

OP. NO. 04-074

EDUCATION: GENERAL POWERS AND DUTIES OF SCHOOL BOARDS.

CONSTITUTION OF VIRGINIA: EDUCATION (SCHOOL BOARDS).

No express authority for school board to loan money to board of supervisors. School boards are subject to Dillon Rule and have only those powers that are expressly given and those that necessarily or fairly are implied from expressly granted powers.

Mr. Franklin P. Slavin, Jr.
County Attorney for Bland County
October 19, 2004

Issue Presented

You ask whether the Board of Supervisors of Bland County may borrow funds from the Bland County School Board.

Response

It is my opinion that the Bland County School Board has no authority to loan money to the Bland County Board of Supervisors. School boards are subject to the Dillon Rule; thus, they have only those powers that are expressly given and those that are necessarily or fairly implied from expressly granted powers. There is no express grant of authority for a local school board to make loans to the Board of Supervisors nor can any such authority be reasonably or fairly implied.

Applicable Law and Discussion

You ask whether the Bland County Board of Supervisors ("board of supervisors") is authorized to secure a loan from the Bland County School Board ("school board"). Article VIII, § 7 of the Constitution of Virginia provides that "[t]he supervision of schools in each school division shall be vested in a school board."¹ Constitutional provisions are either self-executing or mandatory.² A self-executing provision does not require enabling legislation for its enforcement.³ A mandatory provision declares or imposes a duty or requirement that must be followed.⁴ A directory provision sets forth procedures or "confer[s] discretion on the legislature" for its implementation.⁵ The Supreme Court of Virginia's decisions concerning Article VIII, § 7, however, leave no room to doubt that the provision is mandatory rather than self-executing.⁶ Thus, the General Assembly has specified the supervisory powers and duties of the local school boards.⁷ School boards are "public quasi corporations that exercise limited powers and functions of a public nature granted to them expressly or by necessary implication, and none other."⁸

Virginia adheres to the Dillon Rule of strict construction, which provides that "[l]ocal 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."⁹ Any

doubt as to the existence of a power must be resolved against the locality.¹⁰ The Dillon Rule applies to school boards as well as to localities.¹¹

The first issue, then, is to determine whether there is an express grant of authority for the school board to make loans. In your written opinion,¹² you conclude that no authority explicitly permitting school boards to make loans exists. I concur.

This alone, however, does not end the inquiry. The next question is whether the authority given to school boards necessarily or fairly implies the power to make loans. For a power to be necessarily or fairly implied, it must be consistent with, and directly related to, a stated power or function of a school board.¹³ "[T]here is no specific test to determine" "what powers are necessarily implied from particular expressed powers."¹⁴ To determine whether a school board has an implied power, one must first identify a stated power from which the unexpressed authority necessarily or fairly is implied. When the express power necessarily or fairly embraces the implied power, the school board will be deemed to have the implied authority.¹⁵ When a conclusion that a governing body does not have the implied power would frustrate the legislative intent, the implied power will be found to exist.¹⁶ An implied power will not be found where its exercise implicates a power not expressly given,¹⁷ or where statutory construction suggests legislative intent to the contrary.¹⁸

The overriding duty of a school board is the supervision of schools in each school division. It is my opinion that, under the circumstances you present, such authority does not include the power to make loans to the locality. Section 22.1-88, which lists sources of school funds, describes them as "funds available to the school board of a school division for the establishment, support and maintenance of the public schools in the school division." This language suggests that the school board must use its funds for the "establishment, support and maintenance" of the schools. The facts you relate do not suggest that a loan by the school board to the board of supervisors meets these objectives.

Conclusion

Accordingly, it is my opinion that the Bland County School Board has no authority to loan money to the Bland County Board of Supervisors. School boards are subject to the Dillon Rule; thus, they have only those powers that are expressly given and those that are necessarily or fairly implied from expressly granted powers. There is no express grant of authority for a local school board to make loans to the Board of Supervisors nor can any such authority be reasonably or fairly implied.

