You inquire regarding two hypothetical situations concerning the extent of the authority of the Department of Criminal Justice Services Board (the "Board") to determine the distribution of forfeited drug assets when a controversy exists between participating agencies as to the amount each agency should receive.

Pursuant to § 18.2249(A) of the Code of Virginia, certain money and property "used in substantial connection" with illegal drug transactions are forfeitable to the Commonwealth. The procedures governing such forfeiture are contained in §§ 19.2386.1 through 19.2386.14. Once a forfeiture under these sections has occurred, § 19.2386.14 provides for the distribution of the seized money or property, less a percentage for processing, to the law-enforcement agencies that participated in the seizure.1

You first present a hypothetical situation in which a law enforcement agency and a Commonwealth's attorney in the same jurisdiction cannot agree on reasonable shares of proceeds derived from a forfeiture action. You ask whether the Board may determine controversies between agencies or offices within the same jurisdiction, or whether the Board may only determine controversies between agencies or offices from different jurisdictions.

When the language of a statute is clear and unambiguous, resort to rules of statutory construction is unnecessary.2 Also, in the absence of a contrary definition, the words in a statute are presumed to have their usual and ordinary meaning.3 Virginia courts have decided that "[t]he language of Code §§ 18.2249 and 19.2386.1 through 19.2386.14 is `plain, unambiguous, and mandatory."4 The words contained in a statute are to be given the effect of their plain meaning when there is no ambiguity.5
When controversy exists between agencies participating in an activity leading to the forfeiture of assets, the plain language of § 19.2386.14(B) grants to the Board the authority to resolve such controversy pursuant to its regulations by assessing the "degree of participation" of each agency. The clear and unambiguous language of the statute does not make any distinction as to whether the participating agencies are from the same or different jurisdictions.

Therefore, it is my opinion that the clear intent of the General Assembly is that the Board shall have the authority to determine any controversy between a law-enforcement agency and a Commonwealth's attorney from the same jurisdiction concerning the equitable share of forfeiture proceeds each should receive.

You present a second hypothetical situation in which the law-enforcement agencies of three jurisdictions have participated in a law-enforcement action resulting in a forfeiture. The law-enforcement agency from one of the jurisdictions has an agreement with its Commonwealth's attorney regarding such attorney's share of any of the agency's forfeitures. The law-enforcement agencies from the other two jurisdictions agree that the Commonwealth's attorney from the first jurisdiction has a reasonable share, but do not agree as to the share distribution among the three law-enforcement agencies from different jurisdictions.

You ask whether the Board is bound by an agreement between some, but not among all, of the participating agencies in a law-enforcement effort resulting in a forfeiture.

Section 19.2386.14(B) provides that in determining distribution of forfeited drug assets, the Department of Criminal Justice Services first shall "find[] that the petitioning agency is eligible for distribution and that all participating agencies agree on the equitable share of each." (Emphasis added.) This is mandatory language. Section 19.2386.14(B) provides further that "[i]f all eligible participating agencies cannot agree on the equitable shares of the net proceeds, the shares shall be determined by the Criminal Justice Services Board" in accord with its regulations. (Emphasis added.)

A principle of statutory construction provides that a statute stating the manner in which something is to be done or the entity which is to do it evinces a legislative intent that it not be done in another manner or by another entity.

The plain, unambiguous language used by the General Assembly in § 19.2386.14(B) makes it clear that it is only when all participating agencies agree as to shares of distribution that the Board shall be bound by such an agreement. While it is reasonable for the Board to consider such an agreement between
some of the participating agencies, the Board is not bound by the agreement, except in the case of agreement among all the agencies.

Therefore, it is my opinion that the Board is not bound by an agreement between some, but not among all, of the agencies participating in an activity resulting in a forfeiture.

1Section 19.2386.14(B) provides:

"Any federal, state or local agency or office that directly participated in the investigation or other law-enforcement activity which led, directly or indirectly, to the seizure and forfeiture shall be eligible for, and may petition the Department [of Criminal Justice Services] for, return of the forfeited asset or an equitable share of the net proceeds, based upon the degree of participation in the law-enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law-enforcement effort with respect to the violation of law on which the forfeiture is based. Upon finding that the petitioning agency is eligible for distribution and that all participating agencies agree on the equitable share of each, the Department shall distribute each share directly to the appropriate treasury of the participating agency.

"If all eligible participating agencies cannot agree on the equitable shares of the net proceeds, the shares shall be determined by the Criminal Justice Services Board in accordance with regulations which shall specify the criteria to be used by the Board in assessing the degree of participation in the law-enforcement effort resulting in the forfeiture." (Emphasis added.)


6Use of the word "shall" in a statute generally indicates that the procedure is mandatory, while use of the word "may" indicates that it is permissive. See Op. Va. Att'y Gen.: 1994 at 64, 68; id. at 71, 72; 1986-1987 at 300, 300, and opinions cited therein.