>
<td>§ 15.2-5604</td>
<td>76</td>
</tr>
<tr>
<td>§ 15.2-5604(3)</td>
<td>76, 78</td>
</tr>
<tr>
<td>§ 15.2-5604(7)</td>
<td>76</td>
</tr>
<tr>
<td>§ 15.2-5604(10)</td>
<td>76</td>
</tr>
<tr>
<td>§ 15.2-5604(11)</td>
<td>77</td>
</tr>
<tr>
<td>§ 15.2-5615</td>
<td>77</td>
</tr>
<tr>
<td>§ 16.1-131</td>
<td>123</td>
</tr>
<tr>
<td>§ 16.1-140</td>
<td>131</td>
</tr>
<tr>
<td>§ 16.1-227</td>
<td>83, 219</td>
</tr>
<tr>
<td>§ 16.1-228</td>
<td>32</td>
</tr>
<tr>
<td>§ 16.1-241</td>
<td>82</td>
</tr>
<tr>
<td>§ 16.1-246(H)</td>
<td>130</td>
</tr>
<tr>
<td>§ 16.1-252</td>
<td>81</td>
</tr>
<tr>
<td>§ 16.1-253</td>
<td>81, 82, 83</td>
</tr>
<tr>
<td>§ 16.1-253(A)</td>
<td>81, 82</td>
</tr>
<tr>
<td>§ 16.1-253(B)</td>
<td>81, 82</td>
</tr>
<tr>
<td>§ 16.1-253(C)</td>
<td>82, 83</td>
</tr>
<tr>
<td>§ 16.1-253(D)</td>
<td>82</td>
</tr>
<tr>
<td>§ 16.1-253(E)</td>
<td>82</td>
</tr>
<tr>
<td>§ 16.1-253(F)</td>
<td>83</td>
</tr>
<tr>
<td>§ 16.1-253(G)</td>
<td>82</td>
</tr>
<tr>
<td>§ 16.1-253(H)</td>
<td>82</td>
</tr>
<tr>
<td>§ 16.1-253.1</td>
<td>81</td>
</tr>
<tr>
<td>§ 16.1-253.4(H)</td>
<td>35</td>
</tr>
<tr>
<td>§ 16.1-260</td>
<td>131</td>
</tr>
<tr>
<td>§ 16.1-260(A)</td>
<td>81, 129</td>
</tr>
<tr>
<td>§ 16.1-260(C)</td>
<td>131</td>
</tr>
<tr>
<td>§ 16.1-260(D)</td>
<td>131</td>
</tr>
</tbody>
</table>
## Code of Virginia (contd.)

