



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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August 20, 2013

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The Honorable Terry G. Kilgore
Member, House of Delegates
Post Office Box 669
Gate City, Virginia 24251

Dear Delegate Kilgore:

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 as to whether a governing body can mandate access to an automated case management system¹ for people who are not approved by the clerk and who are not employed by the clerk.

Response

It is my opinion that a local governing body may not mandate that individuals not employed by the clerk be granted access to a case management system without the clerk's authorization.

Applicable Law and Discussion

Referencing a prior opinion of this Office,² you inquire whether a governing body may, without the consent of the clerk, grant access by persons not employed by the clerk to the clerk's automated case management system and other integral parts of the system such as the Commonwealth online court order system. The prior opinion, which specifically addressed whether circuit court judges could order the clerk to grant access to the case management system by individuals not employed by the clerk, concluded that "automated case management systems maintained by the clerk of a circuit court, whether the storage media is on or off premises, are records of the clerk's office under the custody of such clerk. Access to such a case management system lies within the sound discretion of the clerk."³

¹ For the purposes of your inquiry, you state that the "clerk's automated case management system" is a system created by the clerk with funds appropriated to the clerk and that the system is stored on the servers of the private vendor with whom the clerk has contracted.

² 2002 Op. Va. Att'y Gen. 62.

³ *Id.* at 64.

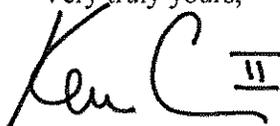
In the years since that opinion, there have been statutory changes that have expanded who may authorize access to automated case management systems.⁴ Nothing in those changes, however, would authorize a local governing body to grant access to the automated case management system over the clerk's objection. Accordingly, consistent with the prior opinion, I conclude that a local governing body cannot grant access to persons not employed by the clerk to the clerk's automated case management system without the consent of the clerk.⁵

Conclusion

Accordingly, it is my opinion that a local governing body may not mandate that individuals not employed by the clerk be granted access to a case management system without the clerk's authorization.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken C II". The signature is written in a cursive style with a horizontal line under the "II".

Kenneth T. Cuccinelli, II
Attorney General

⁴ In 2007, the General Assembly enacted 2007 Va. Acts chs. 548 and 626, which were codified at VA. CODE ANN. § 17.1-293 (Supp. 2013), and then amended that enactment in 2013. Section 17.1-293(F) provides that “[n]othing in this section shall prohibit the Supreme Court or any other court clerk from providing online access to a case management system that may include abstracts of case filings and proceedings in the courts of the Commonwealth.”

⁵ Section 17.1-293(H) (“Nothing in this section shall be construed to permit any data accessed by secure remote access to be sold or posted on any other website or in any way redistributed to any third party, and the clerk, in his discretion, may deny secure remote access to ensure compliance with these provisions. However, the data accessed by secure remote access may be included in products or services provided to a third party of the subscriber provided that (i) such data is not made available to the general public and (ii) the subscriber maintains administrative, technical, and security safeguards to protect the confidentiality, integrity, and limited availability of the data.”).