You ask whether law-enforcement officers engaged in off-duty employment under § 15.2-1712 of the Code of Virginia are considered to be performing "law enforcement activities" for purposes of workers' compensation and personal and property damage liability coverage under a local government risk management insurance program. You advise that multifamily rental apartment and commercial office landlords ("private leasing entity(-ies)") contract for the off-duty employment of law-enforcement officers to provide building and grounds security and other crime prevention services. You advise that local government law-enforcement agencies approve and assign officers to perform off-duty employment, as well as arm and equip such officers for most law-enforcement contingencies, whether performed on or off the property of the private leasing entity. Such officers are compensated by the private leasing entity. Further, the officers operate directly under policies, procedures and guidelines established by their local departments. The private leasing entity provides general guidance to, but exercises no control over, the off-duty officers, and grants advance authorization to such officers to act on its behalf. You also advise that officers assigned to off-duty employment are authorized to act in a law-enforcement capacity on the site of the private leasing entity; however, such officers are subject to recall by their local departments without prior notice to the private leasing entity. Consequently, you observe that law-enforcement officers employed under contract in an off-duty capacity to private leasing entities to provide security and crime prevention services are involved in law-enforcement activities throughout their assigned shifts of work.

You further relate that the locality may assume responsibility for workers’ compensation and personal and property damage liability insurance coverage for law-enforcement officers working under contract in an off-duty capacity with private leasing entities only when such officers are engaged in law-enforcement
activities; however, the private leasing entities must provide insurance coverage for any nonlaw-enforcement activities performed in an off-duty capacity by law-enforcement officers. You state that it does not appear that the activities of a law-enforcement officer employed in an off-duty capacity to provide building and grounds security and crime prevention services on the property of a private leasing entity can be categorized as either law-enforcement or nonlaw-enforcement activities, because the services performed are so interrelated as to be incapable of clear definition as law-enforcement or non-law-enforcement activity.

You indicate that your primary interest is to determine whether law-enforcement officers employed under § 15.2-1712 are engaged in law-enforcement activities for purposes of workers' compensation and personal and property damage liability coverage under a local government risk management insurance program. You also seek clarification regarding what constitutes nonlaw-enforcement activities not covered under such risk management insurance program. We are not aware of the terms of either the contract for off-duty employment between the law-enforcement officers and the private leasing entities or the local government's risk management insurance program.

The constitutional provision declaring that the Attorney General shall perform such duties as may be prescribed by law is implemented by the statutes that define the various duties of the Office. Section 2.2-505 articulates the authority of the Attorney General of Virginia to render official legal opinions. For many years, Attorneys General have concluded that § 2.2-505, the authorizing statute for official opinions of the Attorney General, does not contemplate that such opinions be rendered on matters requiring factual determinations, rather than matters interpreting questions of law. Your question requires that certain factual determinations be made and applied to the provisions of a policy or contract of insurance provided under a local government's risk management insurance program. Section 2.2-505 also prevents me from rendering an official opinion on questions involving the interpretation of the terms of such a policy or contract of insurance that are clearly of a purely private and local nature, and has limited responses to requests for official opinions to matters that concern an interpretation of federal or state law, rule or regulation.

Additionally, should the local government entity risk management insurance program to which you refer be a policy with the Department of the Treasury, Division of Risk Management, the General Assembly clearly requires that the Division implement and interpret the provisions of such a program. Prior opinions conclude that a request for an official opinion made pursuant to § 2.2-505 concerning the propriety of the actions of another entity interpreting matters reserved solely to it is not subject to review by the Attorney General and must be treated as the binding determination with regard to the matter. I will, however, share with you several observations on the controlling principles in the question you have raised.