<table>
<thead>
<tr>
<th>Section/Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 16.1-262</td>
<td>131</td>
</tr>
<tr>
<td>§ 16.1-265</td>
<td>123</td>
</tr>
<tr>
<td>§ 16.1-278.2</td>
<td>82</td>
</tr>
<tr>
<td>§ 16.1-278.2(A)</td>
<td>83</td>
</tr>
<tr>
<td>§ 16.1-278.2(C)</td>
<td>82</td>
</tr>
<tr>
<td>§§ 16.1-335 to -348</td>
<td>129</td>
</tr>
<tr>
<td>§ 16.1-337</td>
<td>129</td>
</tr>
<tr>
<td>§ 16.1-338</td>
<td>131</td>
</tr>
<tr>
<td>§ 16.1-339</td>
<td>131</td>
</tr>
<tr>
<td>§ 16.1-340</td>
<td>129, 130, 131</td>
</tr>
<tr>
<td>§ 16.1-341(A)</td>
<td>129</td>
</tr>
<tr>
<td>§ 16.1-341(B)</td>
<td>131</td>
</tr>
<tr>
<td>§ 16.1-342</td>
<td>131</td>
</tr>
<tr>
<td>§§ 16.1-343 to -345</td>
<td>129</td>
</tr>
<tr>
<td>§ 16.1-345</td>
<td>131</td>
</tr>
<tr>
<td>§ 17-59</td>
<td>220</td>
</tr>
<tr>
<td>§ 17.1-272</td>
<td>26</td>
</tr>
<tr>
<td>§ 17.1-272(A)(6)</td>
<td>25</td>
</tr>
<tr>
<td>§ 17.1-272(C)</td>
<td>26</td>
</tr>
<tr>
<td>Tit. 18.2</td>
<td>136, 137</td>
</tr>
<tr>
<td>Tit. 18.2, ch. 1, art. 3</td>
<td>136</td>
</tr>
<tr>
<td>§ 18.2-8</td>
<td>137</td>
</tr>
<tr>
<td>§§ 18.2-11 to -13</td>
<td>137</td>
</tr>
<tr>
<td>§ 18.2-56</td>
<td>85, 86, 87</td>
</tr>
<tr>
<td>§ 18.2-57(E)</td>
<td>35</td>
</tr>
<tr>
<td>§ 18.2-119</td>
<td>33, 34, 35</td>
</tr>
<tr>
<td>§ 18.2-132</td>
<td>111</td>
</tr>
<tr>
<td>§ 18.2-136</td>
<td>111, 112</td>
</tr>
<tr>
<td>Tit. 18.2, ch. 7, art. 2</td>
<td>137</td>
</tr>
<tr>
<td>§ 18.2-266</td>
<td>58, 59, 88, 89, 136, 151</td>
</tr>
<tr>
<td>§ 18.2-266.1</td>
<td>136</td>
</tr>
<tr>
<td>§ 18.2-268</td>
<td>59</td>
</tr>
<tr>
<td>§§ 18.2-268.2 to -268.4</td>
<td>134</td>
</tr>
<tr>
<td>§ 18.2-268.2</td>
<td>136</td>
</tr>
<tr>
<td>§ 18.2-268.4</td>
<td>136</td>
</tr>
<tr>
<td>§ 18.2-270</td>
<td>151</td>
</tr>
<tr>
<td>§ 18.2-388</td>
<td>88, 89</td>
</tr>
<tr>
<td>§ 18.2-407</td>
<td>88, 89</td>
</tr>
<tr>
<td>§ 18.2-409</td>
<td>34</td>
</tr>
<tr>
<td>§ 18.2-433.1</td>
<td>35</td>
</tr>
<tr>
<td>§ 18.2-434</td>
<td>222</td>
</tr>
<tr>
<td>Code of Virginia (contd.)</td>
<td></td>
</tr>
<tr>
<td>--------------------------</td>
<td></td>
</tr>
<tr>
<td><strong>Section/Title</strong></td>
<td><strong>Page</strong></td>
</tr>
<tr>
<td>§ 18.2-460</td>
<td>34, 35</td>
</tr>
<tr>
<td>§ 18.2-460(A)</td>
<td>35</td>
</tr>
<tr>
<td>§ 18.2-460(B)</td>
<td>35</td>
</tr>
<tr>
<td>§ 18.2-465.1</td>
<td>83, 84</td>
</tr>
<tr>
<td>§ 19.2-74</td>
<td>87, 88, 89</td>
</tr>
<tr>
<td>§ 19.2-74(A.1)</td>
<td>87, 90</td>
</tr>
<tr>
<td>§ 19.2-74(A)(2)</td>
<td>90</td>
</tr>
<tr>
<td>§ 19.2-74(B)</td>
<td>87</td>
</tr>
<tr>
<td>§ 19.2-81.3(G)</td>
<td>35</td>
</tr>
<tr>
<td>§ 19.2-149</td>
<td>69</td>
</tr>
<tr>
<td>§ 19.2-187</td>
<td>94, 95, 96</td>
</tr>
<tr>
<td>§ 19.2-187(ii)</td>
<td>94, 95</td>
</tr>
<tr>
<td>§ 19.2-316.1</td>
<td>152</td>
</tr>
<tr>
<td>§ 19.2-316.2</td>
<td>152</td>
</tr>
<tr>
<td>§ 19.2-316.3</td>
<td>152</td>
</tr>
<tr>
<td>Tit. 19.2, ch. 24, §§ 19.2-393 to -397</td>
<td>92</td>
</tr>
<tr>
<td>§ 19.2-393</td>
<td>92, 94</td>
</tr>
<tr>
<td>§ 19.2-394</td>
<td>92, 94</td>
</tr>
<tr>
<td>§ 20-61</td>
<td>149, 150</td>
</tr>
<tr>
<td>§§ 20-88.32 to -88.82</td>
<td>97</td>
</tr>
<tr>
<td>§ 20-88.32</td>
<td>99</td>
</tr>
<tr>
<td>§ 20-88.39</td>
<td>99</td>
</tr>
<tr>
<td>§ 20-88.39(A)</td>
<td>97</td>
</tr>
<tr>
<td>§ 20-88.39(D)</td>
<td>98</td>
</tr>
<tr>
<td>§ 20-88.66</td>
<td>99</td>
</tr>
<tr>
<td>§ 20-88.68(B)</td>
<td>99</td>
</tr>
<tr>
<td>§ 20-88.68(C)</td>
<td>97</td>
</tr>
<tr>
<td>§§ 20-88.74 to -88.77:2</td>
<td>98</td>
</tr>
<tr>
<td>§ 20-88.74</td>
<td>98</td>
</tr>
<tr>
<td>§ 20-88.75</td>
<td>98</td>
</tr>
<tr>
<td>§ 20-88.76</td>
<td>98, 99</td>
</tr>
<tr>
<td>§ 20-88.76(D)</td>
<td>99</td>
</tr>
<tr>
<td>§ 20-88.77:1</td>
<td>99</td>
</tr>
<tr>
<td>§ 20-88.77:1(A)</td>
<td>99</td>
</tr>
<tr>
<td>Tit. 21, ch. 2</td>
<td>100, 101</td>
</tr>
<tr>
<td>§§ 21-112.22 to -140.3</td>
<td>101</td>
</tr>
<tr>
<td>§ 21-113</td>
<td>100, 101</td>
</tr>
<tr>
<td>§ 21-114</td>
<td>100</td>
</tr>
<tr>
<td>§ 21-118</td>
<td>101</td>
</tr>
<tr>
<td>§ 22.1-3</td>
<td>106, 107</td>
</tr>
<tr>
<td>§ 22.1-28</td>
<td>103</td>
</tr>
</tbody>
</table>
### Code of Virginia (cont'd.)