¹The Virginia Constitution, however, establishes three levels of oversight of public education in the Commonwealth. First, the General Assembly is directed to "provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth." Va. Const. art. VIII, § 1. Second, "general supervision of the public school system shall be vested in a Board of Education" appointed by the Governor and confirmed by the General Assembly. Va. Const. art. VIII, § 4. Third, school boards have the duty of "supervision of schools." Va. Const. art. VIII, § 7.

²2002 Op. Va. Att'y Gen. 50, 52.

³"A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be employed and protected, or the duty imposed may be enforced; and it is not self-executing when it merely indicates principles, without laying down rules by means of which those principles may be given the force of law.'" *City of Newport News v. Woodward*, 104 Va. 58, 61-62, 51 S.E. 193, 194 (1905) (citation omitted).

⁴16 C.J.S. *Constitutional Law* § 52, at 137 (1984) ("Mandatory constitutional provisions are binding on all departments of the government.").

⁵*Albemarle Oil & Gas Co. v. Morris*, 138 Va. 1, 10, 121 S.E. 60, 62 (1924).

⁶See 2002 Op. Va. Att'y Gen., *supra* note 2, at 52, 54 n.23.

⁷See Va. Code Ann. tit. 22.1, ch. 7, §§ 22.1-71 to 22.1-87 (LexisNexis Repl. Vol. 2003 & Supp. 2004) (general powers and duties of school boards).

⁸*Kellam v. Sch. Bd.*, 202 Va. 252, 254, 117 S.E.2d 96, 98 (1960); see also *Commonwealth v. County Bd.*, 217 Va. 558, 574, 232 S.E.2d 30, 40 (1977).

⁹*Arlington County v. White*, 259 Va. 708, 712, 528 S.E.2d 706, 708 (2000) (alteration in original) (quoting *City of Va. Beach v. Hay*, 258 Va. 217, 221, 518 S.E.2d 314, 316 (1999)); see also 2002 Op. Va. Att'y Gen. 105, 106.

¹⁰2A Eugene McQuillin, *The Law of Municipal Corporations* § 10.19, at 369 (3d ed. 1996); see also Op. Va. Att'y Gen.: 2002, *supra* note 9, at 106; 2000 at 75, 76.

¹¹See *Commonwealth v. Arlington County Bd.*, 217 Va. 558, 232 S.E.2d 30 (1977); 2002 Op. Va. Att'y Gen., *supra* note 9, at 107.

¹²Any request by a county attorney for an opinion from the Attorney General "shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions." Va. Code Ann. § 2.2-505(B) (LexisNexis Repl. Vol. 2001).

¹³1978-1979 Op. Va. Att'y Gen. 216, 216.

¹⁴*Gordon v. Bd. of Supvrs.*, 207 Va. 827, 832, 153 S.E.2d 270, 274 (1967).

¹⁵For example, a 1983 opinion of the Attorney General concludes that § 22.1-78, which requires a school board to ensure the "proper discipline of students, including their conduct going to and returning from school," includes the authority to punish a student by directing the student to perform work for the school. 1982-1983 Op. Va. Att'y Gen. 448, 449. Also, this Office has concluded that the authority of school boards to determine who will use their property, and in what manner, included the power to grant exclusive broadcast rights to sporting events. 1978-1979 Op. Va. Att'y Gen. 224, 225 (interpreting § 22-164.1, predecessor to § 22.1-131).

¹⁶*Gordon*, 207 Va. at 832-33, 153 S.E.2d at 274-75.

¹⁷See 1978-1979 Op. Att'y Gen. 228 (concluding that §§ 22-161 and 15.1-262, which authorize "sale" or "exchange" of school property, do not include power for school board to make *gift* of school property that does not benefit school district); see also 1978-1979 Op. Va. Att'y Gen., *supra* note 13, at 216 (concluding that power of local school board to supervise education does not include authority to operate day care center, which is custodial in nature and not essentially related to education).

¹⁸See, e.g., 2002 Op. Va. Att'y Gen. 105, 106-07 (concluding that school board may not add sexual orientation as category in its nondiscrimination policy, as such authority is not necessarily or fairly implied from express authority to prohibit discrimination on basis of sex); see also 1976-1977 Op. Va. Att'y Gen. 240, 240 (concluding that authority of school board to care for, manage, and control school property does not include authority to offer reward for identification of vandals).

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