The Honorable J.S. Walton
Sheriff for King William County
September 28, 2001

You inquire regarding the law-enforcement authority of the sheriff of King William County on the Mattaponi and Pamunkey Indian reservations. You specifically inquire regarding the authority of the sheriff’s office to serve legal process, arrest warrants, and subpoenas, and to investigate misdemeanors and felonies on the reservations.

You advise that the sheriff’s office routinely responds to calls for law-enforcement assistance on both reservations when requested by members of the Mattaponi and Pamunkey tribes. In addition, you report that the sheriff’s office serves legal process on both reservations. Finally, you advise that it has been the historical practice of the sheriff’s office to advise the chief or council members of both tribes that such activities are occurring on the reservations.

A sheriff is an independent constitutional officer whose duties "shall be prescribed by general law or special act." A 1980 opinion of the Attorney General notes that, in the absence of a statute providing otherwise, the authority of a sheriff is coextensive with his county. The Supreme Court of Virginia has commented that, as a general
rule, the duties of a sheriff and his deputies are regulated and defined by statute. The Court has also stated:

The sheriff is an officer of the court subject to its orders and directions. He is also a conservator of the peace and charged with the enforcement of all criminal laws within his jurisdiction. It is his duty, as well as the duty of the other police officers of the county and city, to investigate all violations of law and to serve criminal warrants.

Prior opinions of the Attorney General conclude that, in the absence of a constitutional or statutory provision to the contrary, a sheriff has exclusive control over the day-to-day operations of his office and the assignment of his personnel. Furthermore, a 1985 opinion of the Attorney General notes that, although 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. The opinion further notes that a sheriff has discretionary authority with respect to personnel policies, cooperative agreements with federal agencies, and policies governing the use of vehicles by the sheriff's personnel.

At this time, the Pamunkey and Mattaponi tribes are not federally recognized Indian tribes. Consequently, state law, not federal law, governs this matter. As early as 1658, the Governor, the Council and commissioners of Virginia "confirmed" the Pamunkey and Mattaponi Indian reservations to those tribes during the Grand Assembly of Virginia held at James City County. In 1661, the Council sought to resolve confrontations occurring between the English settlers and members of the tribes. The Council confirmed that members of the tribes must be afforded security in their persons and goods, and further, "whoever shall defraud or take from them their goods and doe hurt and injury to their persons" must receive the same punishment as the laws imposed upon "an Englishman."

The Indian Treaty of 1677 between the King of England, acting through the Lieutenant Governor of Virginia, and several Indian tribes, including the Pamunkey and the Mattaponi, is the most important existing document describing Virginia's relationship toward Indian lands and the rights of the tribes on such lands. The Commonwealth now stands as the successor to the Crown. The treaty confirms the Pamunkey and Mattaponi tribes' aboriginal title
to lands described in a patent issued by the British Crown, which no longer is on record in Virginia. The Indian Treaty of 1677 provides:

[T]he said Indian Kings & Queens and their Subjects shall hold their lands, and have the same confirmed to them and their posterity by Patent under the Seale of this his Majesties Colony, without any fee gratuity or Reward for ye same, in such sort, and in as free and firme manner as others His Majesties Liege Subjects, have and enjoye their Lands, and possessions, paying onely yearly for, and in Liew of a Quitrent or acknowledgement for the same three Indian Arrowes.

The Supreme Court of the United States explained the effect of British law on Indian land rights in the case of *Mitchel v. United States*. "[F]riendly Indians were protected in the possession of the lands they occupied, and were considered as owning them by a perpetual right of possession in the tribe or nation inhabiting them, as their common property, from generation to generation." Subject to this right of possession, the fee simple remained in the Crown or its grantees. Cases and opinions subsequent to *Mitchel* agree that aboriginal Indian title consists of an exclusive right of occupancy, not a fee simple. The cases dealing with Indian lands in the territory of the original colonies, such as Virginia, locate the ultimate fee in the state in which the lands are located. Although the Commonwealth has a fee simple interest in the Pamunkey and Mattaponi reservations, it should be emphasized that this interest is subject to the exclusive use and occupancy of the two tribes possessing Indian title to the land. The superior title that exists in the Commonwealth does not abrogate Indian rights, but only prevents transfer of Indian lands to non-Indians without the consent of both the government and the Indians.