<table>
<thead>
<tr>
<th>Section/Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 22.1-44</td>
<td>105</td>
</tr>
<tr>
<td>§§ 22.1-48 to -50</td>
<td>105</td>
</tr>
<tr>
<td>§ 22.1-49</td>
<td>105</td>
</tr>
<tr>
<td>§ 22.1-50</td>
<td>105</td>
</tr>
<tr>
<td>§ 22.1-57.2</td>
<td>104</td>
</tr>
<tr>
<td>§ 22.1-57.3</td>
<td>104</td>
</tr>
<tr>
<td>§ 22.1-57.3(A)</td>
<td>104</td>
</tr>
<tr>
<td>§ 22.1-57.3(B)</td>
<td>104</td>
</tr>
<tr>
<td>§ 22.1-57.3:3(B)</td>
<td>16</td>
</tr>
<tr>
<td>§ 22.1-71</td>
<td>103</td>
</tr>
<tr>
<td>§ 22.1-76</td>
<td>15, 16</td>
</tr>
<tr>
<td>§ 22.1-79</td>
<td>103</td>
</tr>
<tr>
<td>§ 22.1-84</td>
<td>103</td>
</tr>
<tr>
<td>§ 23-7.4</td>
<td>108</td>
</tr>
<tr>
<td>§ 23-7.4(B)</td>
<td>108</td>
</tr>
<tr>
<td>Tit. 23, ch. 4.1, art. 1, §§ 23-38.11 to -38.19</td>
<td>108</td>
</tr>
<tr>
<td>§ 23-38.12</td>
<td>109</td>
</tr>
<tr>
<td>§ 23-38.13</td>
<td>109</td>
</tr>
<tr>
<td>§ 23-38.14</td>
<td>109</td>
</tr>
<tr>
<td>§ 23-38.17</td>
<td>109</td>
</tr>
<tr>
<td>§ 24.2-218</td>
<td>53</td>
</tr>
<tr>
<td>§§ 24.2-900 to -930</td>
<td>80</td>
</tr>
<tr>
<td>Tit. 29.1</td>
<td>111</td>
</tr>
<tr>
<td>§ 29.1-508</td>
<td>111, 112</td>
</tr>
<tr>
<td>§ 29.1-516</td>
<td>110, 111</td>
</tr>
<tr>
<td>Tit. 32.1</td>
<td>115</td>
</tr>
<tr>
<td>§ 32.1-45.1</td>
<td>113</td>
</tr>
<tr>
<td>§ 32.1-45.1(G)</td>
<td>35</td>
</tr>
<tr>
<td>§ 32.1-46</td>
<td>112, 113, 114, 115, 116</td>
</tr>
<tr>
<td>§ 32.1-46(A)</td>
<td>114, 115</td>
</tr>
<tr>
<td>§ 32.1-46(B)</td>
<td>115</td>
</tr>
<tr>
<td>§ 32.1-46(D)</td>
<td>115</td>
</tr>
<tr>
<td>§ 32.1-46(E)</td>
<td>112, 113, 114</td>
</tr>
<tr>
<td>§ 32.1-69.1</td>
<td>115</td>
</tr>
<tr>
<td>§ 32.1-69.2</td>
<td>115</td>
</tr>
<tr>
<td>§§ 32.1-70 to -71</td>
<td>115</td>
</tr>
<tr>
<td>§ 32.1-102.1</td>
<td>113</td>
</tr>
<tr>
<td>§ 32.1-111.1</td>
<td>113</td>
</tr>
<tr>
<td>§§ 32.1-116.1 to -116.3</td>
<td>115</td>
</tr>
<tr>
<td>§§ 32.1-123 to -137</td>
<td>113</td>
</tr>
<tr>
<td>§ 32.1-127.1:03</td>
<td>116, 121, 122, 123</td>
</tr>
<tr>
<td>Section/Title</td>
<td>Page</td>
</tr>
<tr>
<td>---------------</td>
<td>------</td>
</tr>
<tr>
<td>§ 32.1-127.1:03(A)</td>
<td>121, 123</td>
</tr>
<tr>
<td>§ 32.1-127.1:03(B)</td>
<td>116, 158</td>
</tr>
<tr>
<td>§ 32.1-127.1:03(D)</td>
<td>116, 121</td>
</tr>
<tr>
<td>§ 32.1-127.1:03(D)(2)</td>
<td>121, 122, 123, 124</td>
</tr>
<tr>
<td>§ 32.1-127.1:03(D)(6)</td>
<td>116</td>
</tr>
<tr>
<td>§ 32.1-127.1:03(E)</td>
<td>123</td>
</tr>
<tr>
<td>§ 32.1-127.1:03(G)</td>
<td>123</td>
</tr>
<tr>
<td>§ 32.1-127.1:03(H)</td>
<td>121, 122, 123, 124</td>
</tr>
<tr>
<td>§ 32.1-127.1:03(H)(1)</td>
<td>123</td>
</tr>
<tr>
<td>§ 32.1-127.1:03(H)(1)-(2)</td>
<td>123</td>
</tr>
<tr>
<td>§ 32.1-127.1:03(H)(4)</td>
<td>123</td>
</tr>
<tr>
<td>Tit. 32.1, ch. 6, art. 1</td>
<td>117</td>
</tr>
<tr>
<td>§§ 32.1-163 to -166</td>
<td>120</td>
</tr>
<tr>
<td>§ 32.1-164</td>
<td>117</td>
</tr>
<tr>
<td>§ 32.1-164(B)(4)</td>
<td>120</td>
</tr>
<tr>
<td>§ 32.1-164(B)(10)-(13)</td>
<td>120</td>
</tr>
<tr>
<td>§ 32.1-164.2</td>
<td>117, 119</td>
</tr>
<tr>
<td>§ 32.1-166.1</td>
<td>117</td>
</tr>
<tr>
<td>§ 32.1-166.6</td>
<td>120</td>
</tr>
<tr>
<td>§ 32.1-249</td>
<td>113</td>
</tr>
<tr>
<td>§ 32.1-267</td>
<td>124</td>
</tr>
<tr>
<td>§ 32.1-267(B)</td>
<td>125, 126</td>
</tr>
<tr>
<td>§ 32.1-276.3</td>
<td>113</td>
</tr>
<tr>
<td>§ 33.1-152.1</td>
<td>58</td>
</tr>
<tr>
<td>§ 35.1-25</td>
<td>200</td>
</tr>
<tr>
<td>§ 35.1-25(3)</td>
<td>199, 200</td>
</tr>
<tr>
<td>Tit. 36, ch. 1.2</td>
<td>10</td>
</tr>
<tr>
<td>§§ 36-55.24 to -55.52</td>
<td>12</td>
</tr>
<tr>
<td>§ 36-55.27</td>
<td>12</td>
</tr>
<tr>
<td>§ 36-55.30</td>
<td>12</td>
</tr>
<tr>
<td>§ 36-55.32</td>
<td>12</td>
</tr>
<tr>
<td>Tit. 36, ch. 5, §§ 36-86 to -96</td>
<td>126, 127</td>
</tr>
<tr>
<td>§ 36-96</td>
<td>126, 127, 128</td>
</tr>
<tr>
<td>Tit. 36, ch. 5.1, §§ 36-96.1 to -96.23</td>
<td>127, 128</td>
</tr>
<tr>
<td>§§ 36-96.8 to -96.20</td>
<td>128</td>
</tr>
<tr>
<td>§ 36-96.21</td>
<td>126, 127</td>
</tr>
<tr>
<td>§ 36-96.21(A)</td>
<td>127, 128</td>
</tr>
<tr>
<td>§ 36-96.21(B)</td>
<td>127, 128</td>
</tr>
<tr>
<td>§ 36-98</td>
<td>120</td>
</tr>
<tr>
<td>§§ 37.1-67.01 to -90</td>
<td>130</td>
</tr>
<tr>
<td>§ 37.1-67.01</td>
<td>130, 131</td>
</tr>
</tbody>
</table>
# Code of Virginia (contd.)

