



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

November 12, 2010

The Honorable R. Lee Ware, Jr.
Member, House of Delegates
P.O. Box 689
Powhatan, Virginia 23139

Dear Delegate Ware:

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 board of supervisors, by an amendment to its adopted budget, may reduce the amount previously budgeted for the local school fund when the supervisors' original budget resolution and their subsequent resolution to amend the adopted budget both expressly describe the school fund amount as being "appropriated" in the original budget resolution.

Response

It is my opinion, based on the facts available to me, that the Board of Supervisors made an appropriation to the School Board and, therefore, did not have the authority to reduce an appropriation previously made.

Background

On April 12, 2010, the Powhatan County Board of Supervisors ("Board of Supervisors") established the tax rates and adopted a Fiscal Year (FY) 2011 budget for the county by a resolution which stated, in relevant part, "[t]he amount hereby approved for the School Fund is \$42,007,557 and is appropriated lump sum." Other items listed in this resolution do not contain the language "is appropriated lump sum." On May 10, 2010, the Board of Supervisors adopted a "resolution to amend the FY11 adopted budget." In this resolution, the Board of Supervisors noted that "the total amount appropriated to the School Fund for FY11 was \$42,007,557" The Board of Supervisors observed that it had "implored the School Board to minimize the salary reductions." The Board of Supervisors further stated that the School Board had "placed \$123,213 in a contingency line for distribution at a later time and did not utilize these surplus funds for any relief related to the salary reductions." The Board of Supervisors "resolved [that it was] amending the School Board adopted FY11 budget from 42,007,557 to 41,884,344" – a reduction of \$123,213. Finally, on June 14, 2010, the Board of Supervisors adopted a "resolution appropriating the fiscal year 2011 budget", providing that "[t]he amount approved for the School Fund is \$41,884,928." This June 14, 2010, resolution appears to be a departure from the usual practice of the

Board of Supervisors; a review of the official minutes for that governing body found no evidence that the Board of Supervisors had adopted an appropriation resolution separate from its annual budget resolution in 2009, 2008, or 2007.

Applicable Law and Discussion

School budgets involve a division of responsibility between the governing board of a locality and the school board. The superintendent of each public school division is tasked with preparing an "estimate of the amount of money deemed to be needed during the next fiscal year for the support of the public schools of the school division."¹ The estimate must list the amounts proposed as necessary according to each "major classification prescribed by the Board of Education and such other headings or items as may be necessary."² The local school board must hold at least one public hearing on the proposed budget prior to giving final approval of the budget for submission to the governing body of the locality.³ The governing body must then prepare and approve the annual educational budget within a statutory timeframe.⁴ The governing body may approve a budget that differs from that submitted by the school board.⁵

In the counties of the Commonwealth, boards of supervisors exercise fiscal control through two distinct processes, budgeting and appropriations. Budgeting is a planning process, required by the General Assembly, to anticipate revenue needs and to make decisions about the priority of programs and level of services to be provided.⁶ Budgets adopted by local governing bodies, therefore, are for planning and informative purposes and are statutorily distinguished from appropriations.⁷ The appropriations process is the mechanism by which funds are made available for spending on those programs and operations the governing body has decided to support. Adoption of a budget that contemplates certain expenditures does not automatically result in the expenditure of money for that purpose. "Approval of the budget . . . is not an appropriation. The formal act of appropriation by the governing body actually sets aside money for a specific use."⁸

¹ VA. CODE ANN. § 22.1-92(A) (2006).

² *Id.* The major classifications for expenditures are: "(i) instruction, (ii) administration, attendance and health, (iii) pupil transportation, (iv) operation and maintenance, (v) school food services and other noninstructional operations, (vi) facilities, (vii) debt and fund transfers, (viii) technology, and (ix) contingency reserves." Section 22.1-115 (Supp. 2010). The Board of Education has adopted by regulation the same classifications. See 8 VA. ADMIN. CODE § 20-210-10.

³ VA. CODE ANN. § 22.1-92(B) (2006).

⁴ Section 22.1-93 (Supp. 2010).

⁵ See *Scott County Sch. Bd. v. Scott County Bd. of Supvrs.*, 169 Va. 213, 217, 193 S.E. 52, 54 (1937) ("General Assembly intended for the board of supervisors to curtail the school budget if in the exercise of a reasonable discretion it thought the budget excessive"). See also 1979-1980 Op. Va. Att'y Gen. 300, 301 ("if the board of supervisors has not made its appropriation of funds for school purposes, the board would have the discretion to reduce the school budget to the level required by the Standards of Quality").

