

OP. NO. 04-035

**COUNTIES, CITIES AND TOWNS: LOCAL CONSTITUTIONAL OFFICERS,
COURTHOUSES AND SUPPLIES – SHERIFF.**

Sheriff may not modify statutorily prescribed standard uniform specifications, unless alternate clothing exception applies. Exception allows sheriff or deputy sheriff to wear alternate clothing when duties of such officer would be adversely affected by wearing of standard uniform.; does not allow for uniform variation based on intangible factors. No financial impediment to sheriff's compliance with standard uniform specifications. Question whether sheriff's office is complying with standard uniform specifications would be determined by appropriate civil court proceeding. Failure to take corrective action ordered by court may result in criminal contempt penalties. Failure to adhere to statutory requirement may be grounds for removal of offending officer from his position.

The Honorable Ryant L. Washington
Sheriff for Fluvanna County
October 6, 2004

Issues Presented

You inquire as to permissible variances from the standard uniform prescribed for sheriffs and their deputies under §§ 15.2-1610 and 15.2-1611.¹ You first ask whether a variance from the specifications prescribed in § 15.2-1610(B) for sheriffs' uniforms would be a criminal or civil violation, and if so, what would be the punishment. Next, you ask whether intangible factors, such as professionalism, morale concerns, competitive marketing, retention of deputies, and public perception of police officers and deputies, would meet the criteria allowed for uniform variance under § 15.2-1611. Further, you inquire as to the process for resolving an issue whereby a sheriff's office believes it has met the criteria for uniform variance, but an individual or entity has a contrary view.²

Response

I am of the opinion that a sheriff would violate § 15.2-1610 if the sheriff modifies the standard uniform specifications prescribed in § 15.2-1610(B), unless the alternate clothing exception in § 15.2-1611 applies. Section 15.2-1611 allows a sheriff or deputy sheriff to wear alternate clothing when the duties of such officer would be adversely affected by the wearing of a standard uniform. Section 15.2-1611 does not allow for uniform variation based on intangible factors. There should be no financial impediment to a sheriff's compliance with the standard uniform specifications, because § 15.2-1613 *requires* counties and cities to provide, at their expense, a reasonable number of standard uniforms and items of personal equipment that are required by the sheriff's office.

Ultimately, the decision whether a sheriff's office is complying with the standard uniform specifications would be determined by a civil proceeding in the appropriate circuit court. Failure to take corrective action ordered by the court, however, may result in criminal contempt penalties. In addition, failure to adhere

to a statutory requirement may be grounds for removal of the offending officer from his position.

Background

You acknowledge that the intent of §§ 15.2-1610 and 15.2-1611 is to standardize all sheriffs' offices across the Commonwealth. You believe that not all sheriffs' offices are able to operate, staff and function in a similar manner. Therefore, a sheriff may have reasons, of an intangible nature, to deviate from the standard uniform, to ensure that the public receives quality service from the sheriff's office.

You also state that the Compensation Board previously reimbursed sheriffs' offices for a portion of their uniform expenses, but that localities now are responsible for funding sheriffs' uniforms and equipment. Thus, you believe that this may justify a variance from the standard uniform requirements.

Applicable Law and Discussion

Section 15.2-1610 requires standard uniforms for all sheriffs' offices in the Commonwealth. Section 15.2-1610(A) provides that "[a]ll uniforms used by sheriffs and their deputies and police officers under the direct control of a sheriff^[3] while in the performance of their duties *shall* meet the standards designated in subsection B,^[4] *except as provided in § 15.2-1611.*" (Emphasis added.) Section 15.2-1610(D) requires that "[a]ll sheriffs' offices *shall be in full compliance with specifications for uniforms ..., if the sheriff prescribes that uniforms be worn.*" (Emphasis added.)