<table>
<thead>
<tr>
<th>Section/Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 37.1-67.1</td>
<td>129, 130, 131</td>
</tr>
<tr>
<td>§ 37.1-67.3</td>
<td>131</td>
</tr>
<tr>
<td>§ 37.1-195</td>
<td>3</td>
</tr>
<tr>
<td>Tit. 38.2</td>
<td>158</td>
</tr>
<tr>
<td>§ 38.2-100</td>
<td>159</td>
</tr>
<tr>
<td>§ 38.2-200(A)</td>
<td>158</td>
</tr>
<tr>
<td>Tit. 38.2, ch. 42, §§ 38.2-4200 to -4235</td>
<td>157, 159</td>
</tr>
<tr>
<td>§ 38.2-4200</td>
<td>157</td>
</tr>
<tr>
<td>§ 38.2-4200(B)</td>
<td>157</td>
</tr>
<tr>
<td>Tit. 38.2, ch. 43, §§ 38.2-4300 to -4323</td>
<td>158</td>
</tr>
<tr>
<td>§ 38.2-4300</td>
<td>113, 158</td>
</tr>
<tr>
<td>§ 46.1-188</td>
<td>137</td>
</tr>
<tr>
<td>Tit. 46.2</td>
<td>58, 88, 89, 136</td>
</tr>
<tr>
<td>§ 46.2-100</td>
<td>35, 58</td>
</tr>
<tr>
<td>§ 46.2-104</td>
<td>210</td>
</tr>
<tr>
<td>§ 46.2-341.4</td>
<td>108</td>
</tr>
<tr>
<td>§ 46.2-341.12(A)(1)</td>
<td>141</td>
</tr>
<tr>
<td>§ 46.2-342(A)(1)</td>
<td>125</td>
</tr>
<tr>
<td>§ 46.2-345(A)</td>
<td>125</td>
</tr>
<tr>
<td>§§ 46.2-351 to -355</td>
<td>152</td>
</tr>
<tr>
<td>§ 46.2-351</td>
<td>151, 152</td>
</tr>
<tr>
<td>§ 46.2-351(1)(b)</td>
<td>140</td>
</tr>
<tr>
<td>§ 46.2-351(1)(c)</td>
<td>140</td>
</tr>
<tr>
<td>§ 46.2-357</td>
<td>59, 151</td>
</tr>
<tr>
<td>§ 46.2-357(A)</td>
<td>151</td>
</tr>
<tr>
<td>§ 46.2-357(B)</td>
<td>151, 152</td>
</tr>
<tr>
<td>§ 46.2-357(B)(2)</td>
<td>152</td>
</tr>
<tr>
<td>§ 46.2-357(D)</td>
<td>151, 152</td>
</tr>
<tr>
<td>§ 46.2-382(1)</td>
<td>135, 136</td>
</tr>
<tr>
<td>§ 46.2-382(2)</td>
<td>135, 136</td>
</tr>
<tr>
<td>§ 46.2-382.1</td>
<td>135, 136</td>
</tr>
<tr>
<td>§ 46.2-383</td>
<td>135</td>
</tr>
<tr>
<td>§ 46.2-383(A)</td>
<td>135</td>
</tr>
<tr>
<td>§ 46.2-389</td>
<td>134, 135</td>
</tr>
<tr>
<td>§ 46.2-389(A)</td>
<td>136</td>
</tr>
<tr>
<td>§ 46.2-391</td>
<td>134, 135</td>
</tr>
<tr>
<td>§ 46.2-391(A)-(B)</td>
<td>136</td>
</tr>
<tr>
<td>§ 46.2-434</td>
<td>134, 135, 136</td>
</tr>
<tr>
<td>§ 46.2-489</td>
<td>135</td>
</tr>
<tr>
<td>§ 46.2-492</td>
<td>135</td>
</tr>
<tr>
<td>Section/Title</td>
<td>Page</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>§ 46.2-492(A)</td>
<td>136</td>
</tr>
<tr>
<td>§ 46.2-492(B)</td>
<td>135</td>
</tr>
<tr>
<td>§ 46.2-492(C)</td>
<td>136</td>
</tr>
<tr>
<td>§ 46.2-752(G)</td>
<td>210</td>
</tr>
<tr>
<td>§§ 46.2-852 to -868</td>
<td>59</td>
</tr>
<tr>
<td>§ 46.2-852</td>
<td>139</td>
</tr>
<tr>
<td>§ 46.2-862</td>
<td>138, 139</td>
</tr>
<tr>
<td>§ 46.2-862(ii)</td>
<td>139</td>
</tr>
<tr>
<td>§ 46.2-870</td>
<td>138</td>
</tr>
<tr>
<td>§ 46.2-873</td>
<td>138, 139</td>
</tr>
<tr>
<td>§ 46.2-873(A)</td>
<td>138, 139, 140</td>
</tr>
<tr>
<td>§ 46.2-873(C)</td>
<td>139</td>
</tr>
<tr>
<td>§ 46.2-873(E)</td>
<td>138, 139</td>
</tr>
<tr>
<td>§ 46.2-1209</td>
<td>132, 133</td>
</tr>
<tr>
<td>Tit. 46.2, ch. 13</td>
<td>137</td>
</tr>
<tr>
<td>§§ 46.2-1300 to -1314</td>
<td>137</td>
</tr>
<tr>
<td>§ 46.2-1300</td>
<td>59</td>
</tr>
<tr>
<td>§ 46.2-1307</td>
<td>59</td>
</tr>
<tr>
<td>§ 46.2-1313</td>
<td>136, 137</td>
</tr>
<tr>
<td>Tit. 47.1, §§ 47.1-1 to -33</td>
<td>140</td>
</tr>
<tr>
<td>§§ 47.1-3 to -11</td>
<td>140</td>
</tr>
<tr>
<td>§ 47.1-3</td>
<td>141</td>
</tr>
<tr>
<td>§ 47.1-5</td>
<td>140</td>
</tr>
<tr>
<td>§ 47.1-8</td>
<td>140, 141</td>
</tr>
<tr>
<td>§ 47.1-9</td>
<td>141</td>
</tr>
<tr>
<td>§ 47.1-14</td>
<td>142</td>
</tr>
<tr>
<td>§ 47.1-17</td>
<td>142</td>
</tr>
<tr>
<td>Tit. 51.1</td>
<td>143</td>
</tr>
<tr>
<td>Tit. 51.1, ch. 1, §§ 51.1-124.1 to -168</td>
<td>145</td>
</tr>
<tr>
<td>§ 51.1-124.3</td>
<td>146</td>
</tr>
<tr>
<td>§ 51.1-124.22(A)(3)</td>
<td>143, 146</td>
</tr>
<tr>
<td>§ 51.1-124.22(A)(8)</td>
<td>146, 148</td>
</tr>
<tr>
<td>§ 51.1-130</td>
<td>146</td>
</tr>
<tr>
<td>§ 51.1-130(A)</td>
<td>146</td>
</tr>
<tr>
<td>§ 51.1-132</td>
<td>143</td>
</tr>
<tr>
<td>§ 51.1-144</td>
<td>147</td>
</tr>
<tr>
<td>§ 51.1-144(A)</td>
<td>147</td>
</tr>
<tr>
<td>§ 51.1-144(F)</td>
<td>147, 148, 149</td>
</tr>
<tr>
<td>§ 51.1-155(B)(1)</td>
<td>146</td>
</tr>
<tr>
<td>§ 51.1-164</td>
<td>221</td>
</tr>
<tr>
<td>§ 52-4</td>
<td>133</td>
</tr>
</tbody>
</table>
### CODE OF VIRGINIA (contd.)