⁶ See VA. CODE ANN. §§ 15.2-2500 to 15.2-2508 (2008 & Supp. 2010).

⁷ See § 15.2-2506 (Supp. 2010) ("In no event, including school division budgets, shall such preparation, publication and approval [of the budget] be deemed to be an appropriation"). See also 1979-1980 Op. Va. Att'y Gen. 300, 301 ("The mere approval of the budget would not necessarily operate as an appropriation").

⁸ 1982-1983 Op. Va. Att'y Gen. 16, 16 (citing *Almond v. Day*, 197 Va. 419, 426, 89 S.E.2d 851, 855 (1955)). See also § 22.1-94 (2006).

The governing body has flexibility in the timing of its appropriations to the school board; it may make its appropriations on the same periodic basis – annually, semiannually, quarterly, or monthly – as it appropriates funds to other departments and agencies.⁹ Once funds are appropriated, however, the governing body is without authority to reduce the appropriation without the consent of the school board.¹⁰ As prior Opinions have noted, this does not leave a governing body without the power to affect educational expenditures: “It may make appropriations on a periodic basis, or appropriate school funds for basic costs only, while establishing a contingency fund for nonessential expenditures. Alternatively, it may in its appropriation increase or decrease the budgeted amounts for major classifications proposed by the school board.”¹¹

Once funds are appropriated to it, the school board has the authority to determine how the funds will be spent, “consistent with law and the local appropriation.”¹² The school board may shift appropriations within the major classifications,¹³ but may not transfer funds from one classification to another.¹⁴

The question to be resolved is whether the Board of Supervisors adopted a budget without making any appropriation to the School Board on April 12, 2010, or whether it appropriated funds to the School Board. If it is the latter, the Board of Supervisors could not reduce the prior appropriation on May 10, 2010. Based on the facts that are available to me, I conclude that the Board of Supervisors appropriated the funds to the School Board on April 12, 2010. The April 12, 2010 resolution states that the amount approved for the School Fund “is appropriated lump sum.”¹⁵ The May 10, 2010, resolution by which the Board of Supervisors sought to reduce this amount states that “the total amount appropriated to the School Fund [on April 12, 2010] for FY11 was \$42,007,557.” Thus, the express language of the May 10, 2010, resolution confirms that the Board of Supervisors intended to, and did, appropriate the school fund amount on April 12, 2010. Having appropriated the funds and not merely budgeted the funds, the Board of Supervisors subsequently could not withdraw those funds from the School Board on May 10, 2010.

⁹ *Id.* See also § 15.2-2506 (“No money shall be paid out or become available to be paid out for any contemplated expenditure unless and until there has first been made an annual, semiannual, quarterly or monthly appropriation for such contemplated expenditure by the governing body”).

¹⁰ See *Bd. of Supvrs. of Chesterfield County v. County Sch. Bd. of Chesterfield County*, 182 Va. 266, 281, 28 S.E.2d 698, 705 (1944) (“After the board of supervisors have (sic) appropriated money for schools, the exclusive right to determine how this money shall be spent is in the discretion of the school board, so long as they stay within the limits set up in the budget”); 1979-1980 Op. Va. Att’y Gen. 122 (“once the appropriation is made, the funds automatically vest within the exclusive dominion of the school board, and the county would have no authority to otherwise divert such funds for any other purpose without the consent of the county school board”).

¹¹ 1980-1981 Op. Va. Att’y Gen. 33, 34 (citations omitted).

¹² 1981-1982 Op. Va. Att’y Gen. 323, 323.

¹³ *Id.* at 324.

¹⁴ 1980-1981 Op. Va. Att’y Gen. at 34.

¹⁵ See 1959-1960 Op. Va. Att’y Gen. 66, 70 (“If the county board makes a lump sum appropriation and includes in its resolution making such appropriation language broad enough to meet the requirements of the terminal sentence of [predecessor statute to § 15.2-2506 containing nearly identical terminal sentence requiring an appropriation by the governing body before money shall be paid out], such will be sufficient”).

Conclusion

Accordingly, it is my opinion, based on the facts available to me, that the Board of Supervisors made an appropriation to the School Board and, therefore, did not have the authority to reduce an appropriation previously made.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink, appearing to read "Ken C II". The signature is stylized, with a large "K" and "C" and a Roman numeral "II" at the end.

Kenneth T. Cuccinelli, II
Attorney General