The plain and unambiguous words of § 15.2-1610(A) and (D) leave no doubt that the General Assembly intends sheriffs to wear standard uniforms that comply with the specifications set out in § 15.2-1610(B), except when § 15.2-1611 authorizes the wearing of alternate clothing. Section 15.2-1610(A) uses the word "shall" to require a sheriff's compliance with the standard uniform specifications. The use of "shall" leaves no doubt that the specifications are mandatory, and that there is no discretion to modify them except in accordance with § 15.2-1611.⁵ Further, § 15.2-1610(D) reiterates that all sheriffs' offices shall comply fully with the standard uniform specifications, if the sheriff prescribes the wearing of such uniforms.

Section 15.2-1610(D) could be interpreted to mean that sheriffs do not have to prescribe that a uniform be worn. If so, various forms of civilian attire would be acceptable. Such an interpretation, however, ignores the public's interest in having uniformed peace officers, throughout the Commonwealth, who are easily and quickly recognizable.⁶ This public interest appears to be the policy reflected in § 15.2-1610 and in § 15.2-1612, which states:

Any unauthorized person who wears a uniform identical to or substantially similar to the standard uniform prescribed in § 15.2-1610 with the intent to deceive a casual observer or with the intent to impersonate the office of sheriff, shall be guilty of Class 3 misdemeanor.^[7] For purposes of this section, "substantially similar" means so similar in appearance as to be likely to deceive the casual observer.

As noted, § 15.2-1610(A) permits an exception from mandatory compliance with the standard uniform specifications. Section 15.2-1611 provides the limited circumstance in which sheriffs may wear alternate clothing:

When the duties of a sheriff or deputy sheriff are such that the wearing of the standard sheriff's uniform would adversely limit the effectiveness of the sheriff's or deputy sheriff's ability to perform his prescribed duties, then clothing appropriate for the duties to be performed may be required by the sheriff. [Emphasis added.]

Section 15.2-1611 is expressly conditioned on a determination that a sheriff's duties warrant wearing alternate clothing appropriate for the "prescribed duties." This is a narrow grant of authority, specifically applicable to the particular duty(-ies) to be performed. The exception in § 15.2-1611 is restricted to a situation where the wearing of a standard uniform would adversely affect a sheriff's ability to perform his prescribed duties. In other words, a sheriff must wear the standard uniform, except where "alternate clothing"⁸ is necessary to facilitate the effective discharge of his prescribed duties.

Especially in light of §§ 15.2-1610 and 15.2-1612, this is an obvious reference to "plain clothes" or "undercover" work, or for example, extra hazardous duties, such as a bomb squad member or hazardous materials unit, where the wearing of special protective clothing is required to perform those specific duties.⁹ The exemption is not intended to extend to intangible matters that affect sheriffs and deputies apart from the actual conduct of their prescribed duties, such as issues related to professionalism, morale, competitive marketing, retention of personnel, and public perception. The fact that the public's elected representatives have deliberated and chosen to prescribe a standard uniform for all sheriffs is evidence of the public's preference and expectation in this regard.

If each sheriff's office were permitted to modify the specifications, the "standard uniform" under § 15.2-1610(B) no longer would exist. Variations from the standard uniform based on intangible considerations, which are subjective and speculative, could lead to a system whereby each jurisdiction essentially adopts its own unique uniforms and markings. The ability to easily and quickly identify actual peace officers by their uniforms is vital to public safety.¹⁰

You also allude to the fact that cost considerations may impel a sheriff to consider a deviation from the standard uniform specifications in § 15.2-1610(B). Since 1990, § 15.2-1613 has *required* counties and cities to provide "a reasonable number of uniforms" to their sheriffs' offices.¹¹ The second paragraph of § 15.2-1613 states:

In addition to those items listed in § 15.2-1615.1, counties and cities shall provide at their expense in accordance with the standards set forth in § 15.2-1610 a reasonable number of uniforms and items of personal equipment required by the sheriff to carry out his official duties. [Emphasis added.]

Like § 15.2-1610, § 15.2-1613 mandates that counties and cities provide "a reasonable number of uniforms"¹² and equipment to their sheriffs' offices.