<table>
<thead>
<tr>
<th>Section/Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tit. 53.1</td>
<td>156</td>
</tr>
<tr>
<td>§ 53.1-67.1</td>
<td>152</td>
</tr>
<tr>
<td>§ 53.1-67.7</td>
<td>152</td>
</tr>
<tr>
<td>§ 53.1-67.8</td>
<td>152</td>
</tr>
<tr>
<td>Tit. 53.1, ch. 3, art. 3.1, §§ 53.1-95.2 to -95.24</td>
<td>150</td>
</tr>
<tr>
<td>§§ 53.1-95.6 to -95.8</td>
<td>150</td>
</tr>
<tr>
<td>Tit. 53.1, ch. 3, art. 5</td>
<td>149</td>
</tr>
<tr>
<td>§§ 53.1-105 to -115.2</td>
<td>150</td>
</tr>
<tr>
<td>§ 53.1-105</td>
<td>149, 153</td>
</tr>
<tr>
<td>§ 53.1-106</td>
<td>156</td>
</tr>
<tr>
<td>§ 53.1-106(A)</td>
<td>149, 153, 155</td>
</tr>
<tr>
<td>§ 53.1-106(B)(4)</td>
<td>149</td>
</tr>
<tr>
<td>§ 53.1-109</td>
<td>149</td>
</tr>
<tr>
<td>Tit. 53.1, ch. 3, art. 7</td>
<td>149</td>
</tr>
<tr>
<td>§§ 53.1-128 to -133.03</td>
<td>150</td>
</tr>
<tr>
<td>§ 53.1-131</td>
<td>150</td>
</tr>
<tr>
<td>§ 53.1-131.2</td>
<td>150</td>
</tr>
<tr>
<td>§ 53.1-131.2(A)</td>
<td>150, 152</td>
</tr>
<tr>
<td>§ 53.1-131.2(C)</td>
<td>152</td>
</tr>
<tr>
<td>§ 54.1-2400(6)</td>
<td>163</td>
</tr>
<tr>
<td>§§ 54.1-2900 to -2973</td>
<td>157</td>
</tr>
<tr>
<td>§ 54.1-2902</td>
<td>163</td>
</tr>
<tr>
<td>§ 54.1-2952</td>
<td>162</td>
</tr>
<tr>
<td>§ 54.1-2957</td>
<td>162</td>
</tr>
<tr>
<td>Tit. 54.1, ch. 33, §§ 54.1-3300 to -3319</td>
<td>159</td>
</tr>
<tr>
<td>§ 54.1-3300</td>
<td>159, 161, 163, 164</td>
</tr>
<tr>
<td>§ 54.1-3300.1</td>
<td>159, 160, 161, 163, 164</td>
</tr>
<tr>
<td>§ 54.1-3316</td>
<td>163</td>
</tr>
<tr>
<td>§§ 54.1-3400 to -3472</td>
<td>160</td>
</tr>
<tr>
<td>§ 54.1-3408(A)</td>
<td>164</td>
</tr>
<tr>
<td>§ 54.1-3410</td>
<td>161</td>
</tr>
<tr>
<td>§ 54.1-3410(A)</td>
<td>160, 164</td>
</tr>
<tr>
<td>§ 54.1-3410(B)</td>
<td>164</td>
</tr>
<tr>
<td>§ 54.1-3410(B)(1)</td>
<td>161</td>
</tr>
<tr>
<td>§ 54.1-3457</td>
<td>161, 164</td>
</tr>
<tr>
<td>§ 54.1-3457(16)</td>
<td>161</td>
</tr>
<tr>
<td>§ 55-106</td>
<td>220</td>
</tr>
<tr>
<td>Tit. 55, ch. 6, art. 2.1</td>
<td>166</td>
</tr>
<tr>
<td>§§ 55-118.1 to -118.9</td>
<td>167</td>
</tr>
<tr>
<td>§ 55-118.1</td>
<td>166</td>
</tr>
<tr>
<td>§ 55-118.3</td>
<td>166, 167</td>
</tr>
</tbody>
</table>
### Code of Virginia (contd.)

