Bill of Particulars

THE REPORTER OF THE LOCAL GOVERNMENT ATTORNEYS OF VIRGINIA, INC.

National Legal Research Group, Inc. David Wagoner, J.D., Editor

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2024 LGA REGIONAL SEMINAR RECAP

Staunton, Virginia was the backdrop for this summer's hybrid format Regional Seminar hosted at the Blackburn Inn and Conference Center on June 28. In-person and remote attendees earned up to 6.0 hours of Mandatory Continuing Legal Education credits, including 2.0 Ethics credits. MCLE forms were emailed and are also available online. If you have any questions, please contact staff.

Thank you to all of our registrants, and to the Outreach Committee for organizing another successful event.

And, thank you to our speakers and moderators: John C. Blair, II, Michelle W. Clayton, Sheree A. Konstantinou, Brandi A. Law, Tara A. McGee, Wendy L. Meyer, Blaire H. O'Brien, Thomas E. Spahn, Dennis A. Walter, and W. Clarke Whitfield, Jr.

Finally, last but not least, a special thank you to our sponsors:

MEMBERSHIP MISCELLANY
Profile update, new benefit, and upcoming renewal

We are excited to head into the LGA's annual membership renewal season. The season change is the perfect opportunity to do a little clean up, and on June 1, we distributed our annual "profile update" email. Each member received a unique email with their contact information and a request to quickly review the information to make sure it is accurate. This quick check ensures that your benefits access continues uninterrupted. If you have not already done so, please check that June 1 email and let us know if a change is needed.

The LGA Board of Directors is happy to provide a new member benefit for our members heading into retirement. The LGA will provide a complimentary Individual Membership (valued at $55 annually) for the balance of the membership year (September 1 through August 31). Please let us know before you go!

Mark your calendars for August 1 when our membership renewal notices will be sent by email to Chief Counsels. If you are not sure who serves as your office's Chief Counsel, please ask. Renewal can be paid by check or credit card online. Make sure to renew by August 31 to continue your member benefits, including forum and resource access and discounted members-only registration to our Fall Conference.

We thank you for your LGA membership. Please reach out to Amy Sales at amy.sales@easterassociates.com with any questions.

SAVE THE DATE: 2024 LGA FALL CONFERENCE OCTOBER 3-5

Planning for the 2024 LGA Fall Conference is underway! Plan to join us at Hilton Norfolk The Main for three days of continuing education and networking with colleagues from across the Commonwealth October 3-5, 2024. Anticipated topics include New Case Law, Goods and Services, Social Services, School Law, and Ethics. Registration and room reservations will open in August and members will be notified by email.

Don't forget, Fall Conference is when the LGA recognizes years of service. If you have reached a milestone year of service, please email that information to Christy Jenkins at christy.jenkins@easterassociates.com.

LGA REPRESENTATIVES AT JUDICIAL CONFERENCE OF VIRGINIA

LGA President Lesa Yeatts and LGA Secretary Courtney Sydnor attended the Judicial Conference of Virginia as LGA representatives. While there, they caught up with former LGA Board member Helivi Holland, who was recently elevated to the Circuit Court of Suffolk. Congrats, Judge Holland!

MEMBER NEWS

WELCOME to the following new members of the LGA!

Kimberly P. Beamer (kimberly.beamer@roanokeva.gov), Roanoke City Attorney's Office

Lalita Brim-Poindexter (lalita.brim-poindexter@roanokeva.gov), Roanoke City Attorney's Office

Vanessa S. Carter (cartervs@nnva.gov), Newport News City Attorney's Office

Shannon Forrest (Shannon.Forrest@yorkcounty.gov), York County Attorney's Office

Ameila W. May (amay@ci.manassas.va.us), Manassas City Attorney's Office

Maria Stickrath (mstickrath@pwcgov.org), Prince William County Attorney's Office

CONGRATULATIONS to Sharon E. Pandak (spandak@gtpslaw.com) and J. Patrick Taves (ptaves@gtpslaw.com), both of Pandak & Taves, PLLC in Woodbridge, who each received an IMLA Amicus Award for their work on *Berry v. Board of Supervisors of Fairfax County*! This important case was summarized in the May 2023 Bill of Particulars.