You also inquire as to the entity responsible for determining whether a sheriff's office is in compliance with the standard uniform requirements. Although a sheriff generally has discretion in the day-to-day operations of his office,¹³ § 15.2-1610(B) sets forth mandatory specifications for uniforms to be worn by sheriffs. Ultimately, the determination as to a sheriff's compliance with the standard uniform requirements would be resolved by an appropriate circuit court proceeding that is civil in nature.¹⁴ The Supreme Court of Virginia has original jurisdiction over any matter seeking a writ of mandamus or of prohibition¹⁵ to force a sheriff to comply with the standard uniform requirements.

Virginia law does not prescribe a civil penalty for violation of § 15.2-1610. Any violation of an injunction or a writ of mandamus enforcing that statute, however, would subject the violator to contempt of court, and criminal penalties may be imposed.¹⁶

In the final analysis, flagrant violations of the law may result in a sheriff being subject to removal from office for misfeasance or malfeasance in office.¹⁷ "[A] circuit court may remove from office any elected officer or officer who has been appointed to fill an elective office" within the court's jurisdiction upon the filing of a petition "signed by a number of registered voters who reside within the jurisdiction of the officer equal to ten percent of the total number of votes cast at the last election for the office that the officer holds."¹⁸ These persons' signatures are to be made "under penalties of perjury."¹⁹ The petition must state "with reasonable accuracy and detail the grounds or reasons for removal."²⁰ One of the grounds specified for removal of an elected officer is "neglect of duty, misuse of office, or incompetence in the performance of duties when that neglect of duty, misuse of office, or incompetence in the performance of duties has a material adverse effect upon the conduct of the office."²¹ Whether a sheriff's deviation from the standard uniform specifications constitutes a violation of § 15.2-1610(B) is a question for the courts.

Conclusion

Accordingly, I am of the opinion that a sheriff would violate § 15.2-1610 if the sheriff modifies the standard uniform specifications prescribed in § 15.2-1610(B), unless the alternate clothing exception in § 15.2-1611 applies. Section 15.2-1611 allows a sheriff or deputy sheriff to wear alternate clothing when the duties of such officer would be adversely affected by the wearing of a standard uniform. Section 15.2-1611 does not allow for uniform variation based on intangible factors. There should be no financial impediment to a sheriff's compliance with the standard uniform specifications, because § 15.2-1613 *requires* counties and cities to provide, at their expense, a reasonable number of standard uniforms and items of personal equipment that are required by the sheriff's office.

Ultimately, the decision whether a sheriff's office is complying with the standard uniform specifications would be determined by a civil proceeding in the appropriate circuit court. Failure to take corrective action ordered by the court, however, may result in criminal contempt penalties. In addition, failure to adhere to a statutory requirement may be grounds for removal of the offending officer from his position.

¹This opinion is based on state law of general application, and does not consider the charter, ordinances or practices of any particular locality.

² You ask a fourth question that is not set out, because it is answered in the response to your other questions.

³ For purposes of this opinion, when the term "sheriff(s)" is used, it may include deputy sheriffs and police officers under the supervision of a sheriff.

⁴ Section 15.2-1610(B) designates specifications for shirts, shoulder patches, badges, trousers, hats, shoes, leather accessories, ties, blouses, jackets and coats.

⁵ See *Schmidt v. City of Richmond*, 206 Va. 211, 218, 142 S.E.2d 573, 578 (1965) ("When the word 'shall' appears in a statute it is generally used in an imperative or mandatory sense."), *quoted in Mayo v. Dep't of Commerce*, 4 Va. App. 520, 523, 358 S.E.2d 759, 761 (1987); *Andrews v. Shepherd*, 201 Va. 412, 414, 111 S.E.2d 279, 281-82 (1959) ("In its ordinary signification, 'shall' is a word of command, and is the language of command, and is the ordinary, usual, and natural word used in connection with a mandate. In this sense 'shall' is inconsistent with, and excludes, the idea of discretion, and operates to impose a duty which may be enforced, particularly if public policy is in favor of this meaning, or when addressed to public officials, or where a public interest is involved, or where the public or persons have rights which ought to be exercised or enforced, unless an intent to the contrary appears" (Citation omitted.)).

