The Honorable Jeffrey W. Haislip  
Commonwealth’s Attorney  
County of Fluvanna  
Post Office Box 116  
Palmyra, Virginia 22963

Dear Mr. Haislip:

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 members of a county board of supervisors are subject to the provisions of §§ 15.2-1239 and 15.2-1240 of the Code of Virginia, which pertain to improper conduct in county procurement procedures.¹

Response

It is my opinion that, because a county board of supervisors constitutes neither a “department” nor an “agency” within the scope of the relevant statutory provisions, its members are not subject to the provisions of §§ 15.2-1239 and 15.2-1240.

Applicable Law and Discussion

Section 15.2-1240 provides that a “violation of ... § 15.2-1239 shall be a misdemeanor and shall be punishable as provided by § 18.2-12.”² Section 15.2-1239 provides that

If any department or agency of the county government purchases or contracts for any supplies or contractual services contrary to the provisions of this article or the rules and

¹ Your inquiry arises from a specific factual scenario involving certain particular allegedly improper procurement activities of the board of supervisors of a county that employs a “county purchasing agent.” See VA. CODE ANN. §§ 15.2-1233 (2012) and 15.2-1543 (2012). This opinion is limited to the purely legal question presented, and the correct construction of the statutes about which you inquire. I make no comment regarding the propriety or wisdom of any action taken by a board member, individually or in conjunction with other board members.

² Because this section does not specify the class of misdemeanor, the offense is a Class 1 misdemeanor. See VA. CODE ANN. § 18.2-12 (2009).
regulations made thereunder, such order or contract shall be void and the head of such department or agency shall be personally liable for the costs of such order or contract.\[3\]

Statutes are to be interpreted according to their plain language.\[4\] The plain meaning of words in a statute is “binding,” when the language of the statute is “clear and unambiguous.”\[5\] Moreover, a criminal statute is construed “strictly against the Commonwealth” in order to “confine the statute to those offenses clearly proscribed by its plain terms.”\[6\] “Any ambiguity or doubt as to [a criminal statute’s] meaning must be resolved in [the defendant’s] favor.”\[7\]

By its plain language, § 15.2-1239 applies only to a “department” or “agency” of the county government. Accordingly, the answer to your inquiry turns on whether the county board is a “department” or “agency” of the county government. The Code of Virginia does not define “department” or “agency” for purposes of these sections; I therefore look to other provisions\[8\] and principles of statutory construction for guidance.

Under Virginia law, a county board of supervisors is the “governing body” of a county.\[9\] The “powers and duties of a county as a body politic and corporate [are] vested in [the] board of county supervisors.”\[10\] The board is empowered to “provide for all the governmental functions of the [county], including, without limitation, the organization of all departments, offices, boards, commissions and agencies of government, and the organizational structure thereof, which are necessary and the employment of the officers and other employees needed to carry out the functions of government.”\[11\] I find no provision stating, or otherwise supporting a conclusion, that the board of supervisors itself is either a “department” or “agency” of the county. The legislature is presumed to have chosen its words with care;\[12\] therefore, the governing body is an entity qualitatively distinct from a department or agency of the county government. Additionally, because the General Assembly did not insert “governing body” or “board of supervisors” into § 15.2-1239, the maxim expressio unius est alterius is applicable, and I conclude that the General Assembly did not intend to include the board of supervisors within the scope of the statute.\[13\]

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\[3\] Emphasis added. I note that the provisions of §§ 15.2-1239 and 15.2-1240 do not apply until there is a “county purchasing agent,” or someone designated to perform the duties of that office. See § 15.2-1233.


\[8\] Because the Code of Virginia constitutes a single body of law, the practice of referring to other Code sections as interpretive guides is well established. See First Nat’l Bank of Richmond v. Holland, 99 Va. 495, 504-05, 39 S.E. 126, 129-30 (1901).

\[9\] Section § 15.2-102 (2012).

\[10\] Section 15.2-402 (2012).

\[11\] Section 15.2-1500(A) (2012) (emphasis added).


\[13\] The maxim “expressio unius est exclusio alterius” provides that the mention of specific items in a statute implies that the General Assembly did not intend to include omitted items within the scope of that statute. See Virginian-Pilot v. Dow Jones & Co., 280 Va. 464, 468-69, 698 S.E.2d 900, 902 (2010). Rather, the intent of §§ 15.2-1233 through 15.2-1240 is to ensure that department and agency heads who are the mid-level managers of a county follow policies and procedures established by the board of supervisors and the county purchasing agent. See
Conclusion

Accordingly, it is my opinion that, because a county board of supervisors constitutes neither a "department" nor an "agency" within the scope of the relevant statutory provisions, its members are not subject to the provisions of §§ 15.2-1239 and 15.2-1240.

With kindest regards, I am,

Very truly yours,

Mark R. Herring
Attorney General

2010 Op. Va. Att’y Gen. 7, 9 (quoting Covington Virginia, Inc. v. Woods, 182 Va. 538, 548-49, 29 S.E.2d 406, 411 (1944)) ("In the construction of statutes, the courts have but one object, to which all rules of construction are subservient, and that is to ascertain the will of the legislature, the true intent and meaning of the statute . . .").