VIRGINIA SUPREME COURT

ZONING • NOTICE OF VIOLATION • CHURCH OFFICE • COUNTY ORDINANCE • FOURTH AMENDMENT • EXCLUSIONARY RULE

Bd. of Supervisors of Fairfax Cnty. v. Leach-Lewis, No. 230491, 2024 Va. LEXIS 38 (Va. June 20, 2024) (McCullough, J.).

HOLDINGS: (1) The Fourth Amendment's exclusionary rule did not apply to the search that yielded evidence of a zoning ordinance. (2) The church office was an "office" for the purpose of the zoning ordinance.

DISCUSSION: A church minister challenged a notice of zoning violation alerting her that a house owned by a trust she managed in a residential neighborhood was being improperly used as an office. The house in question was one of several owned by the trust, over which the minister served as trustee, where church members lived and worked. A significant portion of the house in question, which was located in an area in which office use was prohibited, was configured for office space, with signs consistent with office use. An investigator with the Department of Code Compliance had been alerted by police about a potential zoning violation. He arrived at the house while police officers were there executing a search warrant for an unrelated matter. The investigator and the minister disagreed as to whether the latter granted the former consent to search the premises.

The minister argued before the Board of Zoning Appeals (BZA) that the residence at issue was not being used as an "office" because this term, as defined in the zoning ordinance, did not apply to a nonprofit organization engaged in spiritual pursuits. She further argued that, because the notice of violation was based on an improper search under the

Fourth Amendment, the fruit of this unlawful action could not be used to support the notice of violation. She cited a provision in the Fairfax County Zoning Ordinance indicating that nothing therein "may be construed to authorize an unconstitutional inspection or search." Fairfax Cnty. Zoning Ordinance § 18-901(4).

The BZA ruled against the minister without addressing the issue of the propriety of the search. The circuit court upheld the BZA's decision, but the Court of Appeals reversed, declining to address the question of whether the church's activities in the house rendered the space an "office." The County Board of Supervisors appealed.

The court held first that the exclusionary rule did not require that the evidence of the zoning violation be discarded, since the Fourth Amendment applies only to criminal cases and civil asset forfeitures, not disputes involving evidence of zoning violations. Furthermore, § 18-901(4) does not provide that a zoning case cannot proceed if evidence is unconstitutionally seized, and it does not contain a rule calling for the exclusion of evidence. Regardless, the BZA was not required to consider this provision because it had no applicability as to whether the trust's property was illegally being used as an office.

The court held second that the portion of the house at issue was being used as an office within the ordinary meaning of the term, which is the sense that the word "office" is used in the County Ordinance. The Ordinance defines "office" in part as "[a]ny room, studio, clinic, suite or building wherein the primary use is the conduct of a business such as accounting, correspondence, research, editing, administration or analysis. . . ." Fairfax Cnty. Zoning Ordinance § 20-300. The evidence, including that submitted by the church's leadership, established that church members earned their livelihood through their work for the church, which included "correspondence, research, and editing," and that they performed their work at least in substantial part within the houses in question.

Therefore, the court reversed the Court of Appeals' decision and entered final judgment in favor of the Fairfax County Board of Supervisors.

VIRGINIA COURT OF APPEALS

CODE § 15.2-3830 • STATUTORY INTERPRETATION • APPORTIONMENT OF BUDGET • MOTION CRAVING OYER

City of Emporia v. County of Greensville, 81 Va. App. 28, 901 S.E.2d 485 (2024) (Atlee, Jr., J.).

HOLDINGS: (1) The statute did not require the city to pay a proportionate share of the county sheriff's entire budget. (2) The circuit court correctly denied the city's motion craving oyer.

DISCUSSION: Greensville County filed suit in circuit court against the City of Emporia, seeking a declaratory judgment that the City's share of the County Sheriff's budget shall be calculated in accordance with Code § 15.2-3830, and a writ of mandamus compelling the City to pay the amount owed. In 1967, the City transitioned from a town within Greensville County to an independent city of the second class under Virginia law. Following this transition, the City remained within the jurisdiction of the circuit court of Greensville County, and the City and County shared certain services. Historically, the City paid a proportionate share of the County Sheriff's entire budget. But in 2021, after the County Sheriff's budget had increased by 20 percent over the previous three years, the City refused, agreeing only to pay the portion of the budget associated with the circuit court. At issue in this dispute was how to interpret Code § 15.2-3830, which provides for the apportionment of certain costs and services between the parties. In relevant part, the statute reads:

> After a town becomes a city under this chapter, the costs and expenses of the circuit court for the county, including jury costs, and the salaries of the judge and clerk of the circuit court and the clerk, attorney for the Commonwealth and sheriff of the county shall be borne by the city and county in the proportion that the population of each bears to the aggregate population of the city and county.
>
> Such expenses and costs shall include stationery, furniture, books, office supplies and equipment for the court and clerk's office; supplies, repairs and alterations on the buildings used jointly by the city and county; and insurance, fuel, water, lights, etc., used in and about the buildings and the grounds thereto.

