



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

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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 Michael F.A. Morehart
State Inspector General
1111 East Broad Street
Richmond, Virginia 23219

Dear Inspector General Morehart:

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 ask whether the Office of the State Inspector General (“OSIG”) must assume all related powers, duties, and resources from certain predecessor entities and whether OSIG has jurisdiction beyond agencies within the executive branch of state government.

Response

It is my opinion that OSIG is not required to assume all duties, powers, and resources from the predecessor entities. It is further my opinion that the jurisdiction of OSIG is limited to executive branch agencies; non-governmental entities that are wholly or principally supported by state funds not otherwise excepted by the definition of “nonstate agency;” and public institutions of higher education to the extent that there are allegations of fraud, waste, abuse, or corruption concerning either the president of the institution or such institution’s internal audit department.

Applicable Law and Discussion

The statutory provisions establishing and governing OSIG grant it broad authority to investigate many state agencies.¹ Sections 2.2-309.1 through 2.2-309.4 provide that OSIG will take over certain audit functions of a smaller subset of state agencies that have traditionally had their own inspector general.² Specifically, you inquire whether these provisions require OSIG to assume *all* of the related powers, duties, and resources from the inspector general offices of these agencies.

The OSIG was established during the 2011 General Assembly Session.³ In 2013 changes were made to that enabling legislation to reorganize the OSIG and to clarify that OSIG investigators had law

¹ See VA. CODE ANN. §§ 2.2-307 through 2.2-313 (2011 & Supp. 2013).

² Sections 2.2-309.1 through 2.2-309.4 (Supp. 2013) (§ 2.2-309.1 refers to Behavioral Health and Developmental Health Services, § 2.2-309.2 refers to the Tobacco Indemnification and Community Revitalization Commission, § 2.2-309.3 refers to Adult Corrections and § 2.2-309.4 refers to Juvenile Justice).

³ 2011 Va. Acts ch. 798 at 1366; 2011 Va. Acts ch. 871 at 1595.

enforcement powers.⁴ It is important to look at the language of the 2011 legislation and 2013 legislation together and interpret them as if originally enacted together.⁵

We begin by looking at the fifth enactment clause of the 2011 legislation, which requires the Governor and other stakeholders to develop a plan to transfer the internal audit programs from affected agencies:

[t]he Governor, on or before December 31, 2011, shall, in consultation with impacted stakeholders, complete a plan for the coordination and oversight of the internal audit programs to the Office of the State Inspector General. This plan shall consider where transfer of the internal audit program to the Office is necessary *or when a dual reporting structure is most practicable*.^[6]

The option of either transferring the internal audit program or maintaining a dual reporting structure implicitly allows for certain functions to remain with pre-existing internal audit programs residing at the specified state agencies, provided that OSIG retains some authority over such programs.

Moreover, the third enactment clause provides for the transfer of the properties and rights from the consolidated inspector general offices to OSIG:

[t]he Office of the State Inspector General created by this act shall be deemed the successor in interest to the (i) Office of the Inspector General for Behavioral Health and Developmental Services, (ii) Inspector General for the Department of Corrections, (iii) Inspector General of the Department of Juvenile Justice, (iv) Inspector General of the Department of Transportation, and (v) Department of the State Internal Auditor, *to the extent that this act transfers powers and duties*. All rights, title, and interest in and to any real or tangible personal property vested in the Inspector General for Behavioral Health and Developmental Services, the Inspector General for the Department of Corrections, the Inspector General of the Department of Juvenile Justice, the Inspector General of the Department of Transportation, and the Department of the State Internal Auditor *to the extent that this act transfers powers and duties* as of July 1, 2012, shall be transferred to and taken as standing in the name of the Office of the State Inspector General created by this act.^[7]

By including the phrase “to the extent that this act transfers powers and duties,” the General Assembly indicated that it did not intend for OSIG necessarily to assume the entirety of the consolidated inspector general offices located within other agencies.⁸

There is nothing in the 2013 legislation to suggest that the General Assembly expressed some other intent than that set forth in these enactment clauses.⁹ I therefore conclude that OSIG is not required to assume all duties, powers, and resources from the predecessor entities.¹⁰

⁴ <http://leg1.state.va.us/cgi-bin/legp504.exe?131+oth+HB2114FER122+PDF>.

⁵ *In re Allied Towing Corp.*, 478 F. Supp. 398, 402 (E.D.Va. 1979).

⁶ 2011 Va. Acts ch. 798 at 1366; 2011 Va. Acts ch. 871 at 1595 (emphasis added).

