



COMMONWEALTH of VIRGINIA

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October 15, 2008

The Honorable Randy N. Williams
Russell County Commissioner of Revenue
P.O. Box 517
Lebanon, Virginia 24266

Dear Commissioner Williams:

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 employees of the county assessor's office who are, by resolution of the board of supervisors, placed under your supervision may be sworn as deputy commissioners of the revenue.

Response

It is my opinion that employees of the county assessor's office who are, by resolution of the board of supervisors, placed under your supervision may be sworn as deputy commissioners of the revenue.

Background

You advise that, as the Russell County Commissioner of the Revenue, you requested that the Russell County Board of Supervisors ("Board") pass a resolution placing the assessor's office and all employees under the supervision and direction of your office. You relate that the Board unanimously passed the following resolution ("Resolution"):

WHEREAS, the function of the office of Real Estate Assessment supplements and provides necessary information concerning real estate values used by the Commissioner of the Revenue; and

WHEREAS, the employees of Real Estate Assessment are hired by the Russell County Board of Supervisors and employees of the constitutional office of the Commissioner of the Revenue are hired by the Commissioner of the Revenue; and

WHEREAS, the function of these offices is to provide an accurate valuation of real estate assessments and responsive answers to the citizens of Russell County.

NOW, THEREFORE, BE IT RESOLVED by the Russell County Board of Supervisors to designate that the Commissioner of the Revenue is hereby charged with supervision of the duties and responsibilities of the Real Estate Assessment Office.

Following receipt of the Resolution, you state that you requested the Russell County Clerk of the Circuit Court to swear in such employees, who are funded 100% by Russell County, as deputy commissioners. You related that the county administrator has requested that the employees be sworn as Russell County assessors/assistants and not as deputy commissioners.¹ You express the belief that as a result of the Resolution, these employees are employees of the Commissioner's office; therefore, they are your deputies. You also state that it is your opinion that you should decide the title and duties of each such employee.

Applicable Law and Discussion

The commissioner of revenue (the "commissioner") is a constitutional officer whose duties "shall be prescribed by general law or special act."² The duties of commissioners are set out specifically in Article 1, Chapter 31 of Title 58.1, §§ 58.1-3100 through 58.1-3122.2, as well as generally in Titles 15.2 and 58.1.³ Section 15.2-1603 provides that a commissioner "may ... appoint one or more deputies, who may discharge any of the official duties of [his] principal." Prior opinions of the Attorney General conclude that the plain meaning of § 15.2-1603 "is to give the enumerated officers the discretionary power to appoint deputies."⁴ To implement this appointment, § 15.2-1603 provides that the commissioner "shall certify the appointment to the court in the clerk's office of which the oath of the principal of such deputy is filed, and a record thereof shall be entered in the order book of such court." Further, § 15.2-1603 provides that "[a]ny such deputy at the time his principal qualifies ... or thereafter, and before entering upon the duties of his office, shall take and prescribe the oath [of office]." Because § 15.2-1603 authorizes a commissioner to appoint one or more deputies, the statute "provides the sole authority for the appointment of such deputies."⁵ Therefore, a commissioner, as a constitutional officer, has "the sole appointing power with respect to deputies and personnel under his supervision."⁶

As a constitutional officer, a commissioner is independent of the control of the local governing body and, except as abrogated by statute, retains complete discretion in the day-to-day operations of the office, personnel matters, and the manner in which the duties of the office are performed.⁷ Prior opinions of the Attorney General conclude that local governing bodies have no authority to supervise or intervene

¹For the purposes of this opinion, I will assume that these employees are required to take an oath of office by virtue of the requirements for boards of supervisors pursuant to § 15.2-1512.

²VA. CONST. art. VII, § 4.

³See Op. Va. Att'y Gen.: 2005 at 157, 158; 2000 at 204, 205.

⁴Op. Va. Att'y Gen: 1998 at 30, 31; 1982-1983 at 105, 105 (interpreting § 15.1-48, predecessor to § 15.2-1603); 1977-1978 at 466, 467 (interpreting § 15.1-48).

⁵1977-1978 Op. Va. Att'y Gen., *supra* note 4, at 467 (citing § 15.1-48 and noting that pursuant to § 14.1-51, predecessor to § 15.2-1636.8, Compensation Board determines salaries of constitutional officers); *see also* 1982-1983 Op. Va. Att'y Gen. 80, 81 (concluding that pursuant to § 14.1-141, Compensation Board determines number of deputies clerk may employ).

⁶1977-1978 Op. Va. Att'y Gen., *supra* note 4, at 467.

