

**OP. NO. 03-056**

**PRISONS AND OTHER METHODS OF CORRECTION: PRISONER PROGRAMS AND TREATMENT — LOCAL CORRECTIONAL FACILITIES.**

**COUNTIES, CITIES AND TOWNS: POLICE AND PUBLIC ORDER.**

**Prisoner-workers from Portsmouth city jail may work on state, county and city property outside city; sheriff has no authority to supervise prisoners working outside sheriff's jurisdiction.**

The Honorable Gary W. Waters  
Sheriff for the City of Portsmouth  
October 8, 2003

**Issues Presented**

You ask whether prisoners confined to jail in the City of Portsmouth and assigned to a work release program by court order pursuant to § 53.1-131<sup>1</sup> ("prisoner-workers") may work on state, county and city property located outside the city. If so, you ask whether you need to obtain permission from the locality where such prisoners will be working.

**Response**

It is my opinion that, pursuant to § 53.1-129, prisoner-workers from the Portsmouth city jail may work on state, county and city property located outside the city. It is also my opinion, however, that the sheriff has no authority to supervise the prisoner-workers while they are working outside the sheriff's jurisdiction.

**Background**

You state that prisoners confined to jail in the City of Portsmouth are assigned, by court order, to work release programs operated under your supervision. You further state that the city sheriff's office has a contract with the Department of Transportation for prisoners at the city jail to work on Department-owned property in Chesapeake and Williamsburg under the supervision of a Portsmouth deputy sheriff.

**Applicable Law and Discussion**

Section 53.1-129 provides:

The circuit court of any county or city may, by specific order entered of record for an identified individual prisoner, allow a person confined in the jail of such county or city who is awaiting disposition of, or serving sentences imposed for, misdemeanors or felonies to work on (i) state, county, city or town property ....

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."<sup>2</sup> The language of § 53.1-129 does not limit the prisoner-workers to work on state, county, city or town property located within the locality in which they are confined. Therefore, a prisoner confined at the Portsmouth jail may perform work on state, county, city or town property located anywhere within the Commonwealth. I must also conclude, however, that, as sheriff, you have no authority to supervise the prisoner-workers while they are working outside your territorial limits.

A sheriff is a constitutional officer whose duties "shall be prescribed by general law or special act."<sup>3</sup> This Office has long held that county law-enforcement officers, including sheriffs, have no authority outside their jurisdiction, absent specific statutory authorization.<sup>4</sup> Absent such legislation, a county law-enforcement officer has no greater authority than does a private citizen.<sup>5</sup>

The General Assembly has authorized local law enforcement to act beyond their territorial limits in certain situations.<sup>6</sup> In these situations, the statutes outline the process by which, and the extent that, local law-enforcement officers may exercise their law-enforcement responsibilities and duties outside their territorial jurisdiction.<sup>7</sup> The General Assembly has not enacted any legislation that would authorize sheriffs or other local law-enforcement officers to supervise prisoner-workers beyond their territorial limits. Accordingly, it is my opinion that local law-enforcement officers do not have this authority. Nor may a local law-enforcement officer or agency obtain this authority by agreement with another jurisdiction. The General Assembly has outlined the circumstances under which local law-enforcement agencies are authorized to enter into such agreements.<sup>8</sup> None of these provisions authorize local law enforcement to enter into agreements providing for interjurisdictional supervision of prisoner-workers.

### **Conclusion**

Accordingly, it is my opinion that, pursuant to § 53.1-129, prisoner-workers from the Portsmouth city jail may work on state, county and city property located outside the city. It is also my opinion, however, that the sheriff has no authority to supervise the prisoner-workers while they are working outside the sheriff's jurisdiction.

<sup>1</sup>Section 53.1-131 authorizes the circuit court to assign certain offenders to a work release program under the supervision of the sheriff of a local jail.

<sup>2</sup>*Temple v. City of Petersburg*, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944), *quoted in* 2002 Op. Va. Att'y Gen. 320, 320.

<sup>3</sup>Va. Const. art. VII, § 4.

<sup>4</sup>*See* Op. Va. Att'y Gen.: 2001 at 77, 78; 1986-1987 at 177, 178 (noting that sheriff's authority generally is coextensive with his county).

<sup>5</sup>*See* 2001 Op. Va. Att'y Gen., *supra* note 4, at 78.

<sup>6</sup>*See, e.g.*, Va. Code Ann. §§ 15.2-1724 to 15.2-1730.1 (LexisNexis Repl. Vol. 2003) (interjurisdictional law enforcement authority of counties, cities and towns); Va. Code Ann. § 8.01-295 (Michie Repl. Vol. 2000) (service of process in contiguous county or city); Va. Code Ann. § 19.2-77 (Mich. Repl. Vol. 2000)

(escape, flight, pursuit and arrest); § 19.2-81 (Mich. Repl. Vol. 2000) (warrantless arrest); see also 1986-1987 Op. Va. Att'y Gen., *supra* note 4, at 178 (concluding that law-enforcement officer may arrest person injured in accident in officer's county but who is hospitalized in different county).

<sup>7</sup>See *supra* note 6.

<sup>8</sup>See, e.g., § 15.2-1730 (LexisNexis Repl. Vol. 2003) (during periods of emergency); § 15.2-1730.1 (LexisNexis Repl. Vol. 2003) (receiving interjurisdictional law-enforcement assistance in counties where no police department is established); § 53.1-79.1 (LexisNexis Repl. Vol. 2002) (transferring and transporting prisoners between jails).

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