

OP. NO. 05-061

COUNTIES, CITIES AND TOWNS.

No principle of law prevents or inhibits local government employer from assisting with purchase program offered by Dell, Inc., to local government employees.

The Honorable John M. O'Bannon, III, M.D.
Member, House of Delegates
September 19, 2005

Issue Presented

You inquire regarding a government employee purchase program offered by Dell, Inc., which currently is offered to state employees through the Virginia Credit Union. Because few local government employees have access to such a credit union program, Dell seeks to offer this benefit directly through local government employers. You ask whether there is any principle of law that would prevent or inhibit a local government employer from assisting Dell in providing the benefit to its employees.

Response

It is my opinion that no principle of law prevents or inhibits a local government employer from assisting with such purchase program benefit for its employees.

Background

You relate that Dell, Inc., manufactures computers and computer peripherals and exclusively sells these products through online and telephone orders. You state that Dell's employee purchase program allows employees of local government to purchase computers and computer peripherals at significantly discounted prices. Further, you note that in order for employees of local government to access this benefit, the local government must participate in this program by: (1) assisting Dell with direct communications with employees via email; (2) allowing Dell access to government office buildings to communicate to employees about the benefit, usually through the means of a manned kiosk placed in a common area of the building; and, (3) providing space on a part of the local government's web site that is routinely accessed by employees.

You also state that Dell's program is nonexclusive, and it does not prevent or restrict a locality from participating in similar programs offered by other manufacturers or retailers of computers and computer peripherals. Dell does not require local governments to make an express endorsement of its products. Instead, you relate that Dell merely requires the locality to assist in informing its employees of the benefit and the process for obtaining the benefit. Finally, you note that there is no requirement that employees take advantage of the benefit.

Applicable Law and Discussion

You ask whether Dell, Inc., may offer its government employment purchase program, which currently is offered through the Virginia Credit Union, through local government employers. I find no specific statute addressing whether public employers may allow Dell to offer such a benefit directly through the local government to its employees. Thus, the Dillon Rule governs the question you present. Under the Dillon Rule, localities and other political subdivisions have only

those powers expressly granted to them by statute and those necessarily implied from their expressly granted powers.¹

Decisions of the Virginia Supreme Court and prior opinions of this Office recognize that there are occasions when a mechanical application of the Dillon Rule is inappropriate.² Title 15.2 is silent on many aspects of the employer/employee relationship in local government. The General Assembly obviously may adopt such legislation as it deems advisable defining or restricting the authority of local governments and other political subdivisions to allow manufacturers, such as Dell, Inc., to offer government employee benefits directly through the local government employer. The Supreme Court has observed, however, that "it would be unrealistic, inefficient, and unnecessary to require the General Assembly to define every aspect of each mechanism available" to a local government to carry out the powers granted to it.³ In my opinion, the General Assembly's failure to grant specific statutory authority in this instance does not indicate legislative opposition to local authority for that purpose. Instead, it reflects a legislative assumption that such authority is inherent in the employer/employee relationship. Thus, such authority is a necessarily implied power that localities and other political subdivisions already possess.

When a locality exercises an implied power, that exercise must be reasonable and consistent with the legislative intent and may not unduly burden any constitutional rights.⁴ In addition, a government employer has a clear interest in limiting the potential disruption in the workplace that could occur if every business enterprise were allowed to conduct advertising in the context of the government's office buildings by means of manned kiosk, websites routinely accessed by employees, and direct communication with local government employees through government email systems.

While there are numerous factors to be considered in determining whether a political subdivision may grant one business enterprise access to its workplace and email system and deny access to another, I find no provision of law that will prevent or inhibit a local government employer from assisting Dell, Inc., in making the benefit available to its employees.

Conclusion

Accordingly, it is my opinion that no principle of law prevents or inhibits a local government employer from assisting with such purchase program benefit for its employees.

¹ See *Commonwealth v. County Bd.*, 217 Va. 558, 572, 232 S.E.2d 30, 39 (1977).

² See, e.g., *Nexsen v. Bd. of Supvrs.*, 142 Va. 313, 318, 128 S.E. 570, 571 (1925); *Op. Va. Att'y Gen.*: 1994 at 40, 41; 1982-1983 at 151, 152; see also *Scott v. Sylvester*, 220 Va. 182, 257 S.E.2d 774 (1979).

³ *Tidewater Ass'n of Homebltrs. v. City of Va. Beach*, 241 Va. 114, 119, 400 S.E.2d 523, 526 (1991).

⁴ *Id.*