



# COMMONWEALTH OF VIRGINIA

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October 8, 2009

The Honorable John T. Frey  
Fairfax County Circuit Court Clerk  
4110 Chain Bridge Road  
Fairfax, Virginia 22030-4048

Dear Mr. Frey:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issue Presented

You ask whether a locality or a circuit court judge is authorized to direct the manner in which a clerk of the circuit court (“circuit court clerk” or “clerk”) uses the Technology Trust Fund monies collected pursuant to § 17.1-279.

## Response

It is my opinion that a locality or a circuit court judge does not have the statutory authority to direct how a circuit court clerk uses the Technology Trust Fund monies allocated to such clerk’s office pursuant to § 17.1-279.

## Background

You state that § 17.1-279(A) requires each circuit court clerk to assess a fee for the “Technology Trust Fund Fee.” You observe that the statute sets out allowable uses for which the clerk may use the monies collected by the fee. You also note that while § 17.1-279 provides that the Compensation Board, circuit court clerks, and other users of court records are to develop and update policies governing the allocation of such funds, it appears that exclusive control over the allocation of these funds, subject to the allowable uses and policies developed, is granted to the clerk.

## Applicable Law and Discussion

Article VII, § 4 of the Constitution of Virginia establishes the office of clerk of the court and provides that the clerk’s duties are “prescribed by general law or special act.”<sup>1</sup> Among the duties the

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<sup>1</sup>The General Assembly has established the duties of clerks of the court. See VA. CODE ANN. tit. 17.1, ch. 2, §§ 17.1-200 to 17.1-295 (2003 & Supp. 2009). The General Assembly also has established provisions governing courts of record, which include certain duties for circuit court clerks. See generally tit. 17.1, ch. 1, §§ 17.1-100 to 17.1-132 (2003 & Supp. 2009); ch. 5, §§ 17.1-500 to 17.1-524 (2003 & Supp. 2009).

General Assembly assigns to the clerks' offices to perform are keeping records of the proceedings in circuit court,<sup>2</sup> providing access to such records,<sup>3</sup> and maintaining and purging the records.<sup>4</sup> The comprehensive list of statutory duties placed upon circuit court clerks by the General Assembly demonstrates that when the General Assembly intends to require a clerk to perform a task, it knows how to express its intention.<sup>5</sup> In addition, the Dillon Rule of strict construction is applicable to constitutional officers.<sup>6</sup>

Numerous prior opinions of the Attorney General conclude that local governing bodies have no authority to supervise or intervene in the management and control of a constitutional officer's duties.<sup>7</sup> These opinions support the long-standing rule that constitutional officers are independent of their respective localities' management and control.<sup>8</sup> This independence is derived from the constitutional status of the office and the popular election of the individual filling the office. Finally, considerable deference is given to the decisions made by constitutional officers, such as circuit court clerks, unless such decisions are contrary to law.<sup>9</sup>

Section 17.1-279(A) establishes a trust fund ("Trust Fund") for the Technology Trust Fund Fee, which is administered by the Compensation Board<sup>10</sup> and funded by a five dollar fee to be assessed by each circuit court. The fee is assessed "upon each instrument to be recorded in the deed books, and upon each judgment to be docketed in judgment lien docket book."<sup>11</sup>

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<sup>2</sup>See § 17.1-123(A) (2003) (requiring clerk to record orders from each day's proceedings of circuit court in order book); § 17.1-124 (Supp. 2009) (requiring clerk to "keep order books recording all proceedings, orders and judgments of the court").

<sup>3</sup>See § 17.1-208 (Supp. 2009).

<sup>4</sup>See § 17.1-209 (Supp. 2009) (requiring clerk to preserve all papers lawfully returned to or filed in clerk's office); § 17.1-213 (Supp. 2009) (requiring clerk to keep certain records permanently; authorizing clerk to destroy certain records).

<sup>5</sup>See 2005 Op. Va. Att'y Gen. 78, 78, and opinions cited therein.

<sup>6</sup>See, e.g., Op. Va. Att'y Gen.: 2006 at 200, 201; 1984-1985 at 284, 284.

<sup>7</sup>See Op. Va. Att'y Gen.: 1993 at 59, 67; *see also* 1989 at 71, 73 (concluding that board of supervisors has no authority to approve or deny purchases or change equipment specifications determined by constitutional officer); 1986-1987 at 69, 69 (noting that constitutional officer has exclusive control over personnel policies of office); 1978-1979 at 237, 237 (noting that constitutional officer is not subject to control of and jurisdiction of governing body); *id.* at 289, 289 (concluding that treasurer is not subject to control of board of supervisors in determining what tax collection methods to employ); 1976-1977 at 46 (concluding that county government may not investigate personnel practices of constitutional officer). Under certain statutes, a local governing body may add additional duties to be performed by a constitutional officer, as long as those additional duties are not inconsistent with the office and its statutorily prescribed duties. *See, e.g.,* 1978-1979 Op. Va. Att'y Gen. 289, 292 (concluding that pursuant to § 15.1-706(d), predecessor to § 15.2-408(d), county board of supervisors may increase number of duties that treasurer performs, so long as additional duties are consistent with office; board may not dictate methods of carrying out duties).

<sup>8</sup>See, e.g., 1993 Op. Va. Att'y Gen. *supra* note 7, at 67.

