

OP. NO. 04-022

COUNTIES, CITIES AND TOWNS: LOCAL CONSTITUTIONAL OFFICERS, COURTHOUSES AND SUPPLIES – SHERIFF – COMPENSATION BOARD GENERALLY — GENERAL POWERS AND PROCEDURES OF COUNTIES.

ELECTIONS: FEDERAL, COMMONWEALTH, AND LOCAL OFFICERS – REMOVAL OF PUBLIC OFFICERS FROM OFFICE.

No requirement that governing body of locality provide local sheriff with unmarked vehicle for official use. 2004 Senate Bill 592, if enacted, will not change conclusion. May require service as agent for purchase or lease of marked or unmarked motor vehicle for sheriff.

The Honorable Floyd H. Miles, Sr.
Member, House of Delegates
October 12, 2004

Issues Presented

You ask whether local governing bodies are required to supply unmarked vehicles to their sheriffs under the terms of § 15.2-1610,¹ and whether 2004 Senate Bill 592, if passed, would affect the answer to this question.

Response

It is my opinion that there is no requirement that the governing body of a locality provide to the local sheriff an unmarked vehicle for official use under the terms of § 15.2-1610(C). It is also my opinion that 2004 Senate Bill 592, if enacted in its current form, will not change this conclusion. A constitutional officer, such as a sheriff, has exclusive authority to determine the equipment needs and specifications of his office, within available resources.² The county's governing body would have no authority to review, approve, or deny purchases by a constitutional officer where such officer has available funds.³ A locality, however, may be required to serve as purchasing agent for the purchase or lease of such equipment, including marked or unmarked motor vehicles, for its sheriff should such an expenditure be approved by the Compensation Board or constitute part of the approved budget of the office.

Applicable Law and Discussion

Section 15.2-1610(C) sets forth the required colors and markings for "[a]ll *marked* motor vehicles used by sheriffs' offices." (Emphasis added.) Section 15.2-1610(D) provides that "[a]ll sheriffs' offices shall be in full compliance with specifications for ... motor vehicle markings, if the sheriff prescribes that ... marked motor vehicles be utilized." No provision of § 15.2-1610⁴ *mandates* that a local governing body purchase or provide any motor vehicle, whether marked or unmarked, to the sheriff for the locality. Although localities may be required to advance costs for the maintenance for sheriffs' automobile radio equipment and accessories⁵ and sheriff's vehicles⁶ no statute specifically requires localities to provide motor vehicles to their sheriffs' departments.

The current wording of 2004 Senate Bill 592⁷ will not change this conclusion. The legislation merely restates a prior opinion of the Attorney General, concluding that former § 15.1-90.1 expressly reserves to a sheriff the option not to use marked motor vehicles in his department, and that it is his prerogative to prescribe the color of such unmarked cars.⁸

It should be noted, however, that there is a procedure to be followed for the preparation and approval of budgets for constitutional offices, to which both the Commonwealth and locality contribute.⁹ "Constitutional officers" are those county and city officers who are elected by the qualified voters, i.e., treasurers, sheriffs, Commonwealth's attorneys, clerks of courts of record, and commissioners of the revenue.¹⁰

Generally, a local sheriff prepares the budget for his office and submits it to the Compensation Board for review, possible modification, and approval.¹¹ Such budget includes salaries, permitted expenses, and other allowances necessary for operating a sheriff's office.¹² A copy of the proposed budget is concurrently submitted to the governing body of the locality.¹³ Once the budget is set, and subject to appropriated funds, the Commonwealth and locality generally participate in funding the approved budget,¹⁴ with certain exceptions.¹⁵ In the event of disagreement, the sheriff, the locality, or the Commonwealth may appeal the decision of the Compensation Board.¹⁶ The purchase or lease of motor vehicles is not an expense that is specifically listed in the applicable statutes.

Although cities and counties previously purchased and owned vehicles used by the local sheriffs' departments, without funding from the Compensation Board,¹⁷ the current policy of the Board is to include as reimbursable office expenses for sheriffs, expenses for vehicle lease or purchase, and maintenance expenses for such vehicles.¹⁸ Consequently, sheriffs may request such expenses in the budgets they submit for approval to the Compensation Board. Section 15.2-1609.7 requires the Commonwealth to pay or reimburse to localities any such expenses approved by the Compensation Board for sheriffs. As an operational matter, counties generally serve as purchasing agents to obtain vehicles meeting the specifications of local sheriffs.¹⁹ A constitutional officer, such as a sheriff, has exclusive authority to determine the equipment needs and specifications of his office, within available resources.²⁰ The county's governing body would have no authority to review, approve, or deny purchases by a constitutional officer where such officer has available funds.²¹

The current practice of the Compensation Board, as described above, however, is subject to the constraints imposed upon it by recent appropriation acts.²² The Compensation Board provides the following in its policies and procedures as related to sheriffs' vehicle expenses:

Due to budget reduction options chosen by the Virginia Sheriffs' Association, base budget office expense funding will not be available in [fiscal year 2004]. If funds are transferred to the office expense budget category in accordance with the FY04 Fund Transfer Policy, or if base funds become available in [fiscal year 2005], [certain] reimbursement policies [including vehicle purchase/lease/expenses] will apply.^[23]

Further, the Board prohibits the display of a sheriff's name on the exterior of any vehicle purchased or leased with public funds on and after July 1, 2002.²⁴

Notwithstanding these limitations, if there are excess appropriated funds remaining in a sheriff's budget, the sheriff may require his or her locality to purchase a motor vehicle meeting his or her specifications for use by the sheriff's office, within the amount of the excess funds.²⁵ As stated previously, the county's governing body has no authority to review, approve, or deny the purchase.

