COUNTIES, CITIES AND TOWNS: LOCAL CONSTITUTIONAL OFFICERS, ETC. – SHERIFF.

Processing fee authorized by ordinance to be collected by clerk on convicted individuals admitted into county, city, or regional jails is reserved solely for use by local sheriff’s office, even though county or city may participate in regional jail.

Ms. Sharon E. Pandak
County Attorney for Prince William County
November 18, 2002

This is in response to your request for an official advisory opinion in accordance with § 2.2-505 of the Code of Virginia.

Issue Presented

You ask whether § 15.2-1613.1 allows Prince William County to adopt an ordinance imposing a processing fee on convicted individuals admitted to a county, city, or regional jail to be used by the regional adult detention center, rather than the local sheriff’s office, to defray the cost of processing such individuals.

Response

It is my opinion that the processing fee authorized by § 15.2-1613.1 is reserved solely for use by the local sheriff’s office.

Applicable Law and Discussion

Section 15.2-1613.1 provides:

Any county or city may by ordinance authorize a processing fee not to exceed twenty-five dollars on any individual admitted to a county, city, or regional jail following conviction. The fee shall be ordered as a part of court costs collected by the clerk, deposited into the account of the treasurer of the county or city and shall be used by the local sheriff’s office to defray the costs of processing arrested persons into local or regional jails.
Virginia adheres to the Dillon Rule of strict construction, which provides that “[local governing bodies] have only those powers which are expressly granted by the state legislature, those powers fairly or necessarily implied from expressly granted powers, and those powers which are essential and indispensable.”\(^1\) Any doubt as to the existence of a power must be resolved against the locality.\(^2\) The Dillon Rule recognizes that localities are political subdivisions of the Commonwealth,\(^3\) which, in turn, rests on the foundation of Article I, § 14 of the Constitution of Virginia.\(^4\)

Absent ambiguity, the plain meaning of a statute must prevail.\(^5\) Section 15.2-1613.1 grants counties and cities the authority to impose a fee on individuals "admitted to a county, city, or regional jail following conviction." The use of the word "may" in the statute implies that the adoption of the ordinance is discretionary.\(^6\) You relate that, in Prince William County, the processing of arrested persons is performed by adult detention center personnel rather than by the sheriff.

A county or city may enact an ordinance imposing a processing fee; however, a sheriff’s office must use such fee for costs associated with processing convicted individuals into county, city, or regional jails. Section 15.2-1613.1 mandates that the processing fee authorized by ordinance "shall be used by the local sheriff’s office to defray the costs of processing." Under well-accepted principles of statutory construction, when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.\(^7\) The statute cannot be read to allow the collection of the fee to be used by regional jail staff. Section 15.2-1613.1 clearly delineates that such funds "shall be used by the local sheriff’s office to defray the costs of processing." The use of the word "shall" in a statute generally indicates that the procedure is mandatory, while "may" indicates that it is permissive.\(^8\) Consequently, any funds collected under such an ordinance must be reserved for use by the sheriff’s office to defray the cost of processing such persons.

**Conclusion**

Accordingly, it is my opinion that the processing fee authorized by § 15.2-1613.1 is reserved solely for use by the local sheriff’s office.


County government ... is ... one of the instruments or agencies through which the State performs its functions of government. It is an arm of the State.” Board of Supervisors v. Cox, 155 Va. 687, 710, 156 S.E. 755, 762 (1931).

Article I, § 14 guarantees “[t]hat the people have a right to uniform government; and, therefore, that no government separate from, or independent of, the government of Virginia, ought to be erected or established within the limits thereof.” This language is identical to Article I, § 14 of the 1902 Constitution and remains unchanged from § 14 of the Declaration of Rights, adopted June 12, 1776.


“Unless it is manifest that the purpose of the legislature was to use the word “may” in the sense of “shall” or “must” then “may” should be given its ordinary meaning—permission, importing discretion.” Board of Sup’rs v. Weems, 194 Va. 10, 15, 72 S.E.2d 378, 381 (1952) (quoting Masters v. Hart, 189 Va. 969, 979, 55 S.E.2d 205, 210 (1949)); see also Op. Va. Att’y Gen.: 2000 at 29, 32 n.2; 1999 at 193, 195 n.6; 1997 at 10, 12; 1978-1979 at 61, 62.


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