



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

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Attorney General

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The Honorable Kenneth W. Stolle  
Sheriff/High Constable for Virginia Beach  
Post Office Box 6098  
Virginia Beach, Virginia 23456-9073

Dear Sheriff Stolle:

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 inquire regarding the permissibility of employing inmate labor in three scenarios. First, you ask whether inmate crews may work on property located outside the jurisdiction of the sheriff. Second, you inquire whether it is permissible to use inmates on private property, leased to a non-profit organization, for the purpose of cultivating a garden where all the vegetables harvested will benefit inmates housed in the Virginia Beach Correctional Center. Finally, you ask whether inmates may maintain trails on private property leased to a non-profit charitable foundation that uses the land to allow disabled children and veterans to hunt for deer and then donates the deer meat to another non-profit for distribution.

## Response

It is my opinion that inmate crews may work on property outside the jurisdiction of the sheriff when authorized by court order or, if the workforce is established by the local governing body, only when the property is owned by a tax-exempt nonprofit organization that is organized and operated exclusively for charitable or social welfare purposes. It is further my opinion that, assuming all other statutory provisions are met, upon a proper court order, inmate crews may cultivate a garden on private property leased to a nonprofit organization so long as the nonprofit organization qualifies as exempt from taxation under 26 U.S.C. § 501(c)(3). Finally, it is my opinion that, assuming all other statutory provisions are met, inmate crews, pursuant to a court order, may maintain trails on private property leased to a nonprofit organization provided the nonprofit organization qualifies as exempt from taxation under 26 U.S.C. § 501(c)(3).

### Applicable Law and Discussion

Pursuant to § 53.1-128 of the *Code of Virginia*,

The local governing body of any county, city or town may establish workforces in the county, city or town under such conditions as it may prescribe. Such workforces are authorized to work on

(i) public property or works owned, leased or operated by the Commonwealth or the county, city or town; . . .

(iii) any property owned by a nonprofit organization that is exempt from taxation under 26 U.S.C. § 501(c)(3) or (c)(4) and that is organized and operated exclusively for charitable or social welfare purposes whether the same is located within such county, city or town, or elsewhere . . .

Section 53.1-129 further authorizes, in relevant part, district and circuit courts to allow prisoners to work on 1) state, county, city or town property; 2) private property that is part of a community improvement project sponsored by a locality; and 3) any private property utilized by a nonprofit organization that is exempt from taxation under 26 U.S.C. § 501(c)(3).

As an initial matter, I note the following legal principles that apply to each of your scenarios. First, absent an ambiguity, statutes are to be interpreted according to their plain meaning;<sup>1</sup> however, they are not to be read in isolation.<sup>2</sup> Rather, statutes concerning the same subject matter are to be construed *in pari materia*.<sup>3</sup> Additionally, the Dillon Rule of strict construction limits the powers of local governing bodies and constitutional officers to those conferred expressly by state statute or by necessary implication from such expressed powers.<sup>4</sup>

Turning specifically to your first question, I note that sheriffs serve the city or county that elected them and their jurisdiction is limited to that particular locality.<sup>5</sup> Your inquiry, as applied to you, therefore asks whether inmate works crews you supervise can perform tasks on municipal property outside the City of Virginia Beach.

A previous Opinion of this Office<sup>6</sup> addresses this question as it relates to court orders entered pursuant to § 53.1-129. It concluded that, because there is no jurisdictional limitation included in the statute, “pursuant to § 53.1-129, prisoner-workers from the [] city jail may work on state, local and city

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<sup>1</sup> Signal Corp., v. Keane Fed. Sys., 265 Va. 38, 46-47, 574 S.E.2d 253, 257 (2003).

<sup>2</sup> 2010 Op. Va. Att’y Gen. 173, 175 n. 6 and citations therein.

<sup>3</sup> See Prillaman v. Commonwealth, 199 Va. 401, 405, 100 S.E.2d 4, 7 (1957).

