



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable Paul W. Higgs
Sheriff, City of Fredericksburg
Post Office Box 448
Fredericksburg, Virginia 22404

Dear Sheriff Higgs:

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 a sheriff's legal authority for making decisions related to courthouse security. Specifically, you inquire whether the sheriff is empowered to make final determinations regarding the location of cameras in the courthouse, including areas within clerks' offices, and the type of door locks to be used in the courthouse. You also ask whether a sheriff is permitted to enter all areas of the courthouse, including both locked and unlocked areas.

Response

It is my opinion that, while judges and sheriffs should work together to resolve any issues or concerns about courthouse security, judges retain rule-making authority over courthouse security, and the sheriff is responsible for enforcing the rules and responding to any security threats or disturbances.

Applicable Law and Discussion

Sheriffs have a statutory duty to maintain security within courthouses: § 53.1-120(A) specifically directs that "[e]ach sheriff shall ensure that the courthouses and courtrooms within his jurisdiction are secure from violence and disruption and shall designate deputies for this purpose" Thus, sheriffs have the responsibility to provide courthouse security.¹

This authority, however, is not exclusive and is shared by judges. For instance, § 53.1-120(B) provides further that

¹ For related discussions regarding a sheriff's role in ensuring court security, see 2004 Op. Va. Att'y Gen. 170, 171; 2002 Op. Va. Att'y Gen. 242, 243; 1998 Op. Va. Att'y Gen. 33, 34-35; 1987-88 Op. Va. Att'y Gen. 259, 259-60; 1987-88 Op. Va. Att'y Gen. 467, 468-69; and 2013 Op. Va. Att'y Gen. No. 12-065, available at <http://www.ag.virginia.gov/Opinions%20and%20Legal%20Resources/Opinions/2013opns/12-065%20Watson.pdf>; 2004 Op. Va. Att'y Gen. 170, 171; 2002 Op. Va. Att'y Gen. 242, 243; 1998 Op. Va. Att'y Gen. 33, 34-35; 1987-88 Op. Va. Att'y Gen. 259, 259-60; 1987-88 Op. Va. Att'y Gen. 467, 468-69.

The chief circuit court judge, the chief general district court judge and the chief juvenile and domestic relations district court judge shall be responsible by agreement with the sheriff of the jurisdiction for the designation of courtroom security deputies for their respective courts. If the respective chief judges and sheriff are unable to agree on the number, type and working schedules of the courtroom security deputies for the court, the matter shall be referred to the Compensation Board for resolution

Moreover, § 8.01-4 more generally provides that “[t]he district courts and circuit courts may, from time to time, prescribe rules for their respective districts and circuits. Such rules shall be limited to those rules necessary to promote proper order and decorum and the efficient and safe use of courthouse facilities and clerks’ offices.” Section 17.1-501(B) further explains that “[t]he chief judge of the circuit shall ensure that the system of justice in his circuit operates smoothly and efficiently.”

Based on these statutes and on courts’ inherent powers, Virginia courts have found that “[t]he trial judge has overall supervision of courtroom security.”² As a prior Opinion of this Office explains, judges “possess supervisory rule-making authority over courthouse security,” while the sheriff enforces those rules and works together with the court to “establish and maintain courthouse security.”³ If a court issues an order concerning a security issue, a sheriff who disobeys or disregards that order is subject to being held in contempt.⁴ Accordingly, with respect to your first two inquiries, I conclude that the authority to make rules regarding courthouse security questions, including location of cameras and types of locks, lies with the judges and not with the sheriff.

Regarding your third question, a previous Opinion of this Office concluded, based on judges’ inherent powers, that judges are authorized to determine who is admitted to the courthouse and to what areas within the courthouse.⁵

Conclusion

Accordingly, it is my opinion that judges and sheriffs share responsibility for courthouse security, but judges have the authority to determine the rules of the courthouse with regards to security while sheriffs possess the legal authority to enforce the rules and to respond to security threats or disturbances.

² *Payne v. Commonwealth*, 233 Va. 460, 466, 357 S.E.2d 500, 504 (1987). *See also* *Bd. of Spvrs. v. Bacon*, 215 Va. 722, 724, 214 S.E.2d 137, 138 (1975) (court has control over portion of building that comprises the courthouse); *Porter v. Commonwealth*, 276 Va. 203, 260-61, 661 S.E.2d 415, 445 (2008) (contrary to circuit court’s first belief, it has authority to direct sheriff’s deputies’ conduct within courtroom); *Epps v. Commonwealth*, 47 Va. App. 687, 701, 626 S.E.2d 912, 918 (2006) (“Courts have the inherent authority to ensure the security of their courtrooms.”), *aff’d* 273 Va. 410, 641 S.E.2d 77 (2007); *Bond v. Commonwealth*, 32 Va. App. 610, 615, 529 S.E.2d 827, 829 (2000) (trial court properly excluded defendant’s twin brother from courtroom, “exercising its responsibility for courtroom security”).

³ 2013 Op. Va. Att’y Gen. No. 12-065.

⁴ *Epps v. Commonwealth*, 47 Va. App. at 717-20, 626 S.E.2d at 926-27 (although the trial court’s finding of contempt was reversed on evidentiary grounds, the sheriff who disregarded court order regarding courthouse security was subject to contempt proceeding).

⁵ 2013 Op. Va. Att’y Gen. No. 12-065. Nevertheless, that opinion also concluded generally that, “both Virginia law and the practicalities of emergent situations require that . . . judges and the sheriff work collaboratively to establish and maintain courthouse security.”

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It is crucial that sheriffs and judges work together to protect the security of the courthouse. Hence, input and agreement among sheriffs and judges is in the public's best interest and should be pursued, if at all possible, on a collaborative basis.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink that reads "Ken C II". The signature is stylized, with a large, sweeping "K" and "C", and the Roman numeral "II" is written to the right of the "C".

Kenneth T. Cuccinelli, II
Attorney General