



COMMONWEALTH of VIRGINIA

Office of the Attorney General

July 8, 2011

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Dennis E. Jones, Esquire
County Attorney for Russell County
210 Abingdon Place
Abingdon, Virginia 24211

Dear Mr. Jones:

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 inquire whether the Board of Supervisors has the authority to award Russell County constitutional officers and their employees a 5% salary increase.

Response

It is my opinion that under § 15.2-1605.1, the Board of Supervisors may authorize a 5% salary supplement to constitutional officers and their employees to be paid out of county funds.

Applicable Law and Discussion

The salaries of constitutional officers, including those serving counties that have adopted the board form of government,¹ are set by the Compensation Board, subject to appropriation by the General Assembly.² Once set by the Board, unless overturned, the Board's decision sets the minimum amount such officers can be paid. Local governing bodies may not set a lower compensation level than that set by the State Compensation Board for these officers.³ The General Assembly, however, has provided that:

Notwithstanding any other provision of law, the governing body of *any* county or city, in its discretion, *may supplement the compensation* of the sheriff, treasurer, commissioner of the revenue, director of finance, clerk of the circuit court, or attorney for the Commonwealth, or any of their deputies or employees, above the salary of any such

¹ VA. CODE ANN. § 15.2-404 (2008).

² Sections 15.2-1608.2 (2008) (county treasurers); 15.2-1609.2 (2008) (county sheriffs and deputies); 15.2-1627.1 (2008) (Commonwealth's attorneys and assistant Commonwealth's attorneys); 15.2-1636.2 (2008) (commissioners of the revenue); 15.2-1636.8 (2008) (Compensation Board to set salaries of constitutional officers).

³ 1978-79 Va. Att'y Gen. Op. 56.

officer, deputy or employee, *in such amounts as it may deem expedient*. Such additional compensation shall be wholly payable from the funds of any such county or city.^[4]

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.”⁵ The plain language of § 15.2-016.05.1 makes clear that a county Board of Supervisors may supplement the compensation of a constitutional officer out of the county’s funds.⁶ The Board is free in future years to increase, decrease, or eliminate such a supplement.⁷

Conclusion

Accordingly, it is my opinion that the Russell County Board of Supervisors may authorize a 5% salary supplement to constitutional officers and their employees to be paid out of county funds.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
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⁴ Section 15.2-1605.1 (2008) (emphasis added).

⁵ *Arlington Cnty. v. White*, 259 Va. 708, 712, 528 S.E.2d 706, 708 (2000) (alteration in original) (quoting *City of Va. Beach v. Hay*, 258 Va. 217, 221 (1999)).

⁶ That a county operates under the board form of government is of no consequence. Section 15.2-403(A) grants the board of supervisors of a county with the board form of government “all the rights and powers conferred on boards of supervisors by general law[.]”

⁷ 1986-87 Op. Va. Att’y Gen. 87, 88. *See also* 1974-75 Va. Att’y Gen. Op. 340, 342. The extent to which a locality wishes to maintain parity between the salaries paid to constitutional officers and their staff and county employees is a matter within the discretion of the locality.