<table>
<thead>
<tr>
<th>Section/Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 55-118.5</td>
<td>167</td>
</tr>
<tr>
<td>§ 55-118.5(1)</td>
<td>168</td>
</tr>
<tr>
<td>Tit. 55, ch. 13.2, §§ 55-248.2 to -248.40</td>
<td>171</td>
</tr>
<tr>
<td>§ 55-248.4</td>
<td>169, 170, 172</td>
</tr>
<tr>
<td>§ 55-248.25</td>
<td>171</td>
</tr>
<tr>
<td>§ 55-248.25(a)</td>
<td>171</td>
</tr>
<tr>
<td>§ 55-248.25(a)(1)-(2)</td>
<td>172</td>
</tr>
<tr>
<td>§ 55-248.25(b)</td>
<td>171</td>
</tr>
<tr>
<td>§ 55-248.25(c)</td>
<td>171</td>
</tr>
<tr>
<td>§ 55-248.25:1(A)</td>
<td>170, 171</td>
</tr>
<tr>
<td>§ 55-248.25:1(B)</td>
<td>171</td>
</tr>
<tr>
<td>§§ 55-424 to -506</td>
<td>205</td>
</tr>
<tr>
<td>§ 55-426</td>
<td>205, 206</td>
</tr>
<tr>
<td>§§ 55-508 to -516.2</td>
<td>164</td>
</tr>
<tr>
<td>§ 55-510</td>
<td>165</td>
</tr>
<tr>
<td>§ 55-510(A)</td>
<td>165</td>
</tr>
<tr>
<td>§ 55-510(B)</td>
<td>164, 165</td>
</tr>
<tr>
<td>§ 55-510(C)</td>
<td>165</td>
</tr>
<tr>
<td>§ 55-510.1</td>
<td>165</td>
</tr>
<tr>
<td>§ 55-510.1(A)</td>
<td>164, 165</td>
</tr>
<tr>
<td>§ 55-512</td>
<td>165</td>
</tr>
<tr>
<td>§ 55-513</td>
<td>165</td>
</tr>
<tr>
<td>§ 55-514</td>
<td>165</td>
</tr>
<tr>
<td>§ 55-516.1</td>
<td>165</td>
</tr>
<tr>
<td>§ 56-265.4</td>
<td>63</td>
</tr>
<tr>
<td>§ 56-265.4:2</td>
<td>63</td>
</tr>
<tr>
<td>§ 56-458</td>
<td>172, 173</td>
</tr>
<tr>
<td>§ 56-458(A)</td>
<td>176, 177</td>
</tr>
<tr>
<td>§ 56-458(B)</td>
<td>173, 176, 177</td>
</tr>
<tr>
<td>§ 56-462</td>
<td>172, 173</td>
</tr>
<tr>
<td>§ 56-468.1</td>
<td>172, 173, 175, 177</td>
</tr>
<tr>
<td>§ 56-468.1(B)</td>
<td>173, 175, 176, 177</td>
</tr>
<tr>
<td>§ 56-468.1(C)</td>
<td>175, 178</td>
</tr>
<tr>
<td>§ 56-468.1(D)</td>
<td>175, 178</td>
</tr>
<tr>
<td>§ 56-468.1(G)</td>
<td>175, 178</td>
</tr>
<tr>
<td>§ 56-468.1(H)(1)-(2)</td>
<td>175, 178</td>
</tr>
<tr>
<td>§ 56-468.1(I)</td>
<td>175</td>
</tr>
<tr>
<td>§ 56-468.2</td>
<td>172, 173</td>
</tr>
<tr>
<td>Tit. 56, ch. 16.3, §§ 56-508.15, -508.16</td>
<td>199</td>
</tr>
<tr>
<td>§§ 56-576 to -595</td>
<td>179</td>
</tr>
</tbody>
</table>
### CODE OF VIRGINIA (contd.)

