



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable A. Lee Ervin, Esquire  
Commonwealth's Attorney of Augusta County  
6 East Johnson Street  
Staunton, Virginia 24401

Dear Mr. Ervin:

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 the Commonwealth's Attorney has the authority to appeal a ruling of the County Circuit Court to the Supreme Court of Virginia, when that ruling dismissed an appeal challenging the imposition of taxes by the Augusta County Board of Supervisors.

## Response

It is my opinion that the limited authority found in § 58.1-3003 does not authorize a Commonwealth's Attorney to appeal to the Supreme Court of Virginia an order from a circuit court with respect to the imposition of taxes by a local governing body.

## Background

You relate that you are the Commonwealth's Attorney for Augusta County, which has a population in excess of 35,000. You report that, in 2010, you received a petition filed with your office pursuant to § 58.1-3003 of the *Code of Virginia*, which demanded that you appeal an order for the imposition of taxes that had been imposed by the Augusta County Board of Supervisors. You state that, in conformity with § 58.1-3003, you appealed this tax levy to the Augusta County Circuit Court. The attorney for Augusta County filed a demurrer requesting the dismissal of the appeal, and the Augusta County Circuit Court granted the demurrer and dismissed your appeal. You indicate that a request has been made that you appeal this ruling to the Supreme Court of Virginia.

## Applicable Law and Discussion

The office of Commonwealth's Attorney is a constitutional office created pursuant to Article VII, § 4 of the Constitution of Virginia. The duties and compensation of such constitutional officers are prescribed by general law or special act.<sup>1</sup> Although the duties of the Commonwealth's Attorney principally involve the prosecution of crime,<sup>2</sup> the Code also imposes duties that are civil in nature.<sup>3</sup>

<sup>1</sup> See VA. CONST. art. VII, § 4. See also VA. CODE ANN. § 15.2-1600 (2008).

<sup>2</sup> See § 15.2-1627 (2008).

Section 58.1-3003 establishes such a duty. It requires a Commonwealth's Attorney to appeal a tax levied by a county to the circuit court "[i]f the attorney for the Commonwealth of any county is of the opinion that an order for imposition of taxes made by his governing body is illegal or if he receives a petition of one per centum of the registered voters of the county, but no fewer than fifty such voters, demanding that he appeal such order[.]"<sup>4</sup> No provision is made with regard to subsequent appeals to the Supreme Court of Virginia.

In this instance, the statutory command is limited to a filing in the circuit court. Certainly, the Commonwealth's Attorney is not *required* under the plain language of § 58.1-3003 to appeal an adverse decision from a circuit court. Whether the Commonwealth's Attorney *may* appeal is a closer question. A previous opinion from this office concluded that the General Assembly had not granted the Commonwealth's Attorney the authority to appeal from a decision to grant a concealed weapon permit application.<sup>5</sup> The court observed that the Commonwealth's Attorney's role was specifically delineated in the statute, and this did not include the authority to appeal. This Office concluded that "[h]ad the General Assembly intended to permit a Commonwealth's attorney to appeal the circuit court decision to grant a concealed weapon permit application, it could have done so in plain language."<sup>6</sup> I conclude in this specific context that the same reasoning applies. This conclusion accords with the modern conception of the role of the Commonwealth's Attorney, whose duties principally consist of representation of the Commonwealth in criminal cases and in certain civil matters that are closely related to criminal cases.


Finally, I note that § 8.01-670(1)(f) allows "any person" to "petition for an appeal to the Supreme Court if he believes himself aggrieved . . . [b]y any judgment in a controversy concerning . . . [t]he right of the Commonwealth, or a county, or municipal corporation to levy tolls or taxes . . . ." The Commonwealth's Attorney is not an aggrieved party in this situation. Rather, the taxpayers who are aggrieved may appeal to the Supreme Court of Virginia at their own initiative and expense.

### Conclusion

Accordingly, it is my opinion that the limited authority found in § 58.1-3003 does not authorize a Commonwealth's Attorney to appeal an order from a circuit court with respect to the imposition of taxes by a governing body to the Supreme Court of Virginia.

With kindest regards, I am

Very truly yours,

  
Kenneth T. Cuccinelli, II  
Attorney General

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<sup>3</sup> See *Kozmina v Commonwealth*, No. 092395, 2011 Va. LEXIS 53, at \*5-6, n. 2 (March 4, 2011) (upholding authority of Commonwealth's Attorney to prosecute civil refusals and listing civil responsibilities of Commonwealth's Attorneys).

<sup>4</sup> VA. CODE ANN. § 58.1-3003 (2009).

<sup>5</sup> 1995 Op. Va. Att'y Gen. 123, 126.

<sup>6</sup> *Id.*