



COMMONWEALTH of VIRGINIA

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The Honorable Ken Stolle
Sheriff, City of Virginia Beach
Post Office Box 6098
Virginia Beach, Virginia 23456-9073

Dear Sheriff Stolle:

I am responding to your request for an official advisory Opinion in accordance with § 2.2-205 of the *Code of Virginia*.

Issues Presented

You ask whether a sheriff is limited in the types of prisoner information he may release to a private attorney hired to collect costs associated with a prisoner's keep (commonly known as "jail keep fees" or "daily jail keep fees").

You also ask whether such a private attorney may carry out the particular collection procedures described in § 53.1-127.4 (seeking judgment for unpaid jail keep fees) and § 46.2-320.2 (communications with Department of Motor Vehicles ("DMV") concerning license suspension for unpaid jail keep fees).

Applicable Law and Discussion

The *Code of Virginia* provides that a sheriff may charge prisoners daily jail keep fees, so long as the amount is reasonable and does not exceed \$3 per day.¹ If a prisoner is unable to pay the fees upon release, the sheriff must provide him with a deferred or installment payment agreement to allow him more time to pay.² Should payment not be made under the terms of the agreement, § 53.1-127.5 authorizes the sheriff to pursue collection through an attorney or other collection agent.³

You first ask whether a sheriff is limited in the types of prisoner information he may release to a collection attorney under § 53.1-127.5.⁴ A prisoner's file may contain various types of personal

¹ *Id.*

² See VA. CODE ANN. § 53.1-127.3 (2013). I note that any deferred or installment payment agreement entered into between a sheriff and a prisoner is subject to the approval of the general district court. *Id.*

³ See § 53.1-127.5 (2013). The sheriff also may opt to enter into a collection agreement with the local governing body or the county or city treasurer. *See id.*

⁴ Under the Dillon Rule, a sheriff may exercise only those powers that are "expressly granted, those that are necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable." 2012 Op. Va. Att'y Gen. 110, 111.

information, and the contents of the file are deemed confidential unless otherwise provided by law.⁵ Section 53.1-127.5 does not specify what types of personal information may be released for collection purposes, except that a sheriff “shall” release a prisoner’s social security number as part of any collections contract.⁶ This statutory provision clarifies that a prisoner’s social security number, which is protected information, must be released to facilitate the collection process.⁷ However, by authorizing the sheriff to enter into a collections contract, the statute also necessarily implies that he may release other types of information.⁸ To date, the Board of Corrections has issued no guidelines regarding what additional types of information a sheriff may release to a collection attorney.⁹

Given this context, it is my opinion that a sheriff has discretion to determine what types of information he will release to a collection attorney, but he must - in all cases - be guided by the following considerations.¹⁰ First, a sheriff may not release information if the release is prohibited by state or federal law. For example, the release of medical records, criminal history record information, victim/witness information under § 19.2-11.2, or confidential tax documents is generally prohibited under state law.¹¹ Second, a sheriff must ensure that any information released is reasonably related to the collection effort. Determining what is reasonably related to collection under § 53.1-127.5 is a fact-specific inquiry within the sound discretion of the sheriff.

You next ask whether an attorney may execute the collection procedures described in § 53.1-127.4 and § 46.2-320.2. Section 53.1-127.4 explicitly authorizes a sheriff to seek judgment

⁵ See 6 VA. ADMIN. CODE § 15-40-90 (stating that inmate records shall be “kept confidential” and shall contain, but not be limited to, an inmate data form, a commitment form or court order, classification records, disciplinary records, work records, program involvement records, inmate expenditure reports, and victim notification records).

⁶ Section 53.1-127.5 (stating that, as part of a collections contract, a private attorney or collection agency “shall be given access to the social security number of the person who owes the fees in order to assist in the collection effort”).

⁷ See also generally Protection of Social Security Numbers Act, VA. CODE ANN. §§ 2.2-3815 through 2.2-3816 (2014) (establishing that the first five digits of an individual’s social security number contained in a public record shall be kept confidential and exempt from disclosure under the Freedom of Information Act, but providing an exception for a release that is necessary “to perform a service or function of the agency”).