Va. Code § 15.2-3830. The issue presented was whether the phrase "costs and expenses" in the first sentence referred only to "the circuit court for the county" or also to the clerk, Commonwealth's Attorney, and County Sheriff. Naturally, each party interpreted this provision in such a way as to financially benefit itself.

The court held first that the plain language of the statute supported the City's interpretation—*i.e.*, that the City was required to pay its proportionate share of (1) the costs and expenses of the circuit court, including jury costs, and (2) the salaries of the judge and clerk of the circuit court, the clerk, the attorney for the Commonwealth, and the sheriff of the county. "The grammatical construction of the first paragraph separates the costs and expenses of the circuit court from the salaries of the constitutional officers. The comma placement around 'including jury costs' sets that off as a nonrestrictive clause providing additional information about the 'costs and expenses of the circuit court for the County.'" If, as the County suggested, both the jury costs and the "salaries of the judge and the clerk of the circuit court" were intended to describe the costs of the circuit court, one would have expected to see commas surrounding either the entire phrase (before "including" and after "circuit court") or after both "jury costs" and after "circuit court." The

second paragraph, which illustrates the meaning of the term "costs and expenses" by listing what might be included, supports this reading, as it lists only items pertaining to the court and clerk's office, with no mention of the Commonwealth's Attorney or County Sheriff. While this list in the second paragraph is not exhaustive, as indicated by the word "include" and the abbreviation "etc.," it indicates that, to qualify as a "cost" or "expense" under the statute, the alleged cost or expense must be similar in nature to those listed. Accordingly, the statute requires the City to pay its proportionate share for those parts of the County Sheriff's budget that relate to the circuit court and the jointly used buildings (as well as a proportionate share of the listed officers' salaries).

The court held second that the circuit court properly denied the City's motion craving oyer. The City had requested to add two documents to the complaint, but since the claim was based solely on the interpretation of Code § 15.2-3830, these documents were not essential to the claim.

Therefore, the court affirmed in part, reversed in part, and remanded the case to the circuit court.

VIRGINIA-BASED U.S. DISTRICT COURTS

FAMILY MEDICAL LEAVE ACT • INTERFERENCE • COMMONWEALTH'S ATTORNEY'S OFFICE • EMPLOYER • 29 U.S.C. § 2611(4)(A) • 29 C.F.R. § 825.307(A)

Mook v. City of Martinsville, No. 4:23-cv-00028, 2024 U.S. Dist. LEXIS 106110 (W.D. Va. June 14, 2024) (Cullen, J.).

HOLDINGS: (1) Both the commonwealth's attorney and the city could be liable as an employer for the alleged Family Medical Leave Act (FMLA) violation. (2) The assistant commonwealth's attorney sufficiently alleged a claim for FMLA interference.

DISCUSSION: An Assistant Commonwealth's Attorney (Attorney) for the City of Martinsville alleged that the Commonwealth's Attorney (CA) and the City violated his rights under the Family Medical Leave Act (FMLA). In November 2021, the Attorney sought FMLA leave to care for his severely ill mother. He received a blank form (Certification) from the City's Human Resources Department (HR) and completed most of it, including the section that was supposed to be filled out by his mother's physician, "based on his knowledge of her condition as her caregiver." He then accompanied his mother to a doctor's appointment and gave the Certification to a Registered Nurse (RN). The RN left the room with the Certification, returned, and signed it with his name, followed by "per" the doctor's name. The Attorney thereafter submitted the completed Certification to both the CA's office manager and the City's HR Director.

