Treasurer is not required to relinquish his office when involuntarily recalled to active military duty. No statute prevents treasurer from continuing to oversee and manage his office via use of Internet, or in person during evening hours and weekends when he is physically present in county. Treasurer may continue to receive compensation for performing duties of his office while involuntarily recalled to active duty.

Ms. Phyllis C. Katz
County Attorney for New Kent County
January 31, 2002

Your inquiries concern the treasurer of New Kent County, a local constitutional officer, and his involuntary recall to active military duty. You first ask whether the treasurer is required to relinquish his office when involuntarily recalled to active duty.

You advise that the treasurer of New Kent County is a member of the United States Army Reserve. You advise further that he has received orders involuntarily recalling him to active duty with the United States Army for a period of one year. You relate that he will be stationed in Suffolk, Virginia, during the period of his recall to active duty. Therefore, to the extent permitted by the treasurer’s military supervisors, the treasurer intends to continue to perform the duties of his office, and to oversee and manage the office via use of the internet, or in person during the evening hours and weekends when he is physically present in New Kent County.

In addition, you advise that the treasurer accrues no sick leave and vacation time during his four-year term of office. Therefore, the county makes no lump sum payment to the treasurer for unused accrued sick leave or vacation time at the end of the officer’s term.

The office of treasurer is a constitutional office whose "duties and compensation … shall be prescribed by general law or special act." The powers and duties of a treasurer are generally set out in Article 2, Chapters 31 and 39 of Title 58.1 of the Code of Virginia. In addition, § 15.2-1608 provides that "[t]he treasurer shall
exercise all the powers conferred and perform all the duties imposed upon treasurers by law."

Section 2.2-2800 prohibits any person from holding "any office of honor, profit or trust under the Constitution of Virginia, who … is in the employment [of the government of the United States]; or … receives from it in any way any emolument whatever." Section 2.2-2802, however, specifically provides that "no … county … officer … shall forfeit his title to office … or vacate the same by reason of … [being] called to active duty in the armed forces of the United States." The use of the word "shall" in a statute generally implies that its terms are intended to be mandatory, rather than permissive or directive.5 "The manifest intention of the legislature, clearly disclosed by its language, must be applied."6

Applying the clear intent expressed in § 2.2-2802, it is my opinion that the county treasurer, who is a constitutional officer and also a member of the organized reserves of the United States, is not required to relinquish his office when involuntarily recalled to active military duty.7

You next ask whether the treasurer may continue to receive compensation as treasurer of New Kent County by performing his duties via use of the Internet or in person during the evening hours and weekends when he is physically present in the county.

Section 44-93 provides for paid leaves of absence for military training as follows:

All officers … of the Commonwealth or of any political subdivision of the Commonwealth who are … members … of the organized reserve forces of any of the armed services of the United States, National Guard, or naval militia shall be entitled to leaves of absence from their respective duties, without loss of seniority, accrued leave, or efficiency rating, on all days during which they are engaged in federally funded military duty, to include training duty …. There shall be no loss of pay during such leaves of absence, except that paid leaves of absence for federally funded military duty, to include training duty, shall not exceed fifteen workdays per federal fiscal year, and except that no officers … shall receive paid leave for more than fifteen workdays per federally funded tour of active military duty. When relieved from such duty, they shall be restored to positions held by them when ordered to duty.

A 1985 opinion of the Attorney General considers the question whether this statutory provision applies to employees of constitutional officers.8 The opinion concludes that § 44-93 applies to constitutional officers and their employees.9 The General Assembly has taken no action to significantly alter the conclusion of the 1985 opinion. In the case of Deal v. Commonwealth, the Supreme Court of Virginia states that "[t]he legislature is presumed to have had knowledge of the Attorney General's interpretation of the statutes, and its failure to make corrective amendments evinces legislative acquiescence in the Attorney General's view."10

A treasurer, as a constitutional officer, is independent of the control of the local governing body and, except as abrogated by statute, retains complete discretion in the day-to-day operations of the office, personnel matters, and the manner in which the duties of the office are performed.11 Numerous prior opinions of the
Attorney General conclude that local governing bodies have no authority to supervise or intervene in the management and control of a constitutional officer’s duties. These opinions support the long-standing rule that constitutional officers are independent of their respective localities’ management and control. Furthermore, numerous other prior opinions of the Attorney General conclude that the establishment and maintenance of the working hours of constitutional officers, such as treasurers, is the direct responsibility of the officers themselves, subject to any controlling statute dealing directly with the matter.

As noted, a treasurer, as a constitutional officer, is generally independent of the local governing body. This independence derives from the constitutional status of the office and the popular election of the individual filling the office. A 1987 opinion of the Attorney General concludes that a county has no authority unilaterally to place a constitutional officer on leave of absence. I am unaware of any statute that prevents the New Kent County treasurer from continuing to oversee and manage his office via use of the Internet, or in person during the evening hours and weekends when he is physically present in the county. As long as the treasurer is actually performing the duties for which the qualified voters of New Kent County elected him, whether such duties are performed via use of the Internet or during the evening hours and weekends, I can find no statutory prohibition to his receipt of compensation as treasurer. Therefore, I conclude that the treasurer may continue to receive compensation as treasurer for New Kent County while involuntarily recalled to active military duty.

1By Executive Order dated September 14, 2001, the President of the United States provided authority to the Secretary of the Department of Defense to order any unit in the Ready Reserve, and any member of the Ready Reserve not assigned to an organized unit, to active duty for not more than 24 consecutive months. See Exec. Order No. 13223, 66 Fed. Reg. 48,201 (Sept. 18, 2001).


7See also Lynchburg v. Suttonfield, 177 Va. 212, 13 S.E.2d 323 (1941) (holding that city councilman, inducted into active military service as officer of National Guard unit, does not forfeit office as councilman under predecessor statute to § 2.2-2802).


9Id. at 200.


12See Op. Va. Att’y Gen.: 1993 at 59, 66-67 (county administrator may not require constitutional officer to agree to management or performance audit); 1989 at 71, 72-73 (no authority for board of supervisors to approve or deny purchases or change equipment specifications determined by constitutional officer); 1986-1987 at 69 (commissioner of revenue has exclusive control over personnel policies of office); 1978-1979 at
237 (board of supervisors may not compel constitutional officer to assume additional duties not imposed by statute, although officer may agree to accept such duties voluntarily); id. at 289 (treasurer is not subject to control of board of supervisors in determining what tax collection methods to employ); 1976-1977 at 46 (county government may not investigate personnel practices of constitutional officer).


17 I express no view regarding whether the military supervisors of the treasurer must permit him to perform the duties of his office while he is serving on active duty as a result of the recall to active duty. Furthermore, I express no view in this opinion regarding whether the requirements of the treasurer’s recall to active military duty subject him to military duty twenty-four hours a day, seven days a week, thus preventing him from performing the duties of treasurer.