⁶ Statutes should not be interpreted to produce absurd results or irrational consequences. See *McFadden v. McNorton*, 193 Va. 455, 461, 69 S.E.2d 445, 449 (1952); 2001 Op. Va. Att'y Gen. 164, 165.

⁷ A Class 3 misdemeanor is punishable by "a fine of not more than \$500." Va. Code Ann. § 18.2-11(c) (LexisNexis Repl. Vol. 2004).

⁸ "Alternate clothing" is a reference to attire of a nonuniform nature.

⁹ See, e.g., *State v. Amundson*, 670 N.E.2d 1083, 1084 (Ohio Ct. App. 1996) (noting that police officers executing search warrant for drugs included drug unit officers wearing ski masks and caps indicating "Deputy Sheriff," sheriffs' deputies wearing standard uniforms, and S.W.A.T. team members wearing helmets, goggles and jackets with "Deputy Sheriff" written across chest in five-inch yellow letters).

¹⁰ See, e.g., *Kelley v. Johnson*, 425 U.S. 238, 245, 248 (1976) (noting that rule of New York's Suffolk County Police Department requiring, among other things, police to wear standard uniform makes police officers "readily recognizable" to public); *Livingston v. State*, 225 Ga. App. 512, 513, 484 S.E.2d 311, 312 (1997) (noting that deputy sheriff making traffic stop was wearing standard uniform); *Amundson*, 670 N.E.2d at 1084.

¹¹ 1990 Va. Acts ch. 68, at 127 (amending and reenacting § 15.1-137.3, predecessor to § 15.2-1613, relating to operation of sheriff's department).

¹² Section 15.2-1613 does not require that counties and cities provide uniforms that do not comply with the specifications set forth in § 15.2-1610(B).

¹³ See Op. Va. Att'y Gen.: 1989 at 71, 72; 1987-1988 at 221, 222; 1986-1987 at 130, 131; 1984-1985 at 285, 285.

¹⁴ See Va. Code Ann. §§ 8.01-184 to 8.01-191, 8.01-620 to 8.01-634 (Michie Repl. Vol. 2000 & :LexisNexis Supp. 2004) (relating to persons seeking declaratory judgments and injunctions, respectively).

¹⁵ See Va. Const. art. VI, § 1; Va. Sup. Ct. R. 5:7; Va. Code Ann. § 17.1-309 (LexisNexis Repl. Vol. 2003); § 8.01-644 (Michie Repl. Vol. 2000), see, e.g., *City of Richmond v. Hayes*, 212 Va. 428, 184 S.E.2d 784 (1971) (invoking original jurisdiction of Supreme Court of Virginia in mandamus action to compel Director of Department of Public Health for City of Richmond to perform ministerial duties imposed upon him by city ordinance).

¹⁶ See 4A Michie's Jur. *Contempt* § 5, at 238 (1999) ("The power to punish for contempt is inherent in the nature and constitution of a court. It is a power not derived from any statute, but arising from necessity, implied because it is necessary to the exercise of all other powers. Without such power, the administration of the law would be in continual danger of being thwarted by the lawless.").

¹⁷ See *generally* *Narrows Grocery Co. v. Bailey*, 161 Va. 278, 286, 170 S.E. 730, 733 (1933) (stating that it is incumbent upon sheriff to serve warrants in mode prescribed by law, or to properly account for his nonperformance of duty, in order to avoid liability for his misfeasance).

¹⁸ Va. Code Ann. § 24.2-233 (LexisNexis Repl. Vol. 2003).

¹⁹ Section 24.2-235 (LexisNexis Repl. Vol. 2003).

²⁰ *Id.*

²¹ Section 24.2-233(1).

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