Not long after receiving the Certification, HR raised concerns about its authenticity, since the physician's section was completed in handwriting that appeared to match that of the Attorney. HR staff called the doctor's office to inquire about the Certification and faxed over a copy. The doctor's office replied that no one there had filled out the form, nor did the doctor authorize anyone to sign it on her behalf, explaining to HR that "[t]he RN who signed it stated that [the Attorney] approached him and asked him to sign an excuse for missing work." According to the CA, HR directed him to fire the Attorney for this. The CA first offered the Attorney the option of resigning immediately, which he refused. The CA then terminated his employment. The Attorney subsequently filed this suit. Both the CA and the City filed motions to dismiss, contending that the other was the Attorney's "employer" and that the allegations did not state a claim for FMLA interference.

The court held first that the Attorney adequately alleged that both, or at least one, of the defendant parties was his employer. An employer, for FMLA purposes, includes public agencies and persons who act in the interest of an employer. *See* 29 U.S.C. § 2611(4)(A)(ii), (iii). The Attorney alleged that the CA was a public agency, acted as his direct supervisor, accepted the completed Certification, informed the Attorney of concerns related to the Certification's authenticity, unilaterally provided the Attorney with the option to resign in lieu of termination, and ultimately fired him. As for the City's role as employer, the Attorney alleged that it was a public agency, paid his salary, managed his employment benefits, provided the blank Certification, received the completed Certification, raised questions about its authenticity, and directed the CA to fire him. "Both had important roles related to his employment. . . . Under these facts, both may be liable as [the Attorney]'s employer for any alleged FMLA violation."

The court held second that the Attorney adequately alleged that the CA and the City violated applicable FMLA regulations and interfered with his rights under that statute. The relevant FMLA regulation states:

> If an employee submits a complete and sufficient certification signed by the health care provider, the employer may not request additional information from the health care provider. However, the employer may contact the health care provider for purposes of clarification and authentication of the medical certification . . . *after* the employer has given the employee an opportunity to cure any deficiencies.

29 C.F.R. § 825.307(a) (emphasis added). The Attorney alleged that his employer contacted his mother's doctor's office to determine if the doctor completed the Certification, which is an "authentication" under the regulation. Thus, the employer was obligated to *first* contact the Attorney in order to give him an opportunity to cure any deficiencies in that Certification.

Therefore, the court denied the motions to dismiss.

POLICE • 42 U.S.C. § 1983 • *MONELL* LIABILITY • FAILURE TO TRAIN • FINAL POLICYMAKING AUTHORITY • RATIFICATION

Scheffer v. Albemarle County, No. 3:23-cv-00048, 2024 U.S. Dist. LEXIS 104911 (W.D. Va. June 12, 2024) (Moon, J.).

HOLDINGS: (1) The municipal liability claim could not proceed since the complaint failed to plausibly allege the county's failure to train, (2) that the supervisor had final policymaking authority, or (3) ratification of the supervisor's actions.

DISCUSSION: A couple visiting Charlottesville in August 2022 sued Albemarle County and a Supervisor with the Albemarle County Police Department (ACPD) under 42 U.S.C. § 1983 for alleged constitutional violations when they were questioned during a manhunt. A suspect who was believed to have abducted a woman in Florida had been located in Charlottesville driving a black Jeep with tinted windows and a damaged front end. A Charlottesville Police Officer spotted a black Jeep with Florida tags in a hotel parking lot late at night. The vehicle had no front end damage, did not have tinted windows, and a search of the license plate revealed that it was registered to a rental car company. Nevertheless, the Officer entered the hotel and showed a photograph of the suspect to the hotel clerk, who stated that he believed he had seen the suspect check in a few hours ago. The Officer then notified ACPD, which dispatched the Department's Special Operations Division Commander (Supervisor) and the SWAT team. Before they arrived, information from the rental car company and the hotel identified the husband of the couple as the individual who had rented the vehicle and that the couple had checked into the hotel a few days prior. Video footage from the hotel lobby indicated that the person whom the clerk had identified was clearly not the suspect.

Be that as it may, when the Supervisor and the SWAT team arrived, a throng of officers went to the couple's room and banged on the door. The husband, awoken from slumber, answered the door after police identified themselves and informed him that they needed to speak with him about his vehicle. Upon opening the door, the husband found himself looking down the barrels of two handguns, was grabbed by an Officer, pulled into the hallway, and searched for weapons. The Supervisor and another Officer retrieved the wife and ordered her into the hallway as well. When the Officers confirmed that the husband was not the suspect, they released the couple. The couple's complaint included Albemarle County as a defendant. The complaint set forth three theories of *Monell* liability based on the conduct of the Supervisor and ACPD Officers. The County moved to dismiss the claims against it.