<sup>9</sup>See Op. Va. Att'y Gen.: 2003 at 60, 60; 2002 at 62, 62.

<sup>10</sup>See § 17.1-279(B)-(C) (Supp. 2009). I note that other subsections in § 17.1-279 refer to the trust fund as the Technology Trust Fund. *See* § 17.1-279(D)(2), (F). However, § 17.1-279(A) merely establishes the Technology Trust Fund Fee and provides that "[s]uch fee shall be deposited by the State Treasurer into a trust fund."

<sup>11</sup>Section 17.1-279(A).

Section 17.1-279(B) enumerates the permissible uses of allocations from the Trust Fund:

Four dollars of every \$5 fee shall be allocated by the Compensation Board from the trust fund for the purposes of: (i) developing and updating individual *land records* automation plans for *individual* circuit court clerks' offices; (ii) implementing automation plans to modernize *land records* in *individual* circuit court clerks' offices and provide secure remote access to land records throughout the Commonwealth pursuant to § 17.1-294; (iii) obtaining and updating office automation and information technology equipment including software and conversion services; (iv) preserving, maintaining and enhancing court records...; and (v) improving public access to court record. The Compensation Board in consultation with circuit court clerks and other users of court records shall develop and update policies governing the allocation of funds for these purposes. [Emphasis added.]

The allocation uses enumerated in § 17.1-279(B) may be categorized by their purposes. In “i” and “ii,” the purposes relate to improvements and automation of land records. Moreover, allocations for these two purposes are intended to be used for land records for “individual circuit court clerks’ offices”<sup>12</sup> or to “provide secure remote access to land records throughout the Commonwealth.”<sup>13</sup> Therefore, for any other type of request, one of the other enumerated purposes must justify the allocation of funds. The purposes in “iii,” “iv,” and “v,” respectively, allow for statewide allocations for “obtaining and updating office automation and information technology equipment,” “preserving, maintaining and enhancing court records,” and “improving public access to court records.” Notably absent is language authorizing allocations for these three purposes to be made to individual circuit court clerks’ offices. Section 17.1-279(F) offers an exception to the limitation and provides, in pertinent part, that:

If a circuit court clerk provides secure remote access to land records on or before July 1, 2008, then *that clerk* may apply to the Compensation Board for an allocation from the Technology Trust Fund for automation and technology improvements in *his* office that are not related to land records.<sup>14</sup> [Emphasis added.]

Therefore, § 17.1-279(F) authorizes an individual clerk to apply for such an allocation from the Trust Fund only when “secure remote access to [his] land records” was established on or before July 1, 2008. The requirement for actual secure remote access in § 17.1-279(F) is different from the certification

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<sup>12</sup>Section 17.1-279(B)(i)-(ii).

<sup>13</sup>Section 17.1-279(B)(ii).

<sup>14</sup>It is noteworthy that the 2006 Session of the General Assembly revised subsection F of § 17.1-279. See 2006 Va. Acts ch. 647, at 869, 870. Prior to the 2006 amendment, § 17.1-279(F) provided that “[i]f a circuit court clerk *has implemented an automation plan for his land records that will accommodate* secure remote access *on a statewide basis*, then that clerk may apply ... for an allocation from the Technology Trust Fund.” VA. CODE ANN. § 17.1-279(F) (Supp. 2005) (emphasis added). In 2006, the General Assembly deleted the italicized words. See 2006 Va. Acts, *supra*. Thus, after the 2006 amendment, § 17.1-279(F) no longer allowed circuit court clerks merely to have a plan in place for remote access in order to receive an allocation from the Trust Fund to use for automation and technology improvements in the civil and criminal divisions. Further, the 2007 Session of the General Assembly amended subsection F to provide, in part, that: “[i]f a circuit court clerk provides secure remote access to land records on or before July 1, ~~2007~~2008, then that clerk may apply to the Compensation Board for an allocation from the Technology Trust Fund for automation and technology improvements in ~~the civil divisions; or the criminal division, of~~ his office *that are not related to land records.*” 2007 Va. Acts chs. 548, 626, at 748, 752, 872, 876, respectively.

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that secure remote access will be provided in § 17.1-279(B). The certification requirement in subsection B relates only to an application from a clerk for “proposed technology improvements of his land records.” Therefore, a circuit court clerk would not have the authority to apply to the Compensation Board for an allocation of funds from the Technology Trust Fund to improve “automation or technology in his office that are not related to land records” unless his office provided secure remote access to its land records on or before July 1, 2008.

Absent any ambiguity, the plain meaning of a statute must prevail.<sup>15</sup> The General Assembly plainly requires the Compensation Board, in consultation with circuit court clerks and other users of court records, to develop and update policies governing the allocation of funds for the purposes set forth in § 17.1-279(B). It is my opinion that § 17.1-279(B) is free of ambiguity.

### **Conclusion**

Accordingly, it is my opinion that a locality or a circuit court judge does not have the statutory authority to direct how a circuit court clerk uses the Technology Trust Fund monies allocated to such clerk’s office pursuant to § 17.1-279.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, appearing to read 'W C Mims', with a stylized flourish at the end.

William C. Mims

2:131; 1:941/09-055

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<sup>15</sup> See *Loudoun Co. Dep’t Soc. Servs. v. Etzold*, 245 Va. 80, 85, 425 S.E.2d 800, 802 (1993).