COSTS, FEES, SALARIES AND ALLOWANCES: SALARIES AND EXPENSES OF OFFICE - SHERIFFS AND SERGEANTS.

FIDUCIARIES GENERALLY: INVENTORIES AND ACCOUNTS.

Commissioner of accounts is not officer of Commonwealth or locality he serves who would be entitled to exemption from payment of sheriff's fee for service of process in matters before commissioner.

The Honorable Charles R. Hawkins

Member, Senate of Virginia

September 5, 1996

You ask whether § 14.169 of the Code of Virginia requires a commissioner of accounts to pay the sheriff's fees for service of process on fiduciaries or other interested parties in matters before the commissioner.¹

When the General Assembly abolished the fee system as a method of compensating sheriffs in the 1942 Session,² it made clear that sheriffs were to continue to collect the fees authorized by law for their services. The 1942 act contained two exceptions to the collection obligation imposed on sheriffs. One exception was fees for services rendered in the prosecution of criminal matters.³ These fees continued but "would be collected by the clerk of the court in which the prosecution is had" rather than by the sheriff.⁴

The second exception was fees for services the sheriff would be entitled to "receive from the Commonwealth or from the county or city for which he is elected or appointed," absent the exception.⁵ The obvious intent of the General Assembly was to relieve any local government that paid a sheriff's salary from also paying fees for the services the sheriff provided to the local government.⁶
The General Assembly has not added to these two exceptions to the sheriffs' obligation to collect fees. Despite other amendments to § 14.169 and its predecessor statutes, the language providing the only exception for fees payable by the Commonwealth or by the locality has remained unchanged since 1942. Section 14.169 continues to exclude fees the sheriff "would have been entitled to receive from the Commonwealth or from the county or city for which he is elected or appointed." It is well-settled that "[i]f the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it." Section 268 authorizes circuit court judges to appoint commissioners of accounts as supervisory officers of the court. Such commissioners have limited jurisdiction over certain fiduciaries and their accounts. In acting under § 268, a commissioner is implementing a special statutory jurisdiction for the efficient administration of fiduciary accounts without resort, in ordinary cases, to a full-scale suit for directions in the administration of estates. A 1981 opinion of the Attorney General concludes that "a commissioner of accounts under § 268 is a public officer exercising statutory jurisdiction, and an officer of the circuit court, in a capacity different from the ordinary attorney." A 1977 opinion concludes that, as an officer of the court, the commissioner of accounts may not be designated by the local governing body as an "other local official" responsible for auditing records of receipts and disbursements of bingo games and raffles of charitable organizations. I can find no authority for the proposition that a commissioner of accounts is an officer of the Commonwealth or the locality he serves.

Accordingly, it is my opinion that § 14.169 does not exempt a commissioner of accounts from the payment of sheriff's fees for service of process in matters
before the commissioner.

1The first two sentences of § 14.169 provide: "Every sheriff, and every sheriff's deputy, shall, however, continue to collect all fees and mileage allowances provided by law for the services of such officer, other than such as he would have been entitled to receive from the Commonwealth or from the county or city for which he is elected or appointed and fees and mileage allowances provided for services in connection with the prosecution of any criminal matter in the circuit courts. Such fees and mileage allowances accruing in connection with any civil or criminal matter shall be collected by the clerk of the court in which the case is heard." (Emphasis added.)


3See id. § 1(b), at 612.

4Id.

5Id.

6Under the 1942 act, the salary of each sheriff was set by the Compensation Board and was funded two-thirds by the Commonwealth and one-third by the respective county or city represented by each sheriff. See id. §§ 2, 3, 6, at 61215. Under present law, the Compensation Board sets and funds the salary of each sheriff. See Ch. 1056, § 129, Item 82(A), 1996 Va. Acts Reg. Sess. (prescribing sheriffs' salaries in Appropriation Act for 1996-1998 biennium).

7See § 1482 (Michie 1949); § 3487(1)(b) (Michie 1942).

8Temple v. City of Petersburg, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944); see also Op. Va. Att'y
The judges of each circuit court shall appoint so many commissioners of accounts, as may be requisite to carry out the duties of that office, who shall be removable at pleasure and who shall have a general supervision of all fiduciaries admitted to qualify in such court or before the clerk thereof and make all ex parte settlements of their accounts. The person appointed as a commissioner of accounts shall be a discreet and competent attorney-at-law.

"[Each commissioner] shall retain the power of supervision over every account, matter or thing referred to him until his final account is approved, unless he shall resign, retire or be removed from office, in which case his successor shall continue such duties." Section 268.