The court held first that the couple did not adequately allege liability on the part of the County under a failure to train theory. The complaint merely stated, in conclusory fashion, that the Supervisor's actions and statements demonstrated that Albemarle

County failed to adequately train its officers. The complaint failed to identify any specific shortcoming in the County's training regimen or plausibly demonstrate that the County acted with deliberate indifference to the rights of persons with whom the police would come into contact.

The court held second that the complaint did not plausibly allege that the Supervisor was an official with final policymaking authority. Instead, it conflated the concepts of the authority to make final policy (which can support a *Monell* claim) and the authority to make implementing decisions (which cannot). That is, the couple surmised that the Supervisor made a deliberate choice to follow an unlawful course of action in interacting with them, yet identified no state law endowing the Supervisor with policymaking authority, nor pointed to any custom or usage that would do so.

The court held third that the complaint did not demonstrate that the County approved of, or ratified, any of the Supervisor's purportedly unconstitutional actions. In support of this theory of liability, the couple alleged that neither the Supervisor nor the ACPD filed a police report or weapons report for the incident. But this scant allegation in no way demonstrated that Albemarle County ratified, or even knew about, the Supervisor's conduct.

Therefore, the court dismissed Albemarle County as a defendant in this case.

SCHOOL BOARD • HEARING OFFICER • INDIVIDUALS WITH DISABILITIES EDUCATION ACT • FREE APPROPRIATE PUBLIC EDUCATION • INDIVIDUALIZED EDUCATION PROGRAM • BURDEN OF PROOF • LEAST RESTRICTIVE ENVIRONMENT

Loudoun Cnty. Sch. Bd. v. Bunkua, No. 1:23cv320 (DJN), 2024 U.S. Dist. LEXIS 90509 (E.D. Va. May 20, 2024) (Novak, J.).

HOLDINGS: (1) The hearing officer's findings were regularly made and entitled to due weight. (2) The hearing officer properly placed the burden of proof on the parents. (3) The school board provided no compelling reason to question the hearing officer's credibility judgments as to the witnesses, nor (4) weighing of the evidence. (5) The school board failed to provide the disabled student with a free appropriate public education.

DISCUSSION: The parents of an 11-year-old autistic child initiated due process proceedings with the Virginia Department of Education, alleging that the Loudoun County School Board (LCPS) failed to provide their child with a free appropriate public education (FAPE). The Hearing Officer held a hearing in October 2022, in which the parents called eight witnesses and LCPS called three witnesses. The Hearing Officer resolved each of the substantive issues against LCPS in a 63-page decision, finding, *inter alia*, that LCPS's attempt at virtual instruction during the COVID-19 pandemic denied the child a FAPE, LCPS unreasonably denied one-on-one home services to the child despite possessing

sufficient data to conclude that such intervention was essential, the individualized education programs (IEPs) developed by LCPS staff failed to provide the child with a FAPE, and the child's least restrictive environment was the private school where he had most recently been enrolled. Based on these findings, the Hearing Officer ordered LCPS to reimburse the parents for the costs of enrollment at Katherine Thomas School (KTS) and the private evaluations conducted by the clinical psychologist and speech-language pathologist. LCPS appealed the Hearing Officer's decision.

As background to this case, the child had been diagnosed with autism and other learning disabilities and social dysfunctions at an early age. The child's educational and behavioral challenges worsened significantly in 2020 when the pandemic caused LCPS to institute fully remote learning. During this time, the parents and LCPS staff met several times to discuss the situation. LCPS thrice denied the parents' request for a staff member to work one-on-one with the child at home, and offered amendments to the child's IEPs which, according to the parents, failed to address his needs. In 2021, the parents sought evaluations from a clinical psychologist and speech-language pathologist, both of whom expressed concerns that LCPS was not providing the child with the appropriate educational assistance. In August 2021, the parents enrolled the child at KTS, a private school for students with disabilities. KTS staff conducted their own evaluation and tailored their approach in such a way as to provide the child with a learning environment under which he began making substantial progress. LCPS staff conducted observations at KTS and updated its IEP. Ultimately, the parents and LCPS disagreed as to whether LCPS could fulfill its requirements under the Individuals with Disabilities Education Act (IDEA) to provide the child with a FAPE.

