

OP. NO. 04-075

**PRISONS AND OTHER METHODS OF CORRECTION: LOCAL
CORRECTIONAL FACILITIES – FUNDING LOCAL CORRECTIONAL
FACILITIES AND PROGRAMS.**

Use of state funds appropriated for local correctional facility limited to payment of expenses incurred for persons confined in facility. Surplus funds may be returned to local treasury to be used for such operating expenses; excess funds not so used must be returned to state treasury.

The Honorable J. T. "Tommy" Whitt
Sheriff for Montgomery County
October 19, 2004

Issue Presented

You inquire regarding the proper interpretation of § 53.1-86, as it relates to the disposition of excess state funds appropriated for the operation of the local jail, at the end of the apportionment year. Specifically, you ask if your locality may revert such funds to its local treasury and appropriate the funds to pay the operational expenses of the local jail, and failing that, whether it must return such funds to the Commonwealth's treasury.

Response

It is my opinion that § 53.1-86 limits the use of state funds appropriated for a local correctional facility to the payment of expenses incurred for persons confined in the correctional facility. It is further my opinion that surplus funds, if any, may be returned to the local treasury to be used for such operating expenses. Finally, it is my opinion that any excess funds not so used must be returned to the state treasury.

Applicable Law and Discussion

Article 3, Chapter 3 of Title 53.1, §§ 53.1-80 through 53.1-90, governs the funding of local correctional facilities and programs. On a quarterly basis, the Compensation Board allocates to the locality funds that the General Assembly has appropriated in the general appropriations act.¹ The allocation for each locality is based upon the number of prisoner days at the jail during the quarter which precedes payment.² Thus, this allocation is a reimbursement, quarterly in arrears, of expenses already incurred in the housing and care of inmates.³ These statutes also prescribe the manner of funding salaries and benefits for medical and treatment personnel in local jails.⁴

By contrast, Articles 3 and 6.1, Chapter 16 of Title 15.2 control the funding of salaries for all other employees of local jails, including sheriffs and deputy sheriffs. Chapter 16 also regulates the funding of the expenses of each local sheriff's office, but does not include jail operating costs, which are governed by §§ 53.1-83.1 and 53.1-85.⁵

With respect to the disposition of funds for jail operating costs received pursuant to § 53.1-85, § 53.1-86 provides in pertinent part:

No locality receiving state funds under § 53.1-85 *shall* use such funds for any purpose other than for paying expenses incurred as the result of the confinement of persons in local correctional facilities. *The Department [of Corrections] shall require a locality to return any portion of state funds expended in violation of this provision to the state treasury. Should an unexpended balance of state funds exist at the end of the apportionment year, the unencumbered funds in such balance may be reverted to the local treasury and subsequently shall be expended for operating expenses of local correctional facilities.* [Emphasis added.]

The language of § 53.1-86 is plain and unambiguous.⁶ In a prior opinion, this Office summarized its meaning:

Section 53.1-86 forbids the use of funds allocated pursuant to § 53.1-85 for any purpose other than jail operating costs. If a surplus of state funds exists at the end of any apportionment year, these funds revert to the local treasury "and subsequently shall be expended for operating expenses of local correctional facilities."^[7]

This language forbids the use of these state funds for any purpose other than reimbursement of jail operating expenses and requires that any funds not so used be returned to the state treasury. Thus, the practical operation of this language requires that surplus funds, if any, be returned to the local treasury. Subsequently, the funds are either used for the expenses of the local jail or returned to the state treasury. In practice, however, this is a reimbursement of sums already expended for jail operating costs and not a prospective grant.

Conclusion

Accordingly, it is my opinion that § 53.1-86 limits the use of state funds appropriated for a local correctional facility to the payment of expenses incurred for persons confined in the correctional facility. It is further my opinion that surplus funds, if any, may be returned to the local treasury to be used for such operating expenses. Finally, it is my opinion that any excess funds not so used must be returned to the state treasury.

¹ See Va. Code Ann. §§ 53.1-84, 53.1-85 (LexisNexis Repl. Vol. 2002).

² See § 53.1-83.1 (LexisNexis Repl. Vol. 2002); § 53.1-85.

³ See § 53.1-85; see also 1987-1988 Op. Va. Att'y Gen. 472, 475 (noting that financial scheme for jail operating expenses is reimbursement). Although the Compensation Board has not adopted any regulations to implement the provisions of §§ 53.1-84 through 53.1-86, as authorized in § 53.1-84, it has issued procedures for localities to seek the available reimbursement through the Local Inmate Data System. See Compensation Board website at <http://www.scb.state.va.us/LIDSinformation/fy05lids.pdf>.

⁴ See generally, 1989 Op. Va. Att'y Gen. 271, 272.

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Id.

⁶ See, Loudoun County Dep't of Soc. Servs. v. Etzold, 245 Va. 80, 85, 425 S.E.2d 800, 802 (1993) ("A primary rule of statutory construction is that courts must look first to the language of the statute. If a statute is clear and unambiguous, a court will give the statute its plain meaning.").

⁷ 1989 Op. Va. Att'y Gen., *supra* note 4, at 273 (quoting § 53.1-86).

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