<table>
<thead>
<tr>
<th>Section/Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 56-576</td>
<td>178, 179</td>
</tr>
<tr>
<td>§ 56-577(A)(1)</td>
<td>179</td>
</tr>
<tr>
<td>§ 56-577(A)(2)</td>
<td>179</td>
</tr>
<tr>
<td>§ 56-578</td>
<td>179</td>
</tr>
<tr>
<td>§ 56-579(A)</td>
<td>179</td>
</tr>
<tr>
<td>§ 56-580</td>
<td>179</td>
</tr>
<tr>
<td>§ 58-587.1</td>
<td>197</td>
</tr>
<tr>
<td>§ 58-760.1</td>
<td>206</td>
</tr>
<tr>
<td>Tit. 58.1</td>
<td>194, 210</td>
</tr>
<tr>
<td>§ 58.1-3</td>
<td>17, 18, 19, 20, 186, 212, 213</td>
</tr>
<tr>
<td>§ 58.1-3(A)</td>
<td>19, 186, 187, 212, 213</td>
</tr>
<tr>
<td>§ 58.1-3(A)(1)</td>
<td>19, 213</td>
</tr>
<tr>
<td>§ 58.1-3(A)(1)-(2)</td>
<td>186</td>
</tr>
<tr>
<td>§ 58.1-3(A)(2)</td>
<td>213</td>
</tr>
<tr>
<td>§ 58.1-3(A)(3)-(5)</td>
<td>213</td>
</tr>
<tr>
<td>§ 58.1-3(B)</td>
<td>213</td>
</tr>
<tr>
<td>§ 58.1-3(B)-(E)</td>
<td>213</td>
</tr>
<tr>
<td>§§ 58.1-600 to -639</td>
<td>200</td>
</tr>
<tr>
<td>§ 58.1-602</td>
<td>200</td>
</tr>
<tr>
<td>§ 58.1-603</td>
<td>67</td>
</tr>
<tr>
<td>§ 58.1-604</td>
<td>67</td>
</tr>
<tr>
<td>§ 58.1-609.1(4)</td>
<td>68</td>
</tr>
<tr>
<td>§ 58.1-609.10(2)</td>
<td>200</td>
</tr>
<tr>
<td>§ 58.1-610(B)</td>
<td>68</td>
</tr>
<tr>
<td>§ 58.1-3010</td>
<td>207</td>
</tr>
<tr>
<td>§ 58.1-3017</td>
<td>194</td>
</tr>
<tr>
<td>Tit. 58.1, ch. 31, art. 1, §§ 58.1-3100 to -3122.2</td>
<td>194</td>
</tr>
<tr>
<td>§ 58.1-3115</td>
<td>19, 186</td>
</tr>
<tr>
<td>§ 58.1-3118</td>
<td>186</td>
</tr>
<tr>
<td>§ 58.1-3122.1</td>
<td>19</td>
</tr>
<tr>
<td>§ 58.1-3210</td>
<td>205, 206</td>
</tr>
<tr>
<td>§ 58.1-3210(A)</td>
<td>206</td>
</tr>
<tr>
<td>Tit. 58.1, ch. 32, art. 4, §§ 58.1-3229 to -3244</td>
<td>202, 203</td>
</tr>
<tr>
<td>§ 58.1-3229</td>
<td>204</td>
</tr>
<tr>
<td>§ 58.1-3230</td>
<td>203</td>
</tr>
<tr>
<td>§ 58.1-3231</td>
<td>203</td>
</tr>
<tr>
<td>§ 58.1-3237</td>
<td>202, 204</td>
</tr>
<tr>
<td>§ 58.1-3237(A)</td>
<td>204</td>
</tr>
<tr>
<td>§ 58.1-3237(B)</td>
<td>204</td>
</tr>
<tr>
<td>§ 58.1-3237(C)</td>
<td>204</td>
</tr>
<tr>
<td>§ 58.1-3237(D)</td>
<td>204</td>
</tr>
<tr>
<td>Section/Title</td>
<td>Page</td>
</tr>
<tr>
<td>--------------</td>
<td>------</td>
</tr>
<tr>
<td>§58.1-3237(E)</td>
<td>204</td>
</tr>
<tr>
<td>§58.1-3241(A)</td>
<td>203</td>
</tr>
<tr>
<td>§58.1-3243</td>
<td>204</td>
</tr>
<tr>
<td>§58.1-3281</td>
<td>205</td>
</tr>
<tr>
<td>§58.1-3301</td>
<td>43</td>
</tr>
<tr>
<td>§58.1-3310</td>
<td>43, 44</td>
</tr>
<tr>
<td>§58.1-3331</td>
<td>20</td>
</tr>
<tr>
<td>Tit. 58.1, ch. 37, §§58.1-3700 to -3735</td>
<td>177, 178, 187</td>
</tr>
<tr>
<td>§58.1-3700</td>
<td>178</td>
</tr>
<tr>
<td>§58.1-3700.1</td>
<td>187, 193</td>
</tr>
<tr>
<td>§58.1-3701</td>
<td>192</td>
</tr>
<tr>
<td>§58.1-3703(A)</td>
<td>177</td>
</tr>
<tr>
<td>§58.1-3703(C)(4)</td>
<td>189, 191</td>
</tr>
<tr>
<td>§58.1-3703.1</td>
<td>191, 193</td>
</tr>
<tr>
<td>§58.1-3703.1(A)(2)</td>
<td>191</td>
</tr>
<tr>
<td>§58.1-3703.1(A)(2)(e)</td>
<td>191</td>
</tr>
<tr>
<td>§58.1-3703.1(B)(2)</td>
<td>191, 192</td>
</tr>
<tr>
<td>§58.1-3712</td>
<td>213</td>
</tr>
<tr>
<td>§58.1-3731</td>
<td>177, 178</td>
</tr>
<tr>
<td>§58.1-3812</td>
<td>195, 196, 197, 198</td>
</tr>
<tr>
<td>§58.1-3812(A)</td>
<td>195, 196, 198</td>
</tr>
<tr>
<td>§58.1-3812(C)</td>
<td>195, 196, 197</td>
</tr>
<tr>
<td>§58.1-3812(C)(i)</td>
<td>196, 197</td>
</tr>
<tr>
<td>§58.1-3812(F)</td>
<td>63, 199</td>
</tr>
<tr>
<td>§58.1-3812(J)</td>
<td>197, 198, 199</td>
</tr>
<tr>
<td>§58.1-3813</td>
<td>199</td>
</tr>
<tr>
<td>§58.1-3814(A)</td>
<td>196</td>
</tr>
<tr>
<td>§58.1-3814(C)</td>
<td>196, 197</td>
</tr>
<tr>
<td>§58.1-3819</td>
<td>201</td>
</tr>
<tr>
<td>§58.1-3819(A)</td>
<td>201, 202</td>
</tr>
<tr>
<td>§58.1-3833</td>
<td>199, 200</td>
</tr>
<tr>
<td>§58.1-3833(A)</td>
<td>199, 200</td>
</tr>
<tr>
<td>§58.1-3916</td>
<td>207, 211</td>
</tr>
<tr>
<td>§58.1-3919</td>
<td>208, 209, 213</td>
</tr>
<tr>
<td>§58.1-3920</td>
<td>207</td>
</tr>
<tr>
<td>§58.1-3934(B)</td>
<td>208</td>
</tr>
<tr>
<td>§58.1-3941</td>
<td>208, 209, 212, 213</td>
</tr>
<tr>
<td>§58.1-3942</td>
<td>208</td>
</tr>
<tr>
<td>§§58.1-3980 to -3983</td>
<td>210-11</td>
</tr>
<tr>
<td>§§58.1-3984 to -3989</td>
<td>211</td>
</tr>
<tr>
<td>§§58.1-3990 to -3992</td>
<td>211</td>
</tr>
</tbody>
</table>
## Code of Virginia (cont’d.)

