



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

October 5, 2012

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

The Honorable Emmett W. Hanger, Jr.
Member, Senate of Virginia
Post Office Box 2
Mount Solon, Virginia 22843

The Honorable Richard P. Bell
Member, House of Delegates
Post Office Box 239
Staunton, Virginia 24402

Dear Senator Hanger and Delegate Bell:

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 multiple localities and school boards may create a single voluntary, self-funded trust to insure health benefits for their employees and the families of their employees as an authorized joint exercise of power pursuant to the "Joint Powers Act."¹

Response

It is my opinion that multiple localities and school boards may create a single voluntary, self-funded trust to insure health benefits for their employees and the families of their employees as a joint exercise of power.

Background

You state that Augusta County and the cities of Staunton and Waynesboro, along with their respective public school systems, desire to create a self-funded trust through which they would provide health insurance to their employees. You indicate that this trust would be created by an agreement between the political subdivisions pursuant to the Joint Powers Act.

Applicable Law and Discussion

Virginia follows the Dillon Rule of strict construction regarding the powers of local governing bodies, whereby such powers are limited to those conferred expressly by law or necessarily implied from

¹ VA. CODE ANN. §§ 15.2-1300 through 15.2-1310 (2012).

conferred powers.² The Dillon Rule also applies to schools boards.³ Once a power is conferred, § 15.2-1300(A) provides that

Any power, privilege or authority exercised or capable of exercise by any political subdivision of this Commonwealth may be exercised and enjoyed jointly with any other political subdivision of this Commonwealth having a similar power, privilege or authority except where an express statutory procedure is otherwise provided for the joint exercise.

Accordingly, if localities and school divisions⁴ are afforded the authority to establish separately a self-funded employee health insurance trust, then they may do so jointly, provided no other Code provision governs such joint exercise.

Section 15.2-1517(A) expressly authorizes localities to provide health insurance programs for its officers and employees, while, pursuant to § 22.1-85, “[a]ny school board may establish a fund for the payment of hospital, medical, surgical and related services provided any of its officers, employees and their dependents” The health insurance offered by a locality “may be through a program of self-insurance, purchased insurance, or partial self-insurance and purchased insurance, whichever is determined to be the most cost effective;”⁵ and the fund established by a school board can be created “out of funds appropriated to the school board or by payroll deductions or other mode consistent with state and federal income tax law and regulations.”⁶

“Self-insurance” generally refers to any “plan under which a business sets aside money to cover any loss.”⁷ Thus, the localities’ plan to create a self-funded trust, as your inquiry presents it, comports with the authority granted them under § 15.2-1517. Further, a trust ordinarily is considered a specific type of fund;⁸ thus school divisions are authorized to create a self-funded health insurance fund under § 22.1-85. Accordingly, because each political subdivision is authorized to establish its own separate voluntary self-funded trust to insure health benefits for employees and their families, I conclude that the localities and their respective school divisions may collaborate in their exercise of such power and create such a fund jointly pursuant to the Joint Powers Act.⁹

² See, e.g., *Commonwealth v. Cnty. Bd.*, 217 Va. 558, 573-74, 232 S.E.2d 30, 40 (1977).

³ See *id.* at 574, 232 S.E.2d at 40.

⁴ School divisions are “political subdivisions” for purposes of § 15.2-1300(A). 1985-86 Op. Va. Att’y Gen. 79 (applying predecessor statute to § 15.2-1300 to proposed activity to be exercised by localities in concert with school board) (citing 1976-77 Op. Va. Att’y Gen. 99).

⁵ Section 15.2-1517.

⁶ VA. CODE ANN. § 22.1-85 (2011).

⁷ BLACK’S LAW DICTIONARY 807 (7th ed. 1999).

⁸ See *id.* at 682 (“fund”) and 1520 (“trust fund”). See also VA. CODE ANN. § 6.2-1094 (employing the term “trust fund” throughout the statute).

⁹ The joint exercise of power pursuant to the Joint Powers Act is limited “where an express statutory procedure is otherwise provided for the joint exercise.” Section 15.2-1300(A). There is no statutory procedure provided for the joint exercise of power in creating a self-funded trust to pay for health insurance programs for employees. Although political subdivisions are granted the additional power to contract with one another to form a group self-insurance pool for accident and health coverage, § 15.2-2703(A)(3), the provisions governing such pools establish the pools as separate bodies and do not relate to or specify any process to be used in setting up a self-funded trusts to insure health benefits.

Honorable Emmett W. Hanger
Honorable Richard P. Bell
October 5, 2012
Page 3

Conclusion

Accordingly, it is my opinion that multiple localities and school boards may create a single voluntary, self-funded trust to insure health benefits for their employees and the families of their employees as an authorized joint exercise of power pursuant to the Joint Powers Act.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink that reads "Ken C. II". The signature is stylized, with the first name "Ken" and the last name "C." followed by a Roman numeral "II".

Kenneth T. Cuccinelli, II
Attorney General