



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable G. Glenn Oder
Post Office Box 6161
Newport News, Virginia 23606

The Honorable Marty G. Eubank, Treasurer
City of Newport News
2400 Washington Avenue,
Newport News, Virginia 23607-4388

Dear Delegate Oder and Treasurer Eubank:

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

Issues Presented

I am in receipt of two overlapping and interrelated official opinion requests addressing the authority of the City school board and the treasurer with respect to the handling of school division funds. Essentially, each opinion request raises two issues. First, with respect to paying school personnel, the letters ask whether the school board or the treasurer has the ultimate authority to establish the payroll dates for the school division, to direct the administrative processes leading to payment of school division employees, and to direct and oversee school division employees' administration of school division payrolls. The requests then inquire whether § 22.1-116 is satisfied if the treasurer maintains the funds of the City and of the school division in a single bank account, but separately accounts for and tracks the funds for accounting purposes, or if that Code provision requires separate bank accounts for school board funds.

Response

It is my opinion that the authority to establish payroll dates for school division employees rests with the school board, but that the *Code of Virginia* contemplates the establishment of regular payroll periods. It is further my opinion that the mechanics of making the payments to schools rests with the treasurer of the locality. Finally, it is my opinion that § 22.1-116 is satisfied if the treasurer maintains separate internal accounts of the funds of the City and of the school division for accounting purposes; the treasurer is not required to maintain a separate bank account for school board funds.

Applicable Law and Discussion

Article VIII, § 7 of the Constitution of Virginia and § 22.1-28 of the *Code of Virginia* provide that “[t]he supervision of schools in each school division shall be vested in a school board.” Section 22.1-89 provides that “[e]ach school board shall manage and control the funds made available to the school board for public schools and may incur costs and expenses.” The Code further provides that “[e]ach school board shall provide for the payment of teachers, principals, assistant principals and other employees monthly, semi-monthly or biweekly, as may be determined by the school board.”¹

Article VII, § 4 of the Constitution of Virginia creates the office of treasurer and provides that a treasurer’s duties “shall be prescribed by general law or special act.”² The powers and duties of a local treasurer are set out generally in Article 2, Chapters 31 and 39 of Title 58.1. Section 22.1-116 provides that the “treasurer . . . shall be charged with the responsibility for the receipt, custody and disbursement of the funds of the school board”

First, given the broad authority afforded to the school board under §§ 22.1-89 and 22.1-296 to manage school funds and to pay school division employees, I conclude that the ultimate authority to determine when school division employees are to be paid rests with the school board. The law expressly provides that “[e]ach school board shall provide for the payment of teachers, principals, assistant principals and other employees monthly, semi-monthly or biweekly, *as may be determined by the school board.*”³ This authority, however, contemplates regular payments on a “monthly, semi-monthly, or biweekly basis.” In other words, the school board can choose the date, but its choice must reflect a regularized timetable.⁴

County school boards expressly are given the authority “for the drawing of special warrants in payment of compensation, when such compensation has been earned and is due.”⁵ This provision effectively allows a county school board the discretion occasionally to deviate from the system of “monthly, semi-monthly or biweekly” payments.⁶ No such authority is given to the school boards in *cities*, who, therefore, must follow a system of “monthly, semi-monthly or biweekly” payments. Virginia adheres to the Dillon Rule of strict construction, which provides that “[local governing bodies] have only those powers which are expressly granted by the state legislature, those powers fairly or necessarily implied from expressly granted powers, and those powers, which are essential and indispensable.”⁷ Any doubt as to the existence of a power must be resolved against the locality.⁸ The Dillon rule applies to school boards as well as localities.⁹ The City school board, therefore, is not statutorily empowered to order the treasurer to disburse a salary advance.

¹ VA. CODE ANN. § 22.1-296 (2006).

² *See also* VA. CODE ANN. § 15.2-1600(A) (2008) (parallel statute).

³ Section 22.1-296 (emphasis added).

⁴ To the extent the school board’s choice of a payment scheme creates needless additional expense and inconvenience for the locality, the Board of Supervisors or the City Council presumably can take that into account when it prepares the next budget for the schools.

⁵ Section 22.1-122(C) (2006).

⁶ As a previous opinion from my Office notes, however, this authority is limited to payments for compensation that has been earned. 1985-86 Op. Va. Att’y Gen. 154 (quoting § 22.1-122(C)).

⁷ *Arlington Cnty. v. White*, 259 Va. 708, 712, 528 S.E.2d 706, 708 (2000) (alternation in original) (quoting *City of Va. Beach v. Hay*, 258 Va. 217, 221, 518 S.E.2d 314, 316 (1999)).

⁸ 2004 Op. Va. Att’y Gen. 117, 118.

⁹ *Commonwealth v. Arlington Cnty. Bd.*, 217 Va. 558, 232 S.E.2d 30 (1977).

