



COMMONWEALTH OF VIRGINIA

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May 6, 2010

The Honorable Jack Kennedy
Clerk of the Circuit Court for Wise County and City of Norton
206 E. Main Street
Wise, Virginia 24293-1248

Dear Mr. Kennedy:

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

Issues Presented

You ask several questions in connection with a law library established by court order. First, you ask whether a clerk of the court (“clerk”) has the authority to enter into private service subscription agreements for case law access following entry of a court’s order. Next, you inquire whether a clerk has the discretion and authority to determine the subscription services to be contracted for the law library pursuant to such court order assuming the governing board would approve payment pursuant to § 42.1-65. Finally, you ask whether the requirement for a public law library is negated by one or two combination lock doors and metal detector screenings.

Response

It is my opinion that a clerk may enter into private subscription agreements: (1) where local bar rules provide such authority, and the court permits the clerk to do so; (2) where the local governing body has authorized it; or (3) pursuant to the statutory authority vested in the clerk to purchase such services. Further, it is my opinion that metal detector screenings and door locks do not necessarily negate the requirement that a library be open to the public.

Background

You state that on March 17, 2010, the Circuit Court for Wise County (“County”) and Norton City (“City”) entered an order providing that you, as Clerk of the Circuit Court, should manage and expand the Wise County Law Library. The order tasks you to determine the needs of the Library, to confer with the executive committee of the local bar to seek recommendations regarding Library resources, including books and equipment, and to confer with County officials concerning funding for the Library. Therefore, you seek guidance concerning your authority related to these duties.

Applicable Law and Discussion

Section 42.1-65(A) provides that a clerk will, under specified circumstances, “take charge” of the local law library. You ask whether a clerk may enter into private subscription agreements for case law access; if so, you ask what discretion and authority a clerk has to determine the subscription services for which he may contract. First, when “the rules prescribed by the bar and approved by the court”¹ authorize a clerk to enter into such an agreement, the clerk may do so. The scope of the clerk’s authority will be determined by the terms of these rules.

Next, you ask about the funding related to such subscription agreements. I note that funding may be obtained from several sources. First, § 42.1-70 allows the imposition of a sum, not to exceed four dollars, “as part of the costs incident to each civil action filed in the courts located within its boundaries.”² This source of funding requires the local governing body to enact an ordinance providing for this sum.³ After a local governing body has established the additional fee for civil actions, “[t]he governing body is authorized to accept contributions to the [library] fund from any bar association.”⁴ It is up to the local governing body to make disbursements for the acquisition of legal materials.⁵ When a clerk seeks funding from this source, prudence would dictate that he obtain approval from the governing body in advance of expenditures.

I find no statutes that would preclude either the local bar or the City or County⁶ from allocating funds toward a locality’s law library. In that circumstance, a clerk may spend the funds “according to the rules prescribed by the bar and approved by the court.”⁷

An additional and separate source of authority and funding is found in § 42.1-65(C), which provides that the local law library “may purchase or lease computer terminals for the purpose of retrieving available legal reference data, and if so, ... may include use of a flat rate or fee structure, for the use of computer research services.” The fees to be charged “shall be sufficient to cover the expenses of such services.”⁸ Further, § 42.1-65 exempts from the fee use of the computers by “the courts, attorneys for the Commonwealth and public defenders, and their assistants.”⁹ Therefore, a clerk could enter into an agreement for “computer research services” and assess a fee to cover the costs of the subscription agreement.

¹ VA. CODE ANN. § 42.1-65(A) (Supp. 2009).

² Section 42.1-70 (Supp. 2009).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ See VA. CODE ANN. § 15.2-953(B) (2008) (providing that localities may make gifts and donations to nonprofit foundations that support local libraries).

⁷ Section 42.1-65(A).

⁸ Section 42.1-65(C).

⁹ *Id.*

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Finally, you ask whether metal detector screenings and locks on a library's doors would negate or violate the requirement that the library be public. Section 42.1-70 contemplates that the local law library will be public.¹⁰ The fact that members of the public may be subjected to metal detector screenings does not prevent the public from gaining access to the library. Section 42.1-65(A)-(B) contemplates that the library may be kept in the courthouse. Courthouses nearly always are equipped with metal detectors, yet no one would deny that courthouses are public buildings. Therefore, the presence of metal detectors does not negate public access to the library. The fact that there may be combination locks does not necessarily close the library to the public. Provided that the library remains "open for the use of the public at hours convenient to the public,"¹¹ the presence of locks, in the abstract, does not transform the library into one that is closed to the public.

Conclusion

Accordingly, it is my opinion that a clerk may enter into private subscription agreements: (1) where local bar rules provide such authority, and the court permits the clerk to do so; (2) where the local governing body has authorized it; or (3) pursuant to the statutory authority vested in the clerk to purchase such services. Further, it is my opinion that metal detector screenings and door locks do not necessarily negate the requirement that a library be open to the public.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken Cuccinelli II", with a horizontal line underneath the name.

Kenneth T. Cuccinelli, II
Attorney General

1:485; 1:941/10-036

¹⁰ See § 42.1-70 (2009) (permitting acquisition of books and computer equipment "to maximize access to the law library by the public" and providing that library should be "open for the use of the public").

¹¹ *Id.*