

**OP. NO. 06-005**

**PRISONS AND OTHER METHODS OF CORRECTION: LOCAL CORRECTIONAL FACILITIES – JAIL AUTHORITIES – REGIONAL JAILS AND JAIL FARMS.**

**CRIMINAL PROCEDURE: CONSERVATORS OF THE PEACE AND SPECIAL POLICEMEN – POWERS AND DUTIES.**

**No authority for regional jail officers to execute criminal warrants in regional jail; such officers are vested with limited authority and powers of conservators of peace.**

The Honorable Roy F. Evans, Jr.  
Commonwealth's Attorney for Smyth County  
March 22, 2006

#### **Issue Presented**

You ask whether officers of a regional jail, who are not police officers or sheriff's deputies, may execute criminal warrants in the jail.

#### **Response**

It is my opinion that officers of a regional jail do not have the authority to execute criminal warrants in the jail. Regional jail officers are vested only with the limited authority and powers of conservators of the peace.

#### **Background**

You relate that it frequently is necessary to execute arrest warrants on inmates in the regional jail. You note that the Southwest Virginia Regional Jail is located in a rural area of Washington County that is not near a police department or sheriff's office. Therefore, you note that officers from Smyth County are required to travel twenty to twenty-five miles to the regional jail to execute arrest warrants.

#### **Applicable Law and Discussion**

A "law enforcement officer" is "any full-time or part-time employee of a police department or sheriff's office ... who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth."<sup>1</sup> Section 19.2-76 provides that "[a] law enforcement officer may execute within his jurisdiction a warrant, capias or summons issued anywhere in the Commonwealth." Further, § 19.2-72 provides that "in a city or town having a police force, the warrant shall be directed 'To any policeman, sheriff or his deputy sheriff of such city (or town),' and shall be executed by the policeman, sheriff or his deputy sheriff into whose hands it shall come or be delivered."

Jail officers<sup>2</sup> of local or regional jail authorities<sup>3</sup> are vested "[d]uring the term of their appointment ... with the powers and authority of a conservator of the peace"

within a certain geographic location during the discharge of their duties.<sup>4</sup> The duties, however, are limited to conveying prisoners to and from correctional facilities; enforcing the provisions of alternative incarceration and treatment programs pursuant to law; providing security and supervision of prisoners taken to a medical, dental, or psychiatric facility; and providing security escort and supervision of prisoners.<sup>5</sup> Pursuant to § 19.2-18, "[e]very conservator of the peace shall have authority to arrest without a warrant."<sup>6</sup> A sworn jail officer or a law enforcement officer may also execute "a *capias*<sup>[7]</sup> for the arrest of [a] prisoner" improperly released or discharged from custody.<sup>8</sup>

### Conclusion

Accordingly, it is my opinion that officers of a regional jail do not have the authority to execute criminal warrants in the jail. Regional jail officers are vested only with the limited authority and powers of conservators of the peace.

<sup>1</sup>Va. Code Ann. § 9.1-101 (Supp. 2005).

<sup>2</sup>Local or regional jails officers are those appointed pursuant to § 53.1-95.7(3) or § 53.1-106(B)(4).

<sup>3</sup>Section 53.1-105 permits any combination of two or more counties or cities to establish, maintain, and operate a regional jail or jail farm. Additionally, § 53.1-95.2 authorizes the governing bodies of any combination of two or more counties, cities, or towns to create a jail authority.

<sup>4</sup>Va. Code Ann. §§ 53.1-95.8, 53.1-98 (2005); see also 2005 Op. Va. Att'y Gen. No. 05-026, available at <http://www.vaag.com/media%20center/Opinions/2005opns/05-026w.htm> (noting that local and regional jail authority officers are conservators of peace).

<sup>5</sup>See § 53.1-95.8 (2005); see also § 53.1-1 (defining "jail officer" and his normal duties).

<sup>6</sup>The power to arrest without a warrant is limited to the instances set out in §§ 19.2-19 and 19.2-81. See Va. Code Ann. § 19.2-18 (2004); see also *Terrell v. Petrie*, 763 F. Supp 1342, 1347 (E.D. Va. 1991), *aff'd* 952 F.2d 397 (4th Cir. 1991) (noting that conservators of peace have no authority to execute arrest warrants).

<sup>7</sup>"The form of a *capias* shall be the same as that provided for a warrant except that it shall be signed by the clerk and shall state that an indictment or information has been filed against the accused." See Va. Sup. Ct. R. 3A:7(a)(1). When the procedures are followed, an individual could be placed in jail on a *capias*. See *id.*; § 53.1-116.3 (2005).

<sup>8</sup>Section 53.1-116.3.