Conclusion

Accordingly, it is my opinion that there is no requirement that the governing body of a locality provide to the local sheriff an unmarked vehicle for official use under the terms of § 15.2-1610(C). It is also my opinion that 2004 Senate Bill 592, if enacted in its current form, will not change this conclusion. A constitutional officer, such as a sheriff, has exclusive authority to determine the equipment needs and specifications of his office, within available resources.²⁶ The county's governing body would have no authority to review, approve, or deny purchases by a constitutional officer where such officer has available funds.²⁷ A locality, however, may be required to serve as purchasing agent for the purchase or lease of such equipment, including marked or unmarked motor vehicles, for its sheriff should such an expenditure be approved by the Compensation Board or constitute part of the approved budget of the office.

¹For purposes of this opinion, I assume that you are requesting a generic answer to this question, and that it is not directed to any particular Virginia locality. For that reason, this opinion is based on state law of general application, and does not consider the charter, ordinances, or practices of any locality.

²1989 Op. Va. Att'y Gen. 71, 73, and opinions cited therein.

³*Id.* at 73.

⁴Section 15.2-1610(A) and (B) relates to standard uniforms worn by sheriffs and their deputies and police officers performing their duties under the sheriff.

⁵Section 15.2-1609.4 requires sheriffs and full-time deputy sheriffs to record and report all expenses incurred for repairs to their automobile police radio equipment, radio transmitter systems, and accessory radio equipment.

⁶See 2004 Va. Acts Spec. Sess. I ch. 4, Item 63(C.1), available at <http://leg1.state.va.us/cgi-bin/legp504.exe?042+bud+21-63> [hereinafter 2004 Appropriation Act].

⁷Senate Bill 592 amends and reenacts § 15.2-1610(C) to provide: "*Nothing in this section shall prevent sheriffs' offices from using unmarked vehicles.*" 2004 S.B. 592, available at <http://leg1.state.va.us/cgi-bin/legp504.exe?041+ful+SB592>. Senate Bill 592 has been continued until the 2005 Session of the General Assembly.

⁸1984-1985 Op. Va. Att'y Gen. 287, 288; see also 1970-1971 Op. Va. Att'y Gen. 34, 35 (citing repealed § 15.1-90.1(d) in both opinions).

⁹See Va. Code Ann. §§ 15.2-1636.1 to 15.2-1636.20 (LexisNexis Repl. Vol. 2003).

¹⁰Va. Const. art. VII, § 4.

¹¹See §§ 15.2-1609.2, 15.2-1636.7, 15.2-1636.8 (LexisNexis Repl. Vol. 2003).

¹² See, e.g., § 15.2-1609.2 (salaries of sheriffs and certain full-time deputy sheriffs); § 15.2-1609.4 (various expenses of sheriffs and full-time deputy sheriffs); §§ 15.2-1609.7 to 15.2-1609.9 (LexisNexis Repl. Vol. 2003) (salary and expense allowances paid to sheriffs and full- and part-time deputy sheriffs, and compensation paid to part-time deputy sheriffs).

¹³ See § 15.2-1636.7.

¹⁴ See § 15.2-1609.7.

¹⁵ See, e.g., § 15.2-1613 (LexisNexis Repl. Vol. 2003) (providing that localities "shall provide at their expense in accordance with standards set forth in § 15.2-1610 a reasonable number of uniforms and items of personal equipment required by the sheriff to carry out his official duties").

¹⁶ See § 15.2-1636.9.

¹⁷ See 1986-1987 Op. Va. Att'y Gen. 91, 92.

¹⁸ See Compensation Board Web site, Policies and Procedures for Sheriffs, www.scb.state.va.us/policies.html.

¹⁹ See § 15.2-1231 (LexisNexis Repl. Vol. 2003) (providing for system of centralized competitive purchasing in any county having chief administrative officer); see also 1989 Op. Va. Att'y Gen. 71, 72, and opinions cited therein (concluding that constitutional officer subject to county's centralized purchasing system retains power to determine equipment needs of his office and specifications for such equipment). If the sheriff is excluded from a county's centralized purchasing system, the sheriff is free to proceed with his or her own procurement, subject to the requirements of the Virginia Public Procurement Act. 1993 Op. Va. Att'y Gen. 271, 275 n.4. In the absence of such a local procurement system, the procedures set forth in the Virginia Public Procurement Act must be followed. 1984-1985 Op. Va. Att'y Gen. 354, 355 n.7.

²⁰ See *supra* note 2.

²¹ See *supra* note 3.

²² See 2004 Appropriation Act, *supra* note 6; 2003 Va. Acts ch. 1042, § 1-28, at 1733, 1781-1800 [hereinafter 2003 Appropriation Act] (citing Item 63(C.1)-(2) in both acts).

²³ Compensation Board Web site, *supra* note 18.

²⁴ *Id.*; see also 2004 Appropriation Act, *supra* note 6; 2003 Appropriation Act, *supra* note 22, at 1782 (citing Item 63(C.1) in both acts).

²⁵ See Op. Va. Att'y Gen.: 1993, *supra* note 19, at 274; 1983-1984 at 143, 144 (interpreting § 15.1-127, predecessor statute to § 15.2-1231, and concluding that funds previously appropriated may be expended for purchase of goods in conformance with county's centralized purchasing system).

²⁶ See *supra* note 2.

²⁷ See *supra* note 3.

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