⁷See generally Op. Va. Att'y Gen.: 1985-1986 at 255, 255, *id.* at 219, 219, *id.* at 98, 98; 1984-1985 at 284, 284; *id.* at 72, 72; 1982-1983 at 128, 129; 1978-1979 at 289, 291.

in the management and control of a constitutional officer's duties.⁸ These opinions support the long-standing rule that constitutional officers are independent of their respective localities' management and control.⁹ Furthermore, numerous prior opinions of the Attorney General conclude that the establishment of the working hours of constitutional officers is the direct responsibility of the officers themselves, subject to any controlling statute dealing directly with the matter.¹⁰ In addition, Attorneys General consistently have opined that constitutional officers have exclusive control over the personnel policies of their offices.¹¹

Chapter 32 of Title 58.1, §§ 58.1-3200 through 58.1-3389, comprehensively governs the assessment and reassessment of real estate for local taxation. Under Chapter 32, a local governing body has the option to provide for the assessment and reassessment of real estate as part of the operation of the local government by appointing a full-time real estate assessor or a board of assessors.¹² In the absence of an appointed assessing officer or officers, a commissioner is authorized to perform assessments as the local assessing officer.¹³ Absent the consent of the commissioner, he is not required to make an annual or biennial assessment and equalization of real estate.¹⁴

In this instance, the Board unanimously adopted the Resolution that charges the commissioner with the supervision of the duties and responsibilities of the Real Estate Assessment Office. The common, ordinary meaning of the word "supervision" is "[t]he act of managing, directing, or overseeing persons or projects."¹⁵ The Board clearly has placed the function of assessment and reassessment of real estate within the office of the commissioner, as authorized by § 58.1-3270. The full-time employees of

⁸See, e.g., 1993 Op. Va. Att'y Gen. 59, 66-67 (concluding that county administrator may not require constitutional officer to agree to management or performance audit); 1989 Op. Va. Att'y Gen. 71, 73 (concluding that there is no authority for board of supervisors to approve or deny purchases or change equipment specifications determined by constitutional officer); 1986-1987 Op. Va. Att'y Gen. 69, 69 (concluding that commissioner has exclusive control over personnel policies of office); 1978-1979 Op. Va. Att'y Gen. 289, 291-92 (concluding that treasurer is not subject to control of board of supervisors in determining what tax collection methods to employ); *id.* at 237, 237-38 (concluding that board of supervisors may not compel constitutional officer to assume additional duties not imposed by statute, although officer may agree to accept such duties voluntarily); 1976-1977 Op. Va. Att'y Gen. 46, 47 (concluding that county government may not investigate personnel practices of constitutional officer).

⁹See, e.g., 1993 Op. Va. Att'y Gen., *supra* note 8, at 67.

¹⁰See Op. Va. Att'y Gen.: 1984-1985, *supra* note 7, at 72; 1974-1975 at 538, 539; 1971-1972 at 448, 448; 1967-1968 at 295, 296.

¹¹See Op. Va. Att'y Gen.: 1985-1986 at 98, 98; 1984-1985, *supra* note 7, at 72-73; 1982-1983 at 107, 107-08.

¹²See VA. CODE ANN. § 58.1-3253(A) (Supp. 2008) (discussing role of full-time real estate appraiser or assessor relating to biennial reassessment), § 58.1-3271 (Supp. 2008) (authorizing appointment of board of real estate assessors or real estate appraiser to conduct annual or biennial assessment); Op. Va. Att'y Gen.: 1984-1985 at 304, 304 (interpreting § 58-778.1, predecessor to § 58.1-3253, and concluding that governing body may establish real estate assessment department to conduct biennial assessment); *id.* at 305, 306 n.1 (interpreting § 58-778.1 and concluding that governing body may employ full-time appraiser or assessor to conduct biennial assessment).

¹³See 1982-1983 Op. Va. Att'y Gen. 546, 547.

¹⁴See § 58.1-3270 (2004) (referencing annual and biennial assessment under § 58.1-3253).

¹⁵BLACK'S LAW DICTIONARY 1479 (8th ed. 2004). The word "supervision" also means "[t]he act, process, or occupation of supervising: direction, inspection, and critical evaluation: OVERSIGHT." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 2296 (1993).

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the Real Estate Assessment Office, although originally appointed by the Board, operate under the direct supervision and administration of the commissioner. A 1988 opinion concludes that the governing body has authority over the employment, including supervision and control, of a real estate assessor only when the assessor is appointed by the governing body and operates within the local government as authorized by §§ 58.1-3253 and 58.1-3271.¹⁶ Based on the above, it is my opinion that these assessors, in effect, operate as an employee of the commissioner. It further is my opinion that the commissioner may have the clerk of the circuit court swear in the employees of the assessor's office as deputy commissioners of the revenue.

Conclusion

Accordingly, it is my opinion that employees of the county assessor's office who are, by resolution of the board of supervisors, placed under your supervision may be sworn as deputy commissioners of the revenue.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

1:213; 1:941/08-058

¹⁶See 1987-1988 Op. Va. Att'y Gen. 522, 524 (noting that facts indicate governing body appointed assessor to operate under administration of commissioner)