



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 Vanessa R. Crawford
Sheriff, City of Petersburg
8 Courthouse Avenue
Post Office Box 2209
Petersburg, Virginia 23803

Dear Sheriff Crawford:

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 present several questions regarding funds generated from inmate telephone accounts in local correctional institutions. You first inquire whether such funds may be considered property of the sheriff's office and therefore must be reallocated back into the sheriff's office budget when those monies are received by the city treasurer and then deposited into the city's general fund. You also ask whether these funds may be maintained by the sheriff's office in a separate fund that is not processed through the treasurer's office. Finally, you ask whether the funds are still considered part of the city's general fund if they are electronically deposited into an investment account at the treasurer's office without first being deposited into the city's general fund.

Response

It is my opinion that Virginia law does not require the funds generated from inmate telephone commissions that are received by the treasurer and deposited into the city's funds to be reallocated back to the sheriff's office to be used within the facility for the benefit of the inmates. Further, it is my opinion that the sheriff's office may not establish and maintain a separate fund for such commissions. Finally, it is my opinion that the account into which the treasurer initially deposits the funds is irrelevant; they remain allocable to city.

Applicable Law and Discussion

Sheriffs and treasurers are constitutional officers whose authority and duties "shall be prescribed by general law or special act."¹ Virginia follows the Dillon rule of strict construction, which dictates that local governing bodies have only those powers that are expressly granted, those that are necessarily or

¹ VA. CONST. art. VII, § 4.

fairly implied from expressly granted powers, and those that are essential and indispensable.² The Dillon rule applies to constitutional officers,³ so that their power and responsibilities also are limited by statute.

With respect to your first question, § 53.1-127.1 authorizes the establishment of stores or commissaries in local correctional facilities. This statute also delineates the manner in which the proceeds from the operation of such stores are to be used. It additionally classifies both these monies and those generated from inmate telephone services as “public funds.” Specifically, § 53.1-127.1 expressly provides:

Each sheriff who operates a correctional facility is authorized to provide for the establishment and operation of a store or commissary to deal in such articles as he deems proper. The net profits from the operation of such store shall be used within the facility for educational, recreational or other purposes for the benefit of the inmates as may be prescribed by the sheriff. The sheriff shall be the purchasing agent in all matters involving the commissary and nonappropriated funds received from inmates. The funds from such operation of a store or commissary and from the inmate telephone services account shall be considered public funds.

In construing a statute, we must “ascertain and give effect to the intention of the legislature [and] that intention must be gathered from the words used.”⁴ Although § 53.1-127.1 refers to telephone service accounts, the sentence that references such accounts concerns only their treatment as public funds. This language does not expressly allocate the funds for correctional facility use. Rather, the portion of the statute dedicating any monies to such use references only “the net profits from the operation of such store[,]” with “such store” referring back to the store or commissary a sheriff may choose to operate. That the store or commissary authorized by § 53.1-127.1 is distinct from telephone services is clear from the General Assembly’s decision to name them separately in the final sentence. I therefore conclude that, because the operable language does not include inmate telephone services accounts, funds derived from such accounts are not imputable to the sheriff.⁵ Thus, absent an agreement between the sheriff’s office and the locality, such monies remain within the purview of the locality, to be appropriated as the locality deems appropriate.

Turning to your second question, § 15.2-1615(A) expressly provides that “[a]ll money received by the sheriff shall be deposited intact and promptly with the county or city treasurer or Director of Finance[.]” This section authorizes a separate account maintained by the sheriff only for

(i) funds collected for or on account of the Commonwealth or any locality or person pursuant to an order of the court and fees as provided by law and (ii) funds held in trust for prisoners held in local correctional facilities, in accordance with procedures established by the Board of Corrections pursuant to § 53.1-68.

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

³ *See, e.g.*, 2009 Op. Va. Att’y Gen. 170, 171.

⁴ *Watkins v. Hall*, 161 Va. 924, 930, 172 S.E. 445, 447 (1934).

⁵ The maxim “*expressio unius est exclusio alterius*” applies here: the mention of one thing in a statute implies the exclusion of another. *See Smith Mountain Lake Yacht Club, Inc. v. Ramaker*, 261 Va. 240, 246, 542 S.E.2d 392, 395 (2001); *Turner v. Wexler*, 244 Va. 124, 127, 418 S.E.2d 886, 887 (1992).

As discussed above, funds generated from the inmate telephone commissions are not reserved for use by the sheriff to benefit inmates. Moreover, the funds otherwise do not fall within these exceptions. Thus, the sheriff may not establish or maintain a separate account for the funds generated from the inmate telephone commissions; rather, pursuant to § 15.2-1615(A), the sheriff must promptly deposit the funds with the city treasurer.⁶

Moreover, and in response to your third question, § 58.1-3127(A) directs the treasurer to collect the “amounts payable into the treasury of the political subdivision of the Commonwealth served by the treasurer.” Upon receipt, the “treasurer shall account for and pay over the revenue received in the manner provided by law.”⁷ In general, provided public funds are properly accounted for and distributed, the manner in which they are deposited is irrelevant.⁸ Thus, funds properly attributed to the sheriff’s office, regardless of whether they are initially deposited in the city’s general fund account or a separate investment account, electronically or otherwise, remain within the purview of the sheriff’s office. Nonetheless, as discussed above, the inmate telephone commissions are monies appropriately payable to the locality, not the sheriff’s office. I therefore conclude that such funds must be submitted to the treasurer for depositing.

Conclusion

Accordingly, it is my opinion that Virginia law does not require the funds generated from inmate telephone commissions that are received by the treasurer and deposited into the city’s funds to be reallocated back to the sheriff’s office to be used within the facility for the benefit of the inmates. Further, it is my opinion that the sheriff’s office may not establish and maintain a separate fund for such commissions. Finally, it is my opinion that the account into which the treasurer initially deposits the funds is irrelevant; they remain allocable to city.

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

⁶ Cf. 2008 Op. Va. Att’y Gen. 84, 85-86 (concluding that sheriff may not establish and maintain a separate account for asset forfeiture funds because such monies do not fall under § 15.2-1615(A) and therefore must be deposited with the treasurer).

⁷ Section 58.1-3127(A).

⁸ Cf. § 15.2-2501 (“Every locality and school division shall establish such funds as may be required by law and as may otherwise be deemed necessary to provide appropriate accounting and budgetary control over the activities and affairs of the locality or school division. This section shall not be construed to require separate depository or investment accounts for the assets of each fund.”) and 2011 Op. Va. Att’y Gen. 120, 122 (concluding that, for purposes of managing school division funds, maintaining “separate” accounts does not require treasurer to set up separate bank accounts).