Governor has power to direct State Board of Elections to reduce amounts it reimburses localities for salaries of electoral board members and general registrars in order to achieve legislatively mandated budget cuts.

The Honorable Harry J. Parrish
Member, House of Delegates
June 21, 2002

Issue Presented

You ask by what authority the State Board of Elections may reduce the amount it reimburses localities for the annual compensation and expenses of electoral board members and general registrars.

Response

It is my opinion that the Governor has the power to direct the State Board of Elections to reduce the amounts it reimburses localities for the salaries of electoral board members and general registrars in order to achieve legislatively mandated budget savings.

Facts

You advise that the State Board of Elections has announced its intention to reimburse localities for ninety-five percent of the salaries paid to electoral board members and general registrars in fiscal year 2002 and ninety percent in fiscal year 2003. You state that you are unable to find authority for the State Board to make such reductions.

Applicable Law

Section 24.2-108 of the Code of Virginia requires the General Assembly to "establish a compensation and expense plan in the general appropriation act for … members of the electoral boards." In particular, § 24.2-108 provides that "[t]he governing body for the county or city of each electoral board shall pay compensation, expenses, and mileage in accordance with the plan and be reimbursed annually as authorized by the act." Section 24.2-111 sets forth the same requirements for the compensation and expenses of general registrars.

Section 2.2-1509(A) requires the Governor to submit a proposed budget bill by "December 20 of the year immediately prior to the beginning of each regular session of the General Assembly." Section 2.2-1509(A) further requires that the budget bill shall be organized by function, primary agency and proposed appropriation item and shall include an identification of, and authorization for, common programs and the appropriation of funds according to programs. Except as expressly provided in an appropriation act, whenever the amounts in a
schedule for a single appropriation item are shown in two or more lines, the portions of the total amount shown on separate lines are for information purposes only and are not limiting. [Emphasis added.]

The 2002 Session of the General Assembly has adopted budget amendments for fiscal year 2002 and a biennium budget for fiscal years 2003-2004.¹ The compensation and expense plans required by §§ 24.2-108 and 24.2-111 are set forth in each of the acts.² The 2002 Amendments to the 2000 Appropriation Act state that, “[t]o accomplish savings estimated at $87,297,805, … the Department of Planning and Budget is hereby authorized to reduce the general fund appropriation for operating expenses of each agency in the Executive Department, … by a maximum of three percent (3%) the second year.”³ The Department of Planning and Budget has calculated the State Board of Election’s reduction as $305,607 for fiscal year 2002.⁴ In fiscal year 2003, the Board is to cut $711,242.⁵

Section 4-1.04(a) of the 2002 Amendments and the 2002 Appropriation Act comments regarding appropriation reductions due to reduced revenues:

2. All appropriations are hereby declared to be maximum and conditional appropriations. The general fund appropriations shall be payable in full in the amounts named only in the event the general fund revenues are estimated by the Governor to be sufficient to pay in full all appropriations payable from the general fund revenues.

6. Except as enumerated in subdivision 5 of this subsection, in effecting the reduction of expenditures the Governor is authorized to withhold specific allotments of appropriations by a uniform percentage, a graduated reduction or on an individual basis, or apply a combination of these actions.⁶

Discussion

The Governor, as the chief planning and budget officer of the Commonwealth,⁹ has broad power to control spending and sustain his constitutional mandate to maintain a balanced budget.¹⁰ To determine the extent of that power under the facts you present requires an examination of the statutes and acts set out above. The Supreme Court of Virginia has stated that “'[t]he manifest intention of the legislature, clearly disclosed by its language, must be applied.'”¹¹ “[T]ake the words as written’ and give them their plain meaning.”¹² “When an enactment is clear and unequivocal, general rules for construction of statutes of doubtful meaning do not apply.”¹³ Sections 24.2-108 and 24.2-111 require localities to pay the salaries of electoral board members and general registrars as authorized in the general appropriation act. The localities are to “be reimbursed annually as authorized by the act.”¹⁴ I can find no specific statement, however, in either the 2002 Amendments to the 2000 Appropriation Act or the 2002 Appropriation Act requiring that a certain percentage of reimbursement be made by the State Board to localities. The acts set out the minimum amount of salary to be paid by localities to local electoral board members and general registrars.¹⁵ One would presume that the amount of reimbursement would be the same as the amount of stated salary, except to the extent the Governor chooses to exercise the power
granted him by the General Assembly to reduce above-the-line allotments of appropriation by a uniform percentage.

The Governor, should he decide to reduce allotments of appropriation budgeted to reimburse localities by five percent for 2002 and ten percent in 2003, has the authority to require the State Board of Elections to reflect such reductions in its reimbursement payments to localities. To accomplish the executive management savings, the Governor has the authority to require a reduction in appropriations allotted for the salaries of electoral board members and general registrars.

Conclusion

It is my opinion that the Governor has the power to direct the State Board of Elections to reduce the amounts it reimburses localities for the salaries of electoral board members and general registrars in order to achieve legislatively mandated budget cuts.


2See 2002 H.B. 29, 2002 H.B. 30 (setting forth Items 88 and 92, respectively).

3"The Director of the Department [of Planning and Budget] shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor." Va. Code Ann. § 2.2-1500(B) (LexisNexis Repl. Vol. 2001).

42002 H.B. 29, Item 543.07(A); see also 2002 H.B. 30, Item 543.04(A).

5Memorandum of Department of Planning and Budget, Summary of 3% - 7% - 8% Reductions Proposed by Secretarial Area and Agency, at 2 (Feb. 11, 2002) (on file with Department of Planning and Budget).

6See 2002 H.B. 30, Item 92.10.

7The term "allotment" means "[a] share or portion of something." Black's Law Dictionary 76 (7th ed. 1999).

82002 H.B. 29, 2002 H.B. 30 (emphasis added).


10"Other than as may be provided for in the debt provisions of this Constitution, the Governor, subject to such criteria as may be established by the General Assembly, shall ensure that no expenses of the Commonwealth be incurred which exceed total revenues on hand and anticipated during a period not to exceed the two years and six months period" "after the end of the session of the General Assembly at which the law is enacted authorizing the same." Va. Const. art. X, § 7.


15 See 2002 H.B. 29, 2002 H.B. 30 (citing Items 88(A)-(C) and 92(A)-(C), respectively).

16 "Above-the-line" in this use means "portions of the total amount shown on separate lines [which] are for information purposes only and are not limiting." Va. Code Ann. § 2.2-1509(A) (LexisNexis Repl. Vol. 2001).

17 2002 H.B. 29, 2002 H.B. 30 (quoting § 4-1.04(a)(6) in both acts).