You ask whether a board of supervisors may designate a position on the regional library board to be filled exclusively by a representative of the public school system.

You relate that the Board of Supervisors of Fairfax County would like to designate a position on the library board to be filled by a representative of the Fairfax County School Board. The school board has recommended that the head librarian of the school system fill such a position.

Section 42.133 of the Code of Virginia authorizes local governing bodies "to establish a free public library for the use and benefit of its residents." Should a local governing body elect to establish such a library, the governing body must appoint a library board, and thereafter, the management and control of the public library system is vested in a board of not less than five members or trustees.1 Appointments are made "by the governing body, chosen from the citizens at large with reference to their fitness for such office."2

In determining the legislative power of local governing bodies, Virginia follows the Dillon Rule of strict construction. The Dillon Rule provides that [localities] possess and can exercise only those powers expressly granted by the General Assembly, those necessarily or fairly implied therefrom, and those that are essential and indispensable. If there is any reasonable doubt whether legislative power exists, that doubt must be resolved against the local governing body.3

The General Assembly has expressly provided that the library board "shall be appointed by the governing body."4 This is mandatory language.5 Accordingly, the board of supervisors may not delegate its responsibility to make library board appointments; however, it may seek the recommendation of the school board for a qualified employee of the school board just as it may receive the recommendation of any other person or entity.6

Furthermore, § 42.135 does not provide any criteria for appointment to the library board other than that the appointee must be "chosen from the citizens at large with reference to their fitness for such office." The statutory provision allows the local governing body substantial discretion to establish appropriate fitness criteria that will be sensitive to the needs of the locality. A concern that the library board include a citizen member with a particular expertise in the educational needs of the public school population appears to be a reasonable concern. It is not an abuse of discretion for the governing body to provide that a position on the library board be filled by a representative of the public school system.7

I am, therefore, of the opinion that the board of supervisors may, if it so determines to be in the best interests of the locality, designate a position on the local library board to be filled by a representative of the public school system.

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1See § 42.135.
§ 42.1-35ld.


Section 42.135 (emphasis added).


A recommendation differs from a delegation of authority in that, in the former case, the individual whose name is submitted by the school board does not fill the seat in question unless that individual subsequently is elected by the board of supervisors.

Any recommendation from the school board should be merely the expression of the board's preference for such representation, and not an attempt by the governing body either to delegate the power of appointment or to restrict the discretion of a successor board in making its appointments. In addition, the representative of the public school system should understand that his or her duty on the library board will be to use his or her judgment on behalf of the residents of the county at large and not merely to reflect any particular institutional viewpoint of the school board.