<table>
<thead>
<tr>
<th>Section/Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 58.1-3991</td>
<td>191</td>
</tr>
<tr>
<td>§§ 59.1-196 to -207</td>
<td>215</td>
</tr>
<tr>
<td>§ 59.1-200(A)</td>
<td>215</td>
</tr>
<tr>
<td>§ 59.1-200(A)(4)</td>
<td>214, 215</td>
</tr>
<tr>
<td>Tit. 59.1, ch. 39</td>
<td>166</td>
</tr>
<tr>
<td>§§ 59.1-467 to -469</td>
<td>167</td>
</tr>
<tr>
<td>§ 59.1-467</td>
<td>166, 167</td>
</tr>
<tr>
<td>§ 59.1-469</td>
<td>166, 167</td>
</tr>
<tr>
<td>Tit. 62.1, ch. 3.1, §§ 62.1-44.2 to -44.34:28</td>
<td>119, 184</td>
</tr>
<tr>
<td>§ 62.1-44.5</td>
<td>184</td>
</tr>
<tr>
<td>§ 62.1-44.15(3a)</td>
<td>180, 184, 185</td>
</tr>
<tr>
<td>§ 62.1-44.15(5)</td>
<td>184, 185</td>
</tr>
<tr>
<td>§ 62.1-44.15(8a)</td>
<td>184, 185</td>
</tr>
<tr>
<td>§ 62.1-44.15:5</td>
<td>180, 181, 182, 183, 185</td>
</tr>
<tr>
<td>Tit. 63.1, ch. 11, §§ 63.1-220 to -238.02</td>
<td>219</td>
</tr>
<tr>
<td>§ 63.1-220.3</td>
<td>219</td>
</tr>
<tr>
<td>§ 63.1-220.4</td>
<td>216, 217, 218, 219</td>
</tr>
<tr>
<td>§ 63.1-220.4(ii)</td>
<td>217</td>
</tr>
<tr>
<td>§ 63.1-220.4(iii)</td>
<td>217, 218</td>
</tr>
<tr>
<td>§ 63.1-220.4(iv)</td>
<td>218</td>
</tr>
<tr>
<td>§ 63.1-220.4(vi)</td>
<td>218</td>
</tr>
<tr>
<td>§§ 64.1-01 to -17</td>
<td>221</td>
</tr>
<tr>
<td>§ 64.1-5.1(4)</td>
<td>221</td>
</tr>
<tr>
<td>§ 64.1-134</td>
<td>220, 221</td>
</tr>
<tr>
<td>§ 64.1-135</td>
<td>220, 221</td>
</tr>
<tr>
<td>§§ 65.2-100 to -1310</td>
<td>78</td>
</tr>
<tr>
<td>§ 65.2-102(B)</td>
<td>35</td>
</tr>
<tr>
<td>§ 65.2-302(A)</td>
<td>76, 78</td>
</tr>
<tr>
<td>§ 65.2-801(A)(1)</td>
<td>78</td>
</tr>
<tr>
<td>§ 65.2-801(A)(2)</td>
<td>78</td>
</tr>
<tr>
<td>§ 65.2-801(A)(3)</td>
<td>78</td>
</tr>
<tr>
<td>§ 66-1</td>
<td>54</td>
</tr>
<tr>
<td>§§ 66-26 to -35</td>
<td>54</td>
</tr>
</tbody>
</table>

## Constitution of Virginia

**Constitution of 1887**

Art. IV, § 5 ................................................. 52

**Constitution of 1902**

Art. II, § 23 ................................................. 52
CONSTITUTION OF VIRGINIA (contd.)

<table>
<thead>
<tr>
<th>Article</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art. V, § 73</td>
<td>52</td>
</tr>
<tr>
<td>Art. VI, § 98</td>
<td>155</td>
</tr>
<tr>
<td>Art. VII, § 110</td>
<td>156</td>
</tr>
<tr>
<td>Art. VIII, § 120</td>
<td>156</td>
</tr>
<tr>
<td>Art. VIII, § 125</td>
<td>174</td>
</tr>
</tbody>
</table>

CONSTITUTION OF 1971

<table>
<thead>
<tr>
<th>Article</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art. I, § 11</td>
<td>116, 118, 119, 120</td>
</tr>
<tr>
<td>Art. II, § 1</td>
<td>48, 49, 50, 51, 52, 108</td>
</tr>
<tr>
<td>Art. III, § 1</td>
<td>52</td>
</tr>
<tr>
<td>Art. V, § 1</td>
<td>52, 53</td>
</tr>
<tr>
<td>Art. V, § 7</td>
<td>52, 53</td>
</tr>
<tr>
<td>Art. VI, § 5</td>
<td>123</td>
</tr>
<tr>
<td>Art. VII, § 4</td>
<td>56, 141, 154, 194</td>
</tr>
<tr>
<td>Art. VII, § 8</td>
<td>62</td>
</tr>
<tr>
<td>Art. VII, § 9</td>
<td>62, 63, 64, 65, 172, 173, 174, 175</td>
</tr>
<tr>
<td>Art. VII, § 10</td>
<td>54</td>
</tr>
<tr>
<td>Art. VIII, § 1</td>
<td>106</td>
</tr>
<tr>
<td>Art. VIII, § 7</td>
<td>102, 103</td>
</tr>
</tbody>
</table>

VIRGINIA RULES Annotated

MEDICAL MALPRACTICE RULES OF PRACTICE

<table>
<thead>
<tr>
<th>Rule</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>R. 1-7</td>
<td>30</td>
</tr>
<tr>
<td>R. 5</td>
<td>30</td>
</tr>
<tr>
<td>R. 6</td>
<td>30</td>
</tr>
<tr>
<td>R. 6(h)</td>
<td>30</td>
</tr>
<tr>
<td>R. 6(j)</td>
<td>30</td>
</tr>
<tr>
<td>R. 6(j)(4)-(12)</td>
<td>30</td>
</tr>
<tr>
<td>R. 6(j)(13)</td>
<td>30</td>
</tr>
</tbody>
</table>

RULES OF SUPREME COURT OF VIRGINIA

<table>
<thead>
<tr>
<th>Pt.</th>
<th>Rule</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pt. 3, R. 3:1</td>
<td>172</td>
<td></td>
</tr>
<tr>
<td>Pt. 3:16(a)</td>
<td>172</td>
<td></td>
</tr>
<tr>
<td>Pt. 3A</td>
<td>121</td>
<td></td>
</tr>
<tr>
<td>R. 3A:1</td>
<td>123</td>
<td></td>
</tr>
<tr>
<td>R. 3A:12(b)</td>
<td>121, 122, 123</td>
<td></td>
</tr>
<tr>
<td>Pt. 6, § I, R. 1, UPC 1-1</td>
<td>172</td>
<td></td>
</tr>
<tr>
<td>Pt. 6, § I, R. 1, UPR 101(B)</td>
<td>172</td>
<td></td>
</tr>
<tr>
<td>Pt. 6, § I(B)(2)</td>
<td>172</td>
<td></td>
</tr>
<tr>
<td>Pt. 7, R. 7A:13</td>
<td>172</td>
<td></td>
</tr>
</tbody>
</table>