The members of the Pamunkey and Mattaponi tribes occupy a status in the Commonwealth somewhat different from other citizens. A 1917 opinion recognizes a guardian-ward relationship between the Commonwealth and members of the Mattaponi and Pamunkey tribes. The Indian Treaty of 1677 imposes some duty on the state to provide certain privileges or benefits to the Indians that may not be extended to others. While this special relationship may not be defined fully, it has been recognized consistently.
Article V of the treaty specifically addresses the protection that is afforded members of the tribes against criminal behavior as follows:

That the said Indians be well Secured & defend'd in theire persons goods and properties against all hurts and injuries of the English, and that upon any breach or violation hereof, that the aggrieve'd Indians doe in the first place repaire and adress themselves to the Govern'r Acquainting him therew'th without rashly and suddainly betakeing themselves to any hostile course for Satisfaction who will inflict such punishment on the wilfull infringers hereof, as the Lawes of England or this Country permitt, and as if such hurt or injury had bin done to any Englishman, which is but just and Reasonable they owneing themselves to be under the allegiance of his most Sacred Majestie.\[26\]

Furthermore, Article VI of the treaty prohibits any member of either tribe from being imprisoned "without a warrant from a Justice of peace, upon Suffitient cause of Committment."\[27\]

Following the Indian Treaty of 1677, the 1705 Council affirmed the obligation of the Commonwealth to the members of the tribes as follows:

[T]he Indians tributary to this government, shall be well secured and defend'd in their persons, goods, and properties; and that whosoever shall defraud, or take from them, their goods, or do hurt or injury to their persons, shall make satisfaction, and be punished for the same, according to law, as if the Indian sufferer had been an Englishman.\[28\]

I can find nothing in the Indian Treaty of 1677 that limits the authority of the King William County sheriff’s office with regard to the Mattaponi and Pamunkey Indian reservations. To the contrary, the treaty and subsequent actions of the General Assembly extend the same protections of the law of the Commonwealth to members
of the tribes as are extended to nonmembers. The agreement between the King William County sheriff’s office and the Pamunkey and Mattaponi tribes in the county reflects the policies that exist in a number of other states with Indian reservations. Other American Indian tribes are recognized by the United States government and, therefore, have a relationship with the federal government. This relationship, with regard to criminal jurisdiction, is codified in the Indian Country Crimes Act and the Indian Major Crimes Act. Under these federal acts, local and state law-enforcement entities have limited jurisdiction over federally designated reservations. Virginia tribes are not subject to either federal act, because they are not recognized by the federal government and do not have federal reservations. Indian tribes in Virginia have an established relationship only with the Commonwealth, and, therefore, the laws of the Commonwealth must apply. Accordingly, I am of the opinion that the King William County sheriff’s office may exercise the same law-enforcement authority on the Pamunkey and Mattaponi Indian reservations as elsewhere in the county. Specifically, the sheriff’s office has authority to serve legal process, arrest warrants, and subpoenas, and to investigate misdemeanors and felonies on the reservations as elsewhere in the county.


4Commonwealth v. Malbon, 195 Va. 368, 371, 78 S.E.2d 683, 686 (1953); see also Op. Va. Att’y Gen.: 1985-1986 at 255; id. at 54, 55; 1976-1977 at 257. A county sheriff generally has the following duties within his county: (a) enforcement of county ordinances and state laws (see Malbon, 195 Va. at 371, 78 S.E.2d at 685-86); (b) service of process for the courts within his county (see, e.g., Va. Code Ann. §§ 16.1-79, 16.1-99 (Michie Repl. Vol. 1999)); (c) maintenance of order in the courtroom and assistance of the court generally (see, e.g., Va. Code Ann. § 53.1-120 (Michie Repl. Vol. 1998); Near v. Commonwealth, 202 Va. 20, 30, 116 S.E.2d 85, 92 (1960)); and (d) operation of the jail (see, e.g., Watts’s Case, 99 Va. 872, 877, 39 S.E. 706, 707 (1901)).


7See id. See, e.g., Op. Va. Att’y Gen.: 1983-1984 at 323 (authority to appoint and remove deputies); 1982-1983 at 462, 463-64 (authority over personnel policies); 1978-1979 at 238 (authority to enter into agreement with federal agency for provision of law enforcement services on land of concurrent jurisdiction); 1976-
1977 at 250 (authority to assign duties to deputies; official use of department vehicle and claim for mileage expense); 1973-1974 at 39, 40 (authority over vehicles assigned to sheriff's office); id. at 322 (authority to request reimbursement for personal car used in performance of official business).

8 I am not aware of any treaty between the Pamunkey and Mattaponi Indian tribes and the United States government.

9 1 Hen. Stat. act 72, at 467-68 (1657-1658) (titled "Confirmation of Indians’ Land").


11 Id. at 139.


18 34 U.S. (9 Pet.) 711 (1835).

19 Id. at 745.

20 See id.


23 Id.


Id. at 292.


18 U.S.C.A. § 1152 (West 2000) (providing that federal criminal laws extend to "Indian country," except those "offenses committed by one Indian against the person or property of another Indian, [or] to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively").

18 U.S.C.A. §§ 1153, 3242 (West 2000) (establishing list of "major" crimes that, if committed by Indian, "shall be subject to the same law and penalties as all other persons committing any of the … offenses, within the exclusive jurisdiction of the United States." Section 1153(a). Indians committing such offenses "shall be tried in the same courts and in the same manner as are all other persons committing such offense within the exclusive jurisdiction of the United States." Section 3242.).