



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable B.J. Roberts  
Sheriff, City of Hampton  
1928 West Pembroke Avenue  
Hampton, Virginia 23661

Dear Sheriff Roberts:

## Issue Presented

You ask whether a sheriff's office, pursuant to a local initiative, can serve notice of truancy meetings to parents and legal guardians without a court order prior to the filing of a petition with the courts.

## Response

It is my opinion that a sheriff's office lawfully can assist, without a court order, a local school division with enforcing the compulsory attendance laws by serving notice of an upcoming meeting to the parents or custodians of a truant student, provided the local school board, division superintendent or the administration of a school has requested such assistance from the Sheriff.

## Background

You relate that the Hampton Juvenile and Domestic Relations District Court, in conjunction with the Commonwealth's Attorney Office, the Sheriff's Office and the Court Services Unit, among others, has established a program to combat truancy and its underlying issues. You indicate that, in order to avoid formal court action, the initiative includes holding meetings with parents and guardians prior to filing criminal truancy charges or child-in-need-of-supervision petitions. You further state that, in order to conduct the meeting, the Sheriff's Office has been tasked with serving notice of the meeting to the parents or custodians of a particular child to inform them of the time and place of the meeting. You note, however, that this service is to be issued without a court order or petition in place.

## Applicable Law and Discussion

Sheriffs are constitutional officers "whose duties and authority are controlled by statute."<sup>1</sup> Section 15.2-1609 provides that "the sheriff shall exercise all the powers conferred and perform all the

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<sup>1</sup> Keathley v. Vitale, 866 F. Supp. 272, 276 (E.D. Va. 1994) (citing Hilton v. Amburgey, 198 Va. 727, 96 S.E.2d 151 (1957)). See also VA. CONST. art. VII, § 4 ("The duties and compensation of such officers shall be prescribed by general law or special act.").

duties imposed upon sheriffs by general law.” Except as limited by the law, constitutional officers are “free to discharge [their] constitutional duties in the manner in which [they] deem most appropriate.”<sup>2</sup>

Sheriffs are called upon by statute to “assist in the judicial process as provided by general law.”<sup>3</sup> Although the Code provides numerous instances in which the Sheriff can be called upon to serve process or other notice,<sup>4</sup> the scenario you present is not among them. The notices are not issued by a court. Thus, no general law specifically *requires* your office to serve the described notices.

Sheriffs are also tasked with the duty to “enforce the law.”<sup>5</sup> The creation of a local police department does not extinguish this general duty.<sup>6</sup> Violation of Virginia’s compulsory attendance law is a Class 3 misdemeanor.<sup>7</sup> Ordinarily, that would be sufficient to authorize a Sheriff to take measures to remedy a violation of this law. In this context, however, a sheriff’s role is circumscribed by the fact that the General Assembly has entrusted the local school system with policing the compulsory school attendance law. Under Virginia’s system of government, the school board is the entity responsible for the day-to-day operations of a local school system.<sup>8</sup> As a general proposition, school attendance laws are enforced by attendance officers appointed by the school board.<sup>9</sup> The school administration can also obtain the assistance of volunteers to assist the school with attendance problems.<sup>10</sup>

In light of this authority, I conclude that a Sheriff whose assistance is requested by school officials, including the school board, the division superintendent, or the administration of a particular school, may assist with the enforcement of the compulsory attendance laws by serving upon a student’s parent or custodian a notice in connection with a student’s school attendance. The duty to enforce the criminal law is not confined to arrests and court process. Law enforcement in the case of a juvenile suspected of a criminal violation may include working with the juvenile’s parents to remedy the violation or suspected violation.<sup>11</sup>

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<sup>2</sup> 1984-85 Op. Va. Att’y Gen. 284, 284.

<sup>3</sup> VA. CODE ANN. § 15.2-1609 (2008).

<sup>4</sup> See, e.g., VA. CODE ANN. §§ 8.01-293(A) (2007) (authorizing sheriff to serve process); 8.01-293(B) (2007) (capias or show cause order); 12.1-29 (2006) (writs, notices, processes, orders of the State Corporation Commission); 16.1-264 (2008) (summons); 46.2-416(A) (2010) (notice of suspension or revocation of driver’s license); 55-248.31:1 (2007) (notice of pay or quit notices to tenants); 58.1-217 (2009) (writs, processes, notices, orders of the Tax Commission).

<sup>5</sup> Section 15.2-1609.

<sup>6</sup> Commonwealth v. Malbon, 195 Va. 368, 78 S.E.2d 683 (1953). Of course, “[t]he extent of the sheriff’s duty in enforcing the criminal laws is shaped . . . by whether the county also has a separate police force.” 1976-77 Op. Va. Att’y Gen. 257, 258.

<sup>7</sup> VA. CODE ANN. § 22.1-263 (2006) (Class 3 misdemeanor to violate § 22.1-254, which mandates school attendance).

<sup>8</sup> VA. CONST. ART. VII, § 7.

<sup>9</sup> Section 22.1-258 (2010).

<sup>10</sup> *Id.*

<sup>11</sup> A sheriff has discretion in determining how to carry out the duties assigned to him. See 1984-85 Op. Va. Att’y Gen. 73 (noting the sheriff’s discretion with respect to personnel policies, cooperative agreements with federal agencies, and automobile use within the office); 1984-85 Op. Va. Att’y Gen. 284, 285 (noting the discretion of the sheriff to discharge his powers and duties includes the discretion to sponsor an occasional bake sale to raise funds for a law enforcement operation to be undertaken by his office).

The absence of a court order does not preclude a Sheriff from serving such a notice. The notice is being provided in an effort to bring the parents and students into compliance with the compulsory attendance law, rather than pursuant to the authority of a court.

**Conclusion**

Accordingly, it is my opinion that a sheriff's office is permitted to assist a local school division with enforcing the compulsory attendance laws by serving notice of an upcoming meeting to the parents or custodians of a truant student, provided the local school board, division superintendent or the administration of a school has requested such assistance from the Sheriff.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink, appearing to read "Ken C II", with a stylized flourish at the end.

Kenneth T. Cuccinelli, II  
Attorney General