The court held first that, because the Hearing Officer's findings were "regularly made," they were entitled to due weight. LCPS complained that the Hearing Officer's decision could not be called "regular" because he had "completely bungled" the burden of proof, "fail[ed] to meaningfully analyze factual evidence," and displayed "ignorance of controlling IDEA legal standards." However, the regularly made inquiry is one of procedure, not substance. During the four-day hearing, both parties were free to call and cross-examine witnesses, introduce evidence, and advance their arguments. The transcript demonstrated the Hearing Officer's active participation, and his lengthy written decision synthesized over 1,000 pages of testimony, reached 86 findings of fact, and resolved 14 specific issues. "The IDEA's procedural safeguards were fully satisfied, as were their state law counterparts."

The court held second that the Hearing Officer properly placed the burden of proof on the parents to show that LCPS failed to comply with the IDEA. Contrary to LCPS's contentions, the Hearing Officer did not incorrectly shift the burden; he credited the evidence and testimony presented by the parents and explained that the conflicting evidence offered by LCPS failed to rebut the parents' claims. "It is of no occasion that [the Hearing Officer] largely focused on why LCPS failed to carry the day. This Court does not stand to police the intensity with which a Hearing Officer elucidates the strengths of one party over the shortcomings of another."

The court held third that the Hearing Officer did not err by failing to defer to LCPS's witnesses. The Hearing Officer heard and saw these witnesses testify, and acknowledged the deference due to them. Yet, he found them to be less persuasive than the parents' witnesses, justifiably declining to blindly credit their testimony due to their shallow experience with the child's post-pandemic needs. "Where a hearing officer provides reasoned consideration of competing testimony, this Court does not scrutinize those findings *de novo* simply because the public school failed to persuade. To the contrary, weighing conflicting testimony is quintessentially the province of a factfinder." To this end, LCPS misread *L.C. v. Arlington County School Board*, No. 1:20-cv-1177 (PTG/TCB), 2022 U.S. Dist. LEXIS 112388 (E.D. Va. June 24, 2022), for the proposition that a hearing officer must defer to a school board's expert witnesses who possess direct knowledge of the school's public program. In that case, the parents' witnesses lacked direct experience with the student, while precisely the opposite factual scenario presented itself here.

The court held fourth that the Hearing Officer correctly applied the IDEA's least restrictive environment requirement. The IDEA sets forth a presumptive default for integrating disabled students into general education, which may be overcome "when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 20 U.S.C. § 1412(a)(5)(A). The gravamen of the Hearing Officer's conclusion was that the child's disabilities precluded education alongside his non-disabled peers. That determination found support in the record, and LCPS offered no persuasive reason to discredit the Hearing Officer's weighing of the evidence. Furthermore, LCPS's protest of the Hearing Officer's purportedly conclusory results missed the mark by failing to read the decision as a whole, which in no way signaled a perfunctory analysis of the case.

The court held fifth that, after conducting a thorough review of the record, in its independent judgment, with due weight given to the Hearing Officer's findings of fact, LCPS indeed denied the child a FAPE from August 2020 through August 2022. Prior to August 2021, in-person instruction at LCPS was either unavailable or inaccessible safely, and the child's disabilities precluded him from learning virtually. LCPS was, thus, obligated to offer some other method of instruction. At that time, LCPS possessed sufficient data to discern that one-on-one at home services were necessary for the child to make progress appropriate in light of his circumstances, yet repeatedly refused to provide such services. Following the child's placement at KTS, LCPS's IEPs remained deficient because they never captured the child's learning needs.

Therefore, the court denied LCPS's motion for judgment on the record, granted the parents' motion for judgment on the record, concluded that the parents remained entitled to the relief awarded by the Hearing Officer, and ordered LCPS to revise the child's IEP to reflect that his least restrictive environment was and remains KTS for the 2021–24 school years.

The opinions summarized here are available for downloading, in PDF format, from the Attorney General's website, www.oag.state.va.us/, or by clicking on the hyperlinked opinion numbers below.

SHERIFF • LOCAL GOVERNING BODIES • COURTHOUSE SECURITY • DILLON RULE • CODE § 53.1-120.

Op. No. 24-002, Addressed to the Honorable James E. Brown III, Sheriff, City of Charlottesville (June 17, 2024).

Whether a locality's governing body has authority to determine the provider of courthouse security within the locality.

The governing body of a locality does not possess such authority.

Under the Dillon Rule, local governing bodies have only those powers that are expressly granted by the General Assembly or necessarily or fairly implied from those express powers. To conclude that the latter exists, the legislature must have *intended* that the grant of the express would also confer the implied.