<sup>4</sup> See, e.g., Advanced Towing Co. v. Fairfax Cnty. Bd. of Sprvrs., 280 Va. 187, 193, 694 S.E.2d 621, 624 (2010).

<sup>5</sup> See VA. CODE ANN. § 15.2-1609 (2008). In certain specified circumstances, the Code extends the jurisdiction of the sheriff beyond the territorial boundaries of his locality. See, e.g., VA. CODE ANN. § 19.2-250 (2008) (providing limited extension of jurisdiction into a neighboring locality in criminal cases involving the Commonwealth); VA. CODE ANN. § 8.01-295 (2007) (authorizing sheriff to serve process in any contiguous jurisdiction).

<sup>6</sup> 2003 Op. Va. Att’y Gen. 143.

property located outside the city.”<sup>7</sup> Because the General Assembly has made no subsequent amendments to this section that are relevant to your inquiry,<sup>8</sup> I affirm the prior Opinion here.<sup>9</sup>

Nevertheless, § 53.1-128, which authorizes local governing bodies to establish workforces to work on “public property or works owned, leased or operated by . . . the county, city or town[.]” is worded differently. Although there similarly is no express limitation restricting the authorized work zones to the jurisdictional limits of the locality, in one instance, the Code provides that the workforce may work on “(iii) any property owned by a nonprofit organization . . . whether the same is located within such county, city or town, or *elsewhere*[.]”<sup>10</sup> This is the only instance in which the General Assembly expressly has authorized inmate work crews on property outside a locality’s jurisdiction.<sup>11</sup> Reading § 53.1-128 to allow localities to authorize workforces on other properties located outside the locality would render this language superfluous.<sup>12</sup> Because the General Assembly clearly knows how to express its intention when it desires to permit workforces beyond the territorial limits of the locality,<sup>13</sup> I conclude that localities may permit inmate work crews to perform tasks on any property outside the jurisdiction only when the property is “owned by a nonprofit organization that is exempt from taxation under [federal law] and that is organized and operated exclusively for charitable or social welfare purposes[.]”<sup>14</sup>

You next ask whether inmates can cultivate a garden on property leased to a nonprofit organization when all the food harvested will be consumed by the inmates. Section 53.1-129 explicitly provides that the judges of circuit and district courts may enter an order allowing inmates to work on “any private property utilized by a nonprofit organization that is exempt from taxation under 26 U.S.C. § 501(c)(3)[.]” Based on the facts provided, I am unable to determine the extent to which the organization uses the property, other than holding the lease and permitting the inmates to cultivate it for

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<sup>7</sup> *Id.* at 144. I further note that the jurisdiction of the Commonwealth’s district and circuit courts is limited to the territory of the city or counties that they serve. See VA. CODE ANN. §§ 16.1-77; 16.1-123.1 (2010) (establishing jurisdiction of district courts) and VA. CODE ANN. §§ 17.1-500; 17.1-515; 17.1-516 (2010) (establishing circuit courts).

<sup>8</sup> “The General Assembly is presumed to have knowledge of the Attorney General’s published interpretations of a statute, and its failure to make corrective amendments evinces legislative acquiescence in the interpretation.” 1999 Op. Va. Att’y Gen. 90, 92 (citing *Lee Gardens v. Arlington Cnty. Bd.*, 250 Va. 534, 540, 463 S.E.2d 646, 649 (1995)).

<sup>9</sup> Nonetheless, while there may be no statutory restriction to entering an order permitting inmates to work on property outside the jurisdiction of the sheriff, I note that there are practical concerns with implementing such an order. As the previous opinion found, sheriffs have no general authority to supervise the prisoners while the work crew is outside their jurisdiction, nor may they enter into an agreement with another jurisdiction to acquire such authority. 2003 Op. Va. Att’y Gen. at 144, 145.

<sup>10</sup> VA. CODE ANN. § 53.1-128 (Supp. 2011) (emphasis added).