⁸ See *Commonwealth v. Cnty. Bd.*, 217 Va. 558, 577 (1977) (“To imply a particular power from a power expressly granted, it must be found that the legislature intended that the grant of the express also would confer the implied.”). For example, collection efforts reasonably require a debtor’s address, and thus the ability of a sheriff to give a collection attorney the current address of a former prisoner may be reasonably implied from the statutory power to enter into a contract with a collection attorney, even though the statute does not explicitly authorize releasing addresses.

⁹ See § 53.1-127.5 (authorizing the Board of Corrections to promulgate “terms and conditions” governing contracts for the collection of unpaid keep fees).

¹⁰ “[A]lthough a sheriff’s powers and duties are limited to those prescribed by statute, he is free to discharge those powers and duties in a manner he deems appropriate.” 2002 Op. Va. Att’y Gen. 264, 265. Nevertheless, a sheriff’s exercise of powers and duties must be carried out in a reasonable manner. See 1987-88 Op. Va. Att’y Gen. 469, 472 (citing the “reasonable selection of method” rule discussed in *Commonwealth v. Cnty. Bd.*, 217 Va. 558, 575 (1977)).

¹¹ See VA. CODE ANN. § 19.2-11.2 (Supp. 2014) (certain victim/witness information); § 19.2-389 (Supp. 2014) (criminal history record information); § 53.1-133.03 (2013) (inmate medical records); VA. CODE ANN. § 58.1-3 (Supp. 2014) (confidential tax documents); 6 VA. ADMIN. CODE § 15-40-90 (inmate records generally); 6 VA. ADMIN. CODE § 15-40-410 (inmate medical records).

against an individual for unpaid jail keep fees, as well as a court order suspending his driver's license for nonpayment. To effectuate court orders of suspension, a sheriff must enter into an agreement with the DMV Commissioner to transmit license suspension orders to DMV via electronic communication. In the event a former prisoner pays the delinquency in full, or enters into a satisfactory payment agreement, § 46.2-320.2 requires the sheriff to send subsequent electronic notification to DMV to release the suspension.¹²

Under Virginia law, it is clear that a private attorney who is under contract to collect may appear in court on behalf of a sheriff to seek judgment against a former prisoner for nonpayment, as well as a court order to suspend his license.¹³ However, a private attorney may not send electronic notices of license suspension, or releases of suspension, to DMV. The plain language of both § 53.1-127.4 and § 46.2-320.2 indicates that only a sheriff or jail superintendent may perform these functions.¹⁴ Had the General Assembly intended to permit private attorneys to do so, it could have so provided by statute. It did not do so. Accordingly, while a private attorney may obtain a judgment and a court order suspending the license of a former prisoner for nonpayment of inmate keep fees, he may not transmit the electronic communications to DMV that are described in § 46.2-320.2.

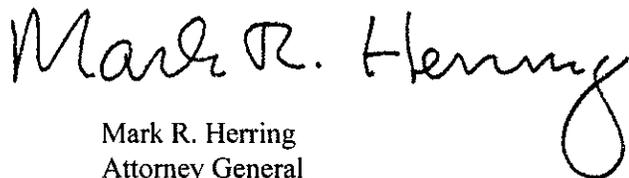
Conclusion

Accordingly, it is my opinion that a sheriff has discretion to determine what types of prisoner information he will release to a collection attorney under § 53.1-127.5, but in all cases the release must not be otherwise prohibited by state or federal law and must be reasonably related to the collection effort.

It is further my opinion that a collection attorney may appear in court on behalf of a sheriff to seek judgment against a former prisoner for nonpayment of jail keep fees, in addition to a court order suspending the former prisoner's license. However, only a sheriff is authorized to transmit electronic communications to the DMV to effectuate license suspension or to release an existing suspension.

With kindest regards, I am

Very truly yours,



Mark R. Herring
Attorney General

¹² This release must be sent the same work day the individual pays in full or enters into a payment agreement. VA. CODE ANN. § 46.2-320.2 (2014).

¹³ An attorney may represent clients in matters before courts in which he is qualified to practice, including collection proceedings. See VA. CODE ANN. § 54.1-3903 (2013); VA. SUP. CT. R., Part 6, § 1 ("Practice of Law in the Commonwealth of Virginia").

¹⁴ Cf. GEICO v. Hall, 260 Va. 349, 355 (2000) (quoting Turner v. Wexler, 244 Va. 124, 127 (1992)) (citing the maxim of statutory construction known as *expressio unius est exclusio alterius*, whereby "mention of a specific item in a statute implies that omitted items were not intended to be included within the scope of the statute").