



# COMMONWEALTH of VIRGINIA

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March 14, 2014

The Honorable Jeffrey W. Haislip  
Commonwealth's Attorney  
County of Fluvanna  
Post Office Box 116  
Palmyra, Virginia 22963

Dear Mr. Haislip:

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 members of a county board of supervisors are subject to the provisions of §§ 15.2-1239 and 15.2-1240 of the *Code of Virginia*, which pertain to improper conduct in county procurement procedures.<sup>1</sup>

## Response

It is my opinion that, because a county board of supervisors constitutes neither a "department" nor an "agency" within the scope of the relevant statutory provisions, its members are not subject to the provisions of §§ 15.2-1239 and 15.2-1240.

## Applicable Law and Discussion

Section 15.2-1240 provides that a "violation of . . . § 15.2-1239 shall be a misdemeanor and shall be punishable as provided by § 18.2-12."<sup>2</sup> Section 15.2-1239 provides that

If any *department* or *agency* of the county government purchases or contracts for any supplies or contractual services contrary to the provisions of this article or the rules and

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<sup>1</sup> Your inquiry arises from a specific factual scenario involving certain particular allegedly improper procurement activities of the board of supervisors of a county that employs a "county purchasing agent." See VA. CODE ANN. §§ 15.2-1233 (2012) and 15.2-1543 (2012). This opinion is limited to the purely legal question presented, and the correct construction of the statutes about which you inquire. I make no comment regarding the propriety or wisdom of any action taken by a board member, individually or in conjunction with other board members.

<sup>2</sup> Because this section does not specify the class of misdemeanor, the offense is a Class 1 misdemeanor. See VA. CODE ANN. § 18.2-12 (2009).

regulations made thereunder, such order or contract shall be void and the head of such department or agency shall be personally liable for the costs of such order or contract.<sup>[3]</sup>

Statutes are to be interpreted according to their plain language.<sup>4</sup> The plain meaning of words in a statute is “binding,” when the language of the statute “is clear and unambiguous.”<sup>5</sup> Moreover, a criminal statute is construed “strictly against the Commonwealth” in order to “confine the statute to those offenses clearly proscribed by its plain terms.”<sup>6</sup> “Any ambiguity or doubt as to [a criminal statute’s] meaning must be resolved in [the defendant’s] favor.”<sup>7</sup>

By its plain language, § 15.2-1239 applies only to a “department” or “agency” of the county government. Accordingly, the answer to your inquiry turns on whether the county board is a “department” or “agency” of the county government. The *Code of Virginia* does not define “department” or “agency” for purposes of these sections; I therefore look to other provisions<sup>8</sup> and principles of statutory construction for guidance.

Under Virginia law, a county board of supervisors is the “governing body” of a county.<sup>9</sup> The “powers and duties of a county as a body politic and corporate [are] vested in [the] board of county supervisors.”<sup>10</sup> The board is empowered to “provide for all the governmental functions of the [county], including, without limitation, the organization of all *departments*, offices, boards, commissions and *agencies* of government, and the organizational structure thereof, which are necessary and the employment of the officers and other employees needed to carry out the functions of government.”<sup>11</sup> I find no provision stating, or otherwise supporting a conclusion, that the board of supervisors itself is either a “department” or “agency” of the county. The legislature is presumed to have chosen its words with care;<sup>12</sup> therefore, the governing body is an entity qualitatively distinct from a department or agency of the county government. Additionally, because the General Assembly did not insert “governing body” or “board of supervisors” into § 15.2-1239, the maxim *expressio unius est alterius* is applicable, and I conclude that the General Assembly did not intend to include the board of supervisors within the scope of the statute.<sup>13</sup>

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<sup>3</sup> Emphasis added. I note that the provisions of §§ 15.2-1239 and 15.2-1240 do not apply until there is a “county purchasing agent,” or someone designated to perform the duties of that office. See § 15.2-1233.

<sup>4</sup> *Signal Corp. v. Keane Fed. Sys.*, 265 Va. 38, 47-47, 574, S.E.2d 253, 257 (2003).

<sup>5</sup> See *Falls Church v. Protestant Episcopal Church in the United States*, 285 Va. 651, 665, 740 S.E.2d 530, 538 (2013).

<sup>6</sup> See *Thompson v. Commonwealth*, 277 Va. 280, 291, 673 S.E.2d 473, 474 (2009) (citations omitted).

<sup>7</sup> See *Morris v. Commonwealth*, 269 Va. 127, 130-31, 607 S.E.2d 110, 112 (2005).

<sup>8</sup> Because the *Code of Virginia* constitutes a single body of law, the practice of referring to other Code sections as interpretive guides is well established. See *First Nat’l Bank of Richmond v. Holland*, 99 Va. 495, 504-05, 39 S.E. 126, 129-30 (1901).

<sup>9</sup> Section § 15.2-102 (2012).

<sup>10</sup> Section 15.2-402 (2012).

<sup>11</sup> Section 15.2-1500(A) (2012) (emphasis added).

<sup>12</sup> See *Barr v. Town & Country Props., Inc.*, 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990).

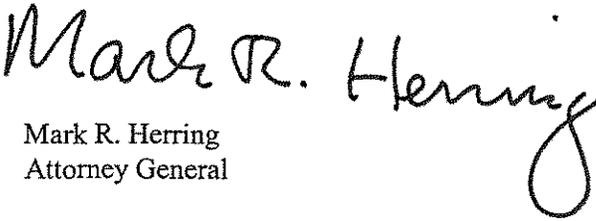
<sup>13</sup> The maxim “*expressio unius est exclusio alterius*” provides that the mention of specific items in a statute implies that the General Assembly did not intend to include omitted items within the scope of that statute. See *Virginian-Pilot v. Dow Jones & Co.*, 280 Va. 464, 468-69, 698 S.E.2d 900, 902 (2010). Rather, the intent of §§ 15.2-1233 through 15.2-1240 is to ensure that department and agency heads who are the mid-level managers of a county follow policies and procedures established by the board of supervisors and the county purchasing agent. See

**Conclusion**

Accordingly, it is my opinion that, because a county board of supervisors constitutes neither a "department" nor an "agency" within the scope of the relevant statutory provisions, its members are not subject to the provisions of §§ 15.2-1239 and 15.2-1240.

With kindest regards, I am,

Very truly yours,

A handwritten signature in black ink that reads "Mark R. Herring". The signature is written in a cursive style with a large, looping "H" and "R".

Mark R. Herring  
Attorney General