<sup>11</sup> It is an accepted principle of statutory construction that the mention of one thing in a statute implies the exclusion of another. *Turner v. Wexler*, 244 Va. 124, 127, 418 S.E.2d 886, 887 (1992). A statute limiting things to be done in a particular manner implies that they shall not be done otherwise. See, e.g., *Jackson v. Fid. & Deposit Co.*, 269 Va. 303, 313, 608 S.E.2d 901, 906 (2005).

<sup>12</sup> See *Cook v. Commonwealth*, 268 Va. 111, 114, 597 S.E.2d 84, 86 (2004) (“Words in a statute should be interpreted, if possible, to avoid rendering words superfluous.”).

<sup>13</sup> See, e.g., 2010 Op. Va. Att’y Gen. 5, 6; 2008 Op. Va. Att’y Gen. 126, 128; 2004 Op. Va. Att’y Gen. 68, 71. See also *Virginia Beach v. ESG Enters.*, 243 Va. 149, 153, 413 S.E.2d 642, 644 (1992) (stating that it is assumed that “the legislature chose, with care, the words it used”) (quoting *Barr v. Town & Country Props., Inc.*, 240 Va. 292, 295; 396 S.E.2d 672, 674 (1990)).

<sup>14</sup> Here, the authority of the sheriff to supervise such crews is implied from the express grant to the locality.

their own usage. As such I am unable to respond definitively to this inquiry.<sup>15</sup> I can conclude, however, that the local governing body does not have the authority to create a workforce to work on such property in this instance. Under § 53.1-128 and in accordance with the Dillon Rule, a locality's authority, as opposed to that of a court, is limited to permitting work crews to work on property *owned* by a qualifying nonprofit organization. Moreover, as stated above, I reiterate that the property must be located within the territorial limits of the locality.

In response to your third question, I conclude that § 53.1-129 authorizes courts to permit inmates to maintain trails on private property leased to a nonprofit that uses the land to allow disabled persons to hunt deer whose meat is then donated to another nonprofit organization. In this scenario, the organization is clearly "utilizing" the property.<sup>16</sup> Thus, the use of inmate labor is permissible here, provided the organization qualifies for the tax exemption under the federal law and any other statutory conditions are satisfied. Maintaining the trails also may fall under § 53.1-129 if they are part of a community improvement project sponsored by the City of Virginia Beach, but I lack sufficient facts to make such a determination. Again, I note that the local governing body has no authority to authorize work crews for this purpose because the land is not owned by the nonprofit.<sup>17</sup>

### Conclusion

Accordingly, it is my opinion that inmate crews may work on property outside the jurisdiction of the sheriff when authorized by court order or, if the workforce is established by the local governing body, only when the property is owned by a tax-exempt nonprofit organization that is organized and operated exclusively for charitable or social welfare purposes. It is further my opinion that, assuming all other statutory provisions are met, upon a proper court order, inmate crews may cultivate a garden on private property leased to a nonprofit organization so long as the nonprofit organization qualifies as exempt from taxation under 26 U.S.C. § 501(c)(3). Finally, it is my opinion that, assuming all other statutory provisions are met, inmate crews, pursuant to a court order, may maintain trails on private property leased to a nonprofit organization provided the nonprofit organization qualifies as exempt from taxation under 26 U.S.C. § 501(c)(3).

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink that reads "Ken C II". The signature is stylized and written in a cursive-like font.

Kenneth T. Cuccinelli, II  
Attorney General

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<sup>15</sup> Nevertheless, I note that sheriffs are responsible for the "feeding and care of all prisoners confined" within their jurisdiction. Section 15.2-1609. Section 53.1-126 further directs sheriffs to "purchase at prices as low as reasonably possible all foodstuffs and other provisions used in the feeding of jail prisoners[.]" Because the sheriff generally has discretion in organizing and managing his operations, the sheriff likely has the authority to use such a garden in fulfilling his duty. *See, e.g.*, 1984-85 Op. Va. Att'y Gen. 284.

<sup>16</sup> "Utilize" is defined as "to make use of: turn to practical use or account[.]" MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1298 (10th ed. 2001).

<sup>17</sup> *See* § 53.1-128.