While no statute expressly empowers local governing bodies to determine courthouse security providers, the Code directs localities to furnish courthouses for serving their counties or cities, and grants local governments the general authority to provide for the protection of its property and to preserve the peace. *See* Va. Code §§ 15.2-1638, 15.2-1700. Nevertheless, it would be improper to conclude that the General Assembly intended to grant local governing bodies the implied power in question here, given its clear intention elsewhere in the Code.

Code § 53.1-120 expressly grants sheriffs the power and duty to provide courthouse security: "Each sheriff shall ensure that the courthouses and courtrooms within his jurisdiction are secure from violence and disruption and shall designate deputies for this purpose." Va. Code § 53.1-120(A). This duty is not exclusive to the sheriff, however, as the statute goes on to state that chief judges "shall be responsible by agreement with the sheriff of the jurisdiction for the designation of courtroom security deputies for their respective courts." Va. Code § 53.1-120(B). Notably, Code § 53.1-120 makes no mention of local governing bodies. "By including the chief judges and the sheriff while omitting local governing bodies, the General Assembly demonstrated an intent to exclude the local government from making decisions governing courthouse security."

Moreover, as constitutional officers, sheriffs retain complete discretion in the operations of their offices and are not subordinate to local governments. Accordingly, a local governing body lacks authority to regulate a sheriff's provision of courthouse security.

This conclusion comports with previous advisory opinions issued by the Attorney General, particularly a 1998 opinion specifically stating that a local governing body does not have the authority to hire private security personnel to guard a courthouse. *See* 1998 Op. Va. Att'y Gen. 33, 34. And since the legislature is presumed to have knowledge of the Attorney General's interpretation of the statutes, its failure to make corrective amendments has evinced its acquiescence in the Attorney General's views.

ELECTIONS • CITY COUNCIL • MAYOR • CODE § 15.2-1400(E) • CHESAPEAKE CITY CHARTER § 3.02(C)

Op. No. 24-011, Addressed to Catherine H. Lindley, Esq., Chesapeake City Attorney (May 30, 2024).

Whether a sitting member of the Chesapeake City Council, whose term otherwise expires on December 31, 2024, but who desires to seek election as mayor at this year's November general election, must resign from the City Council by June 30 pursuant to a provision of the City Charter.

Section 3.02(c) of the Chesapeake City Charter requires a sitting council member to resign from the City Council by June 30 in order to run for mayor in that year's election.

In relevant part, this section reads: "In the event any member of council during his or her term of office shall decide to be a candidate for the office of mayor, he or she may be eligible to do so, but shall tender a resignation as a member of council, such resignation to be effective June 30 of such election year." Charter for the City of Chesapeake, Va., § 3.02(c).

When § 3.02(c) was adopted in 1987, municipal elections were held in May, with mayoral and council member terms beginning on July 1. In 2021, the Virginia General Assembly directed that, beginning in 2022, and "[n]otwithstanding . . . any other provision of law," elections for mayor or members of a local governing body "shall be held at the time of the November general election for terms to commence January 1." Va. Code § 15.2-1400(E). The Chesapeake City Council responded to this legislation by amending its Code of Ordinances to comport by moving the affected elections from May to November and setting new terms accordingly. At that time, the City Council specified that "all other provisions of the city charter relating to the election of council members [and] the mayor . . . shall remain in effect." City of Chesapeake, Va., Code § 2-1(f).

Although a sitting council member's compliance with § 3.02(c) of the Charter has the effect of shortening one's term by at least six months (*i.e.*, ending on or before June 30 instead of December 31), this shortening is voluntarily undertaken by the council member, as a consequence of one's own independent action. Such abbreviation of one's term had always been the case for council members seeking election as mayor while serving in any year other than the final one of their four-year term.

In sum, "because the General Assembly in no way addressed resignation requirements or any other charter provisions in enacting the legislation, Charter § 3.02(c) remains applicable law."

POSITIONS AVAILABLE

(Positions posted in order received, sorted by most recent)

County of Goochland

Position: Deputy County Attorney

Deadline: Open until filled

Details: If you are looking for a leadership opportunity in an up-and-coming, professionally-run locality, this is for you! The Goochland County Attorney's office seeks qualified applicants interested in becoming the Deputy County Attorney.