With regard to whether the treasurer or the school board can direct the administrative processes leading to payment of school division employees, and direct and oversee school division employees' administration of school division payrolls, § 22.1-116 provides that the "treasurer . . . shall be charged with the responsibility for the receipt, custody and disbursement of the funds of the school board" The school board's duty under § 22.1-89 to "manage and control" its funds "must be construed in the context of living within its budgetary limits and its authority to determine how public school monies should be spent within those limits."¹⁰ Therefore, although the school board can decide how to spend the funds, the mechanics of disbursing the funds rest with the treasurer. For example, the treasurer would be responsible for executing the school division's direct deposit ACH payroll file to the bank that facilitates the transmission of the file to the Federal Automated Clearing House. Similarly, the treasurer would be responsible for instituting internal controls to ensure that payrolls are executed in accord with the Code, and ensuring timely and proper communication of payroll needs to avoid any overdraft status.

The final question relates to the requirement that school funds be maintained in a separate account. Section 22.1-116 provides that the treasurer "shall be charged with the responsibility for the receipt, custody and disbursement of the funds of the school board and shall keep such funds in an account or accounts separate and distinct from all other funds." The question is whether this language refers to a separate account in accounting terms, or whether the statute requires a separate bank account for these funds. Section 22.1-116 does not contain language, as many statutes do, requiring that the funds be kept in a separate *bank* account.¹¹ So long as the funds of the school division are separately tracked and maintained in a distinct "funding account," the mandate of a separate account is satisfied. In other words, a "separate account" is not necessarily a "separate *bank* account." Had the General Assembly wished to specify a separate bank account, it could have done so, as it has in a number of other statutes.

This conclusion is consistent with a prior opinion of this Office. A statute required the treasurer to "keep all money collected by him for dog license taxes in a separate account from all other funds collected by him."¹² The opinion addressed whether this statute imposed a requirement of "a separate bank account for this tax money or whether a separate account maintained within the general fund itself" was sufficient.¹³ This Office reasoned that

¹⁰ See 1982-83 Op. Va. Att'y Gen. 638, 639 (concluding that school board members had no personal liability for investments of idle or excess funds under the control of the school boards because the responsibility for investing such funds rested with the treasurer).

¹¹ See VA. CODE ANN. § 6.2-2005 (2010) (setting forth requirements for agencies providing debt management plans and requiring the funds to be deposited "in separate trust accounts with an FDIC-insured depository institution"). See also VA. CODE ANN. § 38.2-4601.1 (2007) (requiring deposit of funds "in a trust account in a financial institution licensed to do business in this Commonwealth. Such trust account shall be separate from all other accounts held by the agent."); VA. CODE ANN. § 54.1-2353(A) (2009) (requiring a common interest community manager to maintain the funds of an association in a separate trust account or "an FDIC-insured financial institution separate from the assets of the common interest community manager."); § 54.1-2822 (2009) (requiring the deposit "in separate, identifiable trust accounts" funds received in preneed funeral contracts"); VA. CODE ANN. § 55-79.74:01 (2007) (requiring certain condominium association funds be "kept in a fiduciary trust account in a federally insured financial institution separate from other assets . . ."); § 55-525.24 (Supp. 2010) (requiring funds deposited with a real estate settlement agent in connection with an escrow, settlement, or closing be "deposited in a separate fiduciary trust account or accounts in a financial institution licensed to do business in the Commonwealth").

¹² See 1977 Op. Va. Att'y Gen. 134, 135 (quoting repealed VA. CODE ANN. § 29-213.31, now codified at VA. CODE ANN. § 3.2-6534 (2008)).

¹³ *Id.*

[t]he language used is “separate account,” not “separate bank account.” Use of the latter terminology would require the establishment of a separate bank account for the deposit of monies collected in payment of dog license taxes. The absence of the word “bank” indicates that the General Assembly intended to require only separate bookkeeping entries be made by the Treasurer, so that the manner in which such funds were used would be traceable in case an audit or similar function had to be performed. The purpose of the separate account requirement is to guarantee that the State can apprise itself whether tax monies collected are used as [the law] specifies. This purpose is met as adequately by an appropriate bookkeeping entry as by establishing a separate bank account.^[14]

I find this reasoning persuasive in the present context.¹⁵ Because the General Assembly did not specify the need for a separate bank account for school division funds, it is sufficient for the treasurer to maintain separate accounts as an accounting matter.

Conclusion

Accordingly, it is my opinion that the authority to establish payroll dates for school division employees rests with the school board, but that the *Code of Virginia* contemplates the establishment of regular payroll periods. It is further my opinion that the mechanics of making the payments to school rests with the treasurer of the locality. Finally, it is my opinion that § 22.1-116 is satisfied if the treasurer maintains separate internal accounts of the funds of the City and of the school division; the treasurer is not required to open a separate bank account for school board funds.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

¹⁴ *Id.*

¹⁵ Furthermore, the General Assembly is presumed to be aware of the Attorney General’s opinions. *Lee Gardens Arlington Ltd. P’ship v. Arlington Cnty. Bd.*, 250 Va. 534, 540, 463 S.E.2d 646, 649 (1995) (citing cases). Its failure to amend § 22.1-116 in the face of an opinion construing highly similar language manifests its acquiescence in the Attorney General’s construction of such statutes. *Id.*