



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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December 8, 2010

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The Honorable Terry G. Kilgore
Member, House of Delegates
Post Office Box 669
Gate City, Virginia 24251

Dear Delegate Kilgore:

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 inquire whether a county board of supervisors can instruct a school board how to consolidate its schools.

Response

It is my opinion that a school board is solely responsible for the decision whether and how to consolidate schools, and a county board of supervisors may not instruct the school board to consolidate schools or how to consolidate schools.

Background

You indicate that the Board of Supervisors of Wise County has enacted a resolution to fund Wise County High Schools. The resolution provides in part that

The majority of Wise County Board of Supervisors, as an alternative to the current plan, accordingly commits the sum of (\$69M) Sixty-Nine million for a plan of consolidation that supports the construction of two new schools on one site that would service all existing high schools with the exception of St. Paul High School, which would be converted to a K-12 school model, with the new facilities to be located within 4 to 5 mile radius of Highways 23 and 58 and 8th grade stays at Appalachia Elementary.

In response, the School Board voted a motion stating that

In an effort to increase the efficiency of the school division, to improve the curriculum offering for all students, and to improve the instructional program, I move that we consider this 2 on 1 site proposal, as presented here tonight, as a proposed plan of consolidation and that we direct the Superintendent to establish a public hearing for community consideration of both proposed plans of consolidation on November 29, 2010

at the J. J. Kelly auditorium at 7:00 p.m. and that immediately thereafter we vote whether to accept one of the proposed plans as our plan of consolidation.

Applicable Law and Discussion

Article VIII, § 7 of the Constitution of Virginia and § 22.1-28 of the *Code of Virginia* provide that “[t]he supervision of schools in each school division shall be vested in a school board.” By statute, school boards are given the responsibility to, among other things, “[p]rovide for the consolidation of schools.”¹

A county’s funding for a county’s schools is determined by the county board of supervisors.² The board of supervisors may make its appropriation for the schools as a lump sum, or it may appropriate the funds based upon major classifications.³ A board of supervisors, however, may not issue specific binding instructions regarding how the appropriated funds are to be spent within those categories.⁴ If the board of supervisors has appropriated funds based upon the prescribed classifications, “[t]he school board may not transfer appropriated funds from one classification to another, but within the major classifications of appropriated funds it has discretion in deciding how monies will be spent.”⁵ In addition, not only is the authority for school consolidation expressly vested with the school board, but also the authority to manage and construct school property rests with the school board.⁶

In light of the exclusive authority of the school board to provide for consolidation of schools, and the limited authority of a board of supervisors with respect to school funding, a board of supervisors may not control through its appropriation of funds a school board’s decision whether and how to consolidate schools in a particular county. A board of supervisors, nonetheless, is free to express its desire concerning how certain funds should be spent. Therefore, the Board in this instance can recommend the adoption of a particular plan for school consolidation. Such recommendations, however, “have no

¹ See, e.g., VA. CODE ANN. § 22.1-79 (Supp. 2010).

² Section 22.1-94 (2006).

³ *Id.* Those classifications include “(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).

⁴ *Bd. of Supvrs. of Chesterfield Cty. v. Cty. Sch. Bd. of Chesterfield Cty.*, 182 Va. 266, 28 S.E.2d 698 (1944) (Although County Board of Supervisors can determine the budget of the School Board, it may not include a specific line item for teacher’s salaries); see also 1975-76 Op. Va. Att’y Gen. 22, 23 (“The board of supervisors may not fund individual line items, nor may it alter individual line items, either by way of an increase or a reduction.”).

⁵ 1980-81 Op. Va. Att’y Gen. 33, 34.

⁶ Thus, a board of supervisors may not wrest from the school board the authority to provide for the construction and furnishing of school buildings. 1997 Op. Va. Att’y Gen. 55, 56. Furthermore, “the board of supervisors has no authority to require the school board to declare its unused real estate as surplus property.” 1987-88 Op. Va. Att’y Gen. 339, 339. Moreover, “[i]t is the responsibility of the local school board to select and purchase a site upon which a public school shall be located.” 1976-77 Op. Va. Att’y Gen. 237, 238. Nor must the school board accept the recommendation of the board of supervisors that it contract with an insurance provider designated by the board of supervisors. 1972-73 Op. Va. Att’y Gen. 30. Finally, this Office has concluded that “the authority to determine whether or not the [school] property in question should be sold or retained is vested in the local school board.” 1968-69 Op. Va. Att’y Gen. 209, 209.

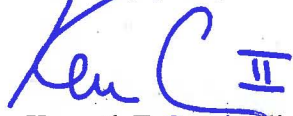
controlling effect upon the school board”⁷ because the ultimate responsibility for a plan of school consolidation rests with the school board.

Conclusion

Accordingly, it is my opinion that a school board is solely responsible for the decision whether and how to consolidate schools, and a county board of supervisors may not instruct the school board to consolidate schools or how to consolidate schools.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

6:1058; 6:310; 1:941/10-106

⁷ 1980-81 Op. Va. Att’y Gen. 33, 34.