



COMMONWEALTH of VIRGINIA

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June 16, 2008

Scot S. Farthing, Esq.
Wythe County Attorney
P.O. Box 1315
Wytheville, Virginia 24382

Dear Mr. Farthing:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether the Wythe County Board of Supervisors has the statutory power and authority to assign office spaces within the County courthouse complex.¹

Response

It is my opinion that the Wythe County Board of Supervisors has the statutory power and authority to assign office spaces within the County courthouse complex for any offices that are not necessary for the use and occupancy of the circuit court.

Background

You relate that the Wythe County courthouse complex contains three buildings: (1) the old courthouse building; (2) the circuit court and circuit court clerk's office building; and (3) the general district court and sheriff's office building. The County constitutional officers, the circuit court, general district court, and juvenile and domestic relations district court are located within this courthouse complex. The Board has supervised the remodeling of the courthouse complex buildings to modernize the office space and provide better utilization of the space for different offices. You advise that the Board is contemplating the relocation of the Commonwealth attorney's office. Further, you relate that the circuit court judge verbally has directed that no offices are to be relocated without his approval and before a security study is completed. You indicate that the Board does not believe the circuit court judge is authorized to control the use of the courthouse complex other than the circuit courtroom area.

Applicable Law and Discussion

Section 15.2-1638 provides that "[t]he governing body of every county and city shall provide courthouses with suitable space and facilities." Additionally, § 15.2-1638 requires that the cost of a

¹You describe the courthouse complex as a group of buildings that are interconnected by corridors.

courthouse “and [that] of keeping the same in good order, shall be chargeable to the county or city.” Section 15.2-1639 provides in part:

The governing body of each county and city shall, if there are offices in the courthouses of the respective counties and cities available for such purposes, provide offices for the treasurer, attorney for the Commonwealth, sheriff, commissioner of the revenue, commissioner of accounts and division superintendent of schools for such county or city.

The use of the word “shall” in statutes generally indicates that the procedures are intended to be mandatory.² Because the statute does not define the term “courthouse,” it is necessary to employ the general definition of that word.³ “[A] ‘courthouse’ is defined in part as ‘the principal building in which county offices are housed and in which county administrative affairs are conducted.’”⁴ The description of the Wythe County courthouse complex that you provide fits clearly within this general definition.

The Supreme Court of Virginia has considered whether the governing body (a board of supervisors or a city council) possesses the statutory power and authority to relocate the offices utilized by constitutional officers.⁵ The Court concluded that a circuit court has control over the assignment of space in the area of the courthouse building necessary for the use and occupancy of the circuit court.⁶ Furthermore, the Court concluded that the governing body “has control of the use and occupancy of all other areas of the [courthouse] building.”⁷ Therefore, I must conclude that the Wythe County Board of Supervisors has control of the use and occupancy of all areas of the County courthouse complex that are not necessary for the use and occupancy of the circuit court. In addition, the Board has the statutory power and authority to assign office spaces within the buildings in the complex in which county offices are housed and in which county administrative affairs are conducted.

Conclusion

Accordingly, it is my opinion is my opinion that the Wythe County Board of Supervisors has the statutory power and authority to assign office space within the County courthouse complex for any offices that are not necessary for the use and occupancy of the circuit court.

²See *Andrews v. Shepherd*, 201 Va. 412, 414, 111 S.E.2d 279, 281-82 (1959); *Op. Va. Att’y Gen.*: 2004 at 168, 169; 1994 at 64, 68.

³See *Hoffman Family, L.L.C. v. Alexandria*, 272 Va. 274, 284, 634 S.E.2d 722, 727 (2006); *McKeon v. Commonwealth*, 211 Va. 24, 27, 175 S.E.2d 282, 284 (1970).

⁴*Tullidge v. Bd. of Supvrs.*, 239 Va. 611, 614, 391 S.E.2d 288, 290 (1990) (quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 523 (1986)).

⁵*Bd. of Supvrs. v. Bacon*, 215 Va. 722, 214 S.E.2d 137 (1975) (interpreting § 15.1-258, predecessor to § 15.2-1639); *Egerton v. City of Hopewell*, 193 Va. 493, 69 S.E.2d 326 (1952) (interpreting § 15-689, predecessor to § 15.2-1639).

⁶See *Bacon*, 215 Va. at 724, 214 S.E.2d at 138.

⁷*Id.*; see also *Egerton*, 193 Va. at 501, 69 S.E.2d at 331 (holding that city council has right to control use and occupancy of that part of municipal building not appointed to circuit court and may assign use of office space therein). I also note that a county is required to “provide suitable quarters” for the general district and juvenile and domestic relations district courts, but the manner in which the county provides such quarters appears to be within the purview of the locality. See VA. CODE ANN. § 16.1-69.50 (2003).

Mr. Scot S. Farthing
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Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink that reads "Robert F. McDonnell". The signature is written in a cursive style with a large, prominent 'R' and 'M'.

Robert F. McDonnell