The successful candidate will assist the County Attorney in providing legal representation and counsel to the Board of Supervisors; County administration; constitutional officers; and County departments, boards, and committees. In addition to partnering with the County Attorney on some projects, the Deputy County Attorney will have independent, self-directed work and directly manage client relationships with several departments and the Planning Commission.

The specific job duties will depend upon the successful candidate's experience and interest, but could include land use, real property, procurement, contracts, and Freedom of Information Act matters. The successful candidate will have a broad knowledge of local government law paired with high standards for writing, work ethic, and initiative.

This position has the potential for a hybrid telework schedule of up to two days per week.

Admission to the Virginia Bar is required and candidates with a minimum of five years of experience in local government law are preferred.

Salary: $111,464–$144,904

Link/Contact: Goochland Deputy County Attorney

County of Prince William

Position: Assistant County Attorney (Two Openings)

Deadline: Continuous

Details: Join a dynamic local government law office. The Prince William County Attorney's Office seeks two full-time Assistant County Attorneys to render legal services to the Board of County Supervisors and the various departments and agencies of the County in civil litigation and in the provision of legal advice involving a variety of tasks related to local government law.

The successful candidates will represent the County in civil legal matters. Incumbents work under the supervision of their Deputy County Attorney. Responsibilities may include local government land use matters, Housing Agency matters, personnel matters, employment law, environmental law, Collective Bargaining, Subdivision submission process, and eminent domain matters.

These positions will assist in the preparation of court pleadings, briefs, and opinions, and will attend meetings with and handle litigation for County Departments and Agencies. With each position, we are looking for a candidate with strong credentials and a zealous work ethic, and who has the ability to work with a team, while also being a self-starter. If you want to join a great place to work while doing public sector law, this is the Office for you!

Salary: $82,777–$111,033

Link/Contact: Prince William Assistant County Attorney

City of Hopewell

Position: City Attorney

Deadline: Continuous

Details: Under the appointment of City Council, the Hopewell City Attorney performs work of considerable difficulty in protecting the legal interests of the City, and serves as the chief legal advisor to Council and City Manager. As designated by Council, the City Attorney also serves as the chief legal advisor to other departments, boards, commissions, and agencies of the City in all matters affecting the interests of the City. City residency is required within mutually agreed-upon terms at time of appointment.

Examples of Duties:

- Provides oral and written legal opinions and advice on complex matters to City Council, City administration, and City departments on a daily basis.
- Attends a variety of meetings—City Council, boards, commissions, committees, authorities, etc.
- Represents the City in complex legal matters. Prepares and tries cases, including appeals to state and federal courts; processes and litigates claims against the City; prosecutes suits, actions, and proceedings for and on behalf of the City.
- Prepares, reviews, and/or approves various complex legal documents on behalf of the City—contracts, ordinances, resolutions, bonds, bids, deeds, leases, policies, etc. Provides explanations and answers when necessary.
- Researches, interprets, and applies laws, court decisions, and other legal authority in the preparation of opinions, advice, and briefs.
- Advises on the purchase, sale, exchange, and/or leasing of properties.
- Reviews procurement matters to ensure compliance.
- Prepares and reviews legislation for General Assembly sessions. Presents to the General Assembly as necessary.
- Supervises and reviews codifications of City Code.
- Manages, supervises, and reviews the work of support staff, as well as manages the department budget, support contracts, etc.

- Membership and active engagement in local government organizations and attendance of continuing education seminars specializing in local government.

Salary: $120,000–$150,000

Link/Contact: Hopewell City Attorney

County of Louisa

Position: County Attorney

Deadline: Open until filled

Details: The Louisa County Attorney is the Chief Legal Officer and Counsel to the County of Louisa. The Louisa County Attorney reports directly to and is responsible to the Louisa County Board of Supervisors.

The Louisa County Attorney represents the County by providing timely legal services and advice to the Board of Supervisors, constitutional officers, and department heads. The Louisa County Attorney also provides legal advice and consultation to the various boards, authorities, and commissions in and for Louisa County. The Louisa County Attorney performs complex legal work including the management and trial of complex civil litigation; working with insurance counsel and outside counsel; and reviewing and preparing legal documents including ordinances, legal opinions, and contracts. The Louisa County Attorney is the primary risk management officer for the County and works daily with leadership, staff, and citizens to resolve problems.

Salary: $109,483–$180,647

Link/Contact: Louisa County Attorney

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