

OP. NO. 04-077

**PRISONS AND OTHER METHODS OF CORRECTION: LOCAL
CORRECTIONAL FACILITIES – DUTIES OF SHERIFFS.**

Fees assessed by governing body for courtroom security that are appropriated to sheriff's office may only be used to compensate deputy sheriff's salary for time actually spent performing courthouse security duties and to fund equipment and other personal property related to such duties.

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Issue Presented

You ask whether funds collected pursuant to § 53.1-120(D), which permits a governing body to assess a courtroom security fee, may be used to pay a courtroom deputy's salary and expenses when the deputy does not spend 100% of his duty time assigned to courtroom security.

Response

It is my opinion that fees assessed for courtroom security, which are subsequently appropriated by the governing body to the sheriff's office, may only be used to compensate a deputy sheriff's salary for the time actually spent performing duties related to courthouse security and to fund equipment and other personal property related to courthouse security.

Background

You relate that a Bland County deputy sheriff provides courthouse security for the general district court two days per week and for the circuit court two days per month. The remainder of this deputy sheriff's on-duty time is unrelated to courthouse security. Your inquiry relates to the source of funding for such deputy's salary.

Applicable Law and Discussion

Section 53.1-120(D) allows localities to assess up to \$5 in costs in each criminal and traffic case in which the defendant is convicted. The statute also delineates the manner in which the funds are to be used. Section 53.1-120(D) provides, in pertinent part, that:

Any county or city, through its governing body, may assess a sum not in excess of \$5 as part of the costs in each criminal or traffic case in its district or circuit court in which the defendant is convicted of a violation of any statute or ordinance.... The assessment shall be collected by the clerk of the court in which the case is heard, remitted to the treasurer of the appropriate

county or city and held by such treasurer subject to appropriation by the governing body to the sheriff's office for the funding of courthouse security personnel, and, if requested by the sheriff, equipment and other personal property used in connection with courthouse security.

By its own terms, § 53.1-120(D) provides that the assessment is subject to appropriation by the governing body to the sheriff's office to fund courthouse security personnel. Further, § 53.1-120(D) provides that should the sheriff so request, the appropriation may be used to fund "equipment and other personal property used in connection with courthouse security." The use of the word "shall" in the statute generally indicates that the procedures are intended to be mandatory.¹ The statute does not state that the assessment may be used for any other purpose. It is a well-established principle of statutory construction that when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.² Therefore, § 53.1-120(D) provides that such funds are to be used to fund courthouse security personnel and equipment and does not permit any other use of these funds.

The statute, however, does not define the terms "courthouse security personnel" or "to fund." "A primary rule of statutory construction is that courts must look first to the language of the state. If a statute is clear and unambiguous, a court will give the statute its plain meaning."³ "[T]he primary objective of statutory construction is to ascertain and give effect to legislative intent."⁴ "The ascertainment of legislative intention involves appraisal of the subject matter, purposes, objects and effects of the statute, in addition to its express terms."⁵ Section 53.1-120(D) provides a mechanism for funding so that the Sheriff may "ensure that the courthouses and courtrooms within his jurisdiction are secure from violence and disruption."⁶ This legislative purpose is furthered by using the assessment to compensate deputy sheriffs for providing courthouse security for their respective courts.⁷ Use of the assessment to compensate deputy sheriffs for time spent performing duties unrelated to courthouse security, however, would not fulfill such purpose.⁸

Conclusion

Accordingly, it is my opinion that fees assessed for courtroom security, which are subsequently appropriated by the governing body to the sheriff's office, may only be used to compensate a deputy sheriff's salary for the time actually spent performing duties related to courthouse security and to fund equipment and other personal property related to courthouse security.

¹ See *Andrews v. Shepherd*, 201 Va. 412, 414, 111 S.E.2d 279, 281-82 (1959); see also 1994 Op. Va. Att'y Gen. 64, 68.

² See 2A Norman J. Singer, *Sutherland Statutory Construction* § 47:23 (6th ed. 2000) (explaining maxim, *expressio unius est exclusio alterius*, as applied to statutory construction); 1992 Op. Va. Att'y Gen. at 145, 146.

³ See *Loudoun County Dep't Soc. Servs. v. Etzold*, 245 Va. 80, 85, 425 S.E.2d 800, 802 (1993); see also 1987-1988 Op. Va. Att'y Gen. 513, 514 (noting that absent statutory definition, words are given their ordinary meaning).

⁴Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983), *quoted in* 2002 Op. Va. Att'y Gen. 233, 236.

⁵Vollin v. Arlington County Electoral Bd., 216 Va. 674, 679, 222 S.E.2d 793, 797 (1976), *quoted in* 2002 Op. Va. Att'y Gen., *supra* note 4, at 236.

⁶Section 53.1-120(A).

⁷Section 53.1-120(B).

⁸For example, when a deputy is regularly scheduled for courtroom security for one-half of the available workdays for a given month it would be appropriate to proportionally fund the personnel cost of such deputy.

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