Prior opinions of the Attorney General consider off-duty employment by law-enforcement officers. A 1999 opinion notes that § 15.2-1712 "specifies that [law-enforcement officers] may engage in off-duty employment requiring the use of their police powers as authorized by local ordinance and regulations." The opinion concludes that law-enforcement officers may not engage in off-duty employment unless the locality has adopted an ordinance permitting such employment. A 1997 opinion concludes that, when a locality has adopted the required ordinance and has promulgated rules and regulations applicable to off-
duty employment, "the chief of police may establish a uniform fee schedule as a
guide for compensating police officers required by subpoena to appear in civil
matters during their off-duty hours." Finally, a 1986 opinion notes that the Law
Enforcement Liability Self-Insurance Plan as administered by the Division of Risk
Management excludes from coverage the off-duty, "part-time" employment of
law-enforcement officers, unless (1) an ordinance has been enacted by the
locality pursuant to § 15.2-1712 permitting such off-duty employment, and (2) the
employing entity is an "organization" meeting the definition contained in § 18.2-
340.16.

The Virginia Local Government Risk Management Plan, "VaRISK 2," is the
current policy offered to local governments by the Division of Risk Management.
VaRISK 2 excludes from coverage

[any] claim resulting from off-duty employment, unless (a) such
employment is performed for an employer that is approved by [a]
Covered Party authorized to make such decisions, and (b) is
performed in a recognized law enforcement context, and (c) if
required by the PLAN, a separate contribution has been paid to
the PLAN for this activity. VaRISK 2 shall have the final decision
in determining what is a recognized law enforcement context
under the PLAN.

I am advised that coverage for law-enforcement officers engaged in off-duty
employment may be available as an exception to this exclusion; however, there
are several conditions that must be met before coverage applies. In addition,
VaRISK 2 is available only to plan members, and not all localities have joined the
VaRISK 2 plan. The law-enforcement liability policy of insurance offered by the
Division of Risk Management also must have been purchased by the member
locality. Finally, VaRISK 2 is excess over any other available policy of insurance.

Under the Virginia Workers' Compensation Act, a compensable "injury" means
an "injury by accident arising out of and in the course of
the employment." Section 65.2-102(A) of the Act specifically addresses workers' compensation
coverage of law-enforcement officers in an off-duty capacity:

Notwithstanding any other provision of law, a claim for workers' compensation benefits shall be deemed to be in the course of employment of any … law-enforcement officer who, in an off-duty capacity …, undertakes any law-enforcement or rescue activity.

The phrase "[n]otwithstanding any other provision of law," in § 65.2-102(A)
indicates a legislative intent to override any potential conflicts with earlier legislation.

The Court of Appeals of Virginia notes that the terms of employment of a law-
enforcement officer are different from a typical employer-employee relationship.
"A law enforcement officer is charged with the public duty of exercising his
authority in different places, … and at various times, including evening hours." In the case of Graybeal v. Board of Supervisors of Montgomery County, the
Supreme Court of Virginia recognized the "atypical circumstances" of a public
officer involved in law enforcement. Furthermore, the Court held, in the context
of the atypical circumstances of a public officer's employment, that the "in the
course of" requirement in the Workers' Compensation Act "must be satisfied by a showing of an unbroken course beginning with work and ending with injury under such circumstances that the beginning and the end are connected parts of a single work-related incident."

As noted, however, your question regarding whether law-enforcement officers employed pursuant to § 15.2-1712 are considered to be performing "law enforcement activities" for purposes of workers' compensation and personal and property damage liability coverage under a local government risk management insurance program, instead, requires an attempt to resolve a dispute involving specific facts. Thus, the question is one requiring a factual determination rather than interpretation of federal or state law, rule or regulation. As noted, the authority of this Office to issue official advisory opinions under § 2.2-505 is limited to questions of law.

Section 15.2-1712 provides that "any locality may adopt an ordinance which permits law-enforcement officers and deputy sheriffs to engage in off-duty employment which may occasionally require the use of their police powers in the performance of such employment." The ordinance "may include reasonable rules to apply to such off-duty employment" or may delegate the promulgation of such rules to the local chief of police or local sheriff. Va. Code Ann. § 15.2-1712 (Michie Repl. Vol. 1997).


6 See §§ 2.2-1839, 2.2-1843.


9 Id.

10 Id.


17216 Va. 77, 216 S.E.2d 52 (1975).

18Id. at 80, 216 S.E.2d at 54.


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