⁷ *Id.* (emphasis added).

⁸ See *Woolfolk v. Commonwealth*, 18 Va. App. 840, 847, 447 S.E. 2d 530, 534 (1994) (“Generally, the words and phrases used in a statute should be given their ordinary and usually accepted meaning unless a different intention is fairly manifest.”) The legislation creating the OSIG makes several references that indicate “dual reporting” in a permissible outcome. I cannot conclude that a different intention is “fairly manifest.”

Your next question refers to the scope of OSIG's jurisdiction over "nonstate" agencies and other agencies outside of the executive branch of government. Section 2.2-307 of the *Code of Virginia* defines "state agency" as "any agency, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch listed in the appropriation act." A "nonstate agency" is defined as

[a]ny public or private foundation, authority, institute, museum, corporation, or similar organization that is (i) not a unit of state government or a political subdivision of the Commonwealth as established by general law or special act and (ii) wholly or principally supported by state funds. "Nonstate agency" shall not include any such entity that receives state funds (a) as a subgrantee of a state agency, (b) through a state grant-in-aid program authorized by law, (c) as a result of an award of a competitive grant or a public contract for the procurement of goods, services, or construction, or (d) pursuant to a lease of real property as described in subdivision 5 of § 2.2-1149.^[11]

Section 2.2-309 sets forth the powers and duties of the State Inspector General and includes the following:

- A. The State Inspector General shall have power and duty to . . .
 - 4. Investigate the management and operations of state agencies and nonstate agencies to determine whether acts of fraud, waste, abuse, or corruption have been committed . . . ;
 - 9. Conduct performance reviews of state agencies . . . ;
 - 10. Coordinate and require standards for those internal audit programs in existence as of July 1, 2012, and for other internal audit programs in state agencies and nonstate agencies . . . ;
 - 12. Assist agency internal auditing programs . . . ;
- B. If the State Inspector General receives a complaint from whatever source that alleges fraud, waste, abuse, or corruption by a public institution of higher education . . . [and] the complaint concerns the president of the institution or its internal audit department . . . the investigation shall be conducted by the State Inspector General^[12]

These provisions grant OSIG largely identical jurisdiction over state and nonstate agencies.¹³ OSIG's powers and duties appear limited to (1) state government executive branch agencies; (2) non-governmental entities that are wholly or principally supported by state funds not otherwise excepted by

⁹ See 2004 Op. Va. Att'y Gen. 125, 127 (noting that it is presumed that the legislature has knowledge of the existing law when making amendments). The 2013 legislation was more specific in its expectations of oversight by the OSIG for Behavioral Health and Development Services, the Department of Corrections and the Department of Juvenile Justice than as set forth in the 2011 legislation. See §§ 2.2-309.1 through 2.2-309.4.

¹⁰ I do note, however, that the fiscal year 2014 appropriation for the OSIG is \$6,176,536 and that would seem to indicate that the General Assembly intended a significant number of responsibilities being transferred to OSIG. See <http://lis.virginia.gov/cgi-bin/legp604.exe?131+bud+21-A147>. In 2011, the estimated budget for the inspector general offices of Behavioral Health and Developmental Services, Juvenile Justice, Corrections and Transportation was \$9,316,953. See <http://leg1.state.va.us/cgi-bin/legp504.exe?111+oth+HB2076FER122+PDF>.

¹¹ Section 2.2-307 (2011).

¹² Section 2.2-309 (Supp. 2013). See the 2013 Appropriations Act, available at <http://lis.virginia.gov/cgi-bin/legp604.exe?131+bud+21-64.05>.

¹³ I note that OSIG is not authorized to conduct performance reviews of nonstate agencies. *Id.*

the definition of nonstate agency; and (3) allegations of fraud, waste, abuse, or corruption where the complaint concerns the president of a public institution of higher education or its internal audit department. Notably, the jurisdiction of OSIG does not extend to those units of state government outside of the executive branch that, as defined, are neither state nor nonstate agencies.

Conclusion

Accordingly, it is my opinion that OSIG is not required to assume all duties, powers, and resources from the predecessor entities. It is further my opinion that the jurisdiction of OSIG is limited to executive branch agencies; non-governmental entities that are wholly or principally supported by state funds not otherwise excepted by the definition of "nonstate agency;" and public institutions of higher education to the extent that there are allegations of fraud, waste, abuse, or corruption concerning either the president of the institution or such institution's internal audit department.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken C II". The signature is stylized with a large "K" and "C", and the Roman numeral "II" is written below the "C".

Kenneth T. Cuccinelli, II
Attorney General