



City of Alexandria, Virginia

MEMORANDUM

DATE: November 13, 2017

TO: Madam Chair and Members of the Joint City-Schools Investment Task Force
Katherine Carraway, Urban Planner

FROM: Jim L. Banks, Jr., City Attorney 
Dori E. Martin, Assistant City Attorney 

SUBJECT: Legal Issues Affecting Joint Facilities Investment Planning

The work of the Joint City-Schools Investment Task Force has prompted many questions regarding the roles and responsibilities of the City Council and the School Board with respect to the planning, management, and funding of school facilities. This memorandum provides a broad overview of the duties imposed and authority granted to each body under Virginia law.

Article VIII, Section 7 of the Virginia Constitution Vests the Supervision of Schools in the School Board

Article VIII of the Virginia Constitution and its statutory counterparts set forth responsibilities at the state and local level for providing free public education. Section 2 of the article charges the State Board of Education and the General Assembly with establishing Standards of Quality for public schools, the costs of which are apportioned between the Commonwealth and local governments in a manner determined by the General Assembly. Section 7 of Article VIII provides that “[t]he supervision of schools in each school district shall be vested in a school board...”

Based on these constitutional provisions, the General Assembly has codified certain powers and duties of local school boards, many of which are set forth in Section 22.1-79 of *The Code of Virginia*. Among other things, a local school board is responsible for the care, management, and control of school property, including “erecting, furnishing, equipping, and noninstructional operating of necessary school buildings and appurtenances and the maintenance thereof by purchase, lease, or other contracts.”¹ Courts have interpreted this provision to mean that the power to select school sites and determine the manner in which school property shall be used is vested *exclusively* with the local school board.²

School boards are also charged with all other aspects of operation and maintenance of the schools within their divisions, including methods of teaching and governance.³ In all of these areas, unless otherwise provided by state law or the state board of education, the school board is the final and only decision maker. Local governing bodies, such as City Council, are not given any general

¹ Va. Code § 22.1-79 (3).

² Howard v. Cnty. Sch. Bd., 203 Va. 55, 58-59 (1961).

³ Va. Code § 22.1-79 (5).

supervisory authority over the schools within their jurisdiction.⁴

City Council Has Limited Authority over School Expenses through the Appropriations Process

The main function of City Council with respect to the local schools is to appropriate funds for their “operation, capital outlay, and debt service,”⁵ and through this process, the Council may exercise a limited oversight role regarding school expenditures. The governing body is authorized to appropriate for each year either a total amount for its school system or an amount for each of the “major classifications” prescribed by the Board of Education pursuant to Va. Code Section 22.1-115.⁶ In appropriating funds to a school system, the governing body may not proceed beyond these classification areas. It does not have a line-item veto over specific items proposed in the school’s budget, and can only adjust the totals per classification area (or the grand total if a lump sum appropriation is made).⁷

School boards are required to submit several types of information to their respective governing bodies annually, including an annual budget estimate (by major classification) and average per pupil costs for the division.⁸ School boards also required to submit an annual report of their expenditures.⁹ In addition, City Council is authorized to obtain from all local agencies and departments receiving appropriations—including school boards—“such information as may be deemed advisable” for the preparation of the locality’s annual budget.¹⁰

Finally, the governing body may require any board, commission, or authority that receives public appropriations to provide any information the governing body deems necessary for review of past and future appropriations, the methods of “management, control, and organization of the recipient agency” and its programs. The governing body may, upon review, determine that public funds may be conserved by combining duplicative functions or coordinating the activities of the agency with those of the locality, and in lieu of appropriations, may instead provide the necessary goods and services to the agency.¹¹ However, while this provision may allow for consolidating of certain administrative functions, the Virginia Attorney General has opined that it does not provide sufficient authority to allow a governing body to assume control over functions like public school construction or the expenditure of funds for that purpose, citing the school board’s statutory authority over the “erecting, furnishing, equipping, and noninstructional operating of necessary school buildings” set forth in Va. Code § 22.1-79.¹² Furthermore, any shift in control over certain functions under Virginia law could only occur by mutual agreement between a school board and a local governing body.

⁴ This does not preclude a school board from entering into contracts for services or partnership with a local government, so long as the school board does not abrogate its duties or compromise its independence. These joint agreements are discussed in greater detail on page 3 of this memo.

⁵ *Id.* at § 22.1-94.

⁶ These classifications are: 1) instruction, 2) administration, attendance, and health, 3) pupil transportation, 4) operation and maintenance, 5) school food services and other noninstructional operations, 6) facilities, 7) debt and fund transfers, 8) technology, and 9) contingency reserves. *Id.* at 22.1-115.

⁷ *See Peters v. Moses*, 613 F. Supp. 1328, 1330 n. 4 (W.D.Va. 1985).

⁸ Va. Code § 22.1-92.

⁹ *Id.* at § 22.1-90.

¹⁰ *Id.* at § 15.2-2508.

¹¹ *Id.* at § 15.2-1305.

¹² 1997 Op. Va. Att’y Gen. 55.

Generally, the governing body has flexibility in the timing of its appropriations to the school board (subject to other applicable law). State law provides that a locality may make appropriations to schools on the same periodic basis—annually, semiannually, quarterly, or monthly—as it appropriates funds to other departments and agencies.¹³ A 1981 opinion of the Attorney General suggests that a governing body may appropriate funds for basic costs (so long as the appropriation is sufficient to satisfy state standards) while placing additional funds in a contingency fund to be used in the event of a shortfall.¹⁴ This statutory flexibility is limited by the Alexandria City Charter, which provides for a general appropriation ordinance to be submitted by the City Manager annually “[a]t the same time that he submits the general fund budget.”¹⁵ Any appropriations in addition to those found in the general appropriation ordinance may be made by the City Council with an affirmative vote of all members and subject to the availability of funds.¹⁶

Once an appropriation is made, the exclusive right to determine how the money is spent is in the discretion of the school board. The locality has no authority to reduce the amount of the funds or to divert funds for any other purpose without the consent of the school board.¹⁷ While the City may hold funds as contingent and transfer them to the school board at a later time, this can never be used to direct operations of the school division per Virginia Code 22.1-79 (as discussed on page one of this memorandum).

Opportunities for Joint Agency Cooperation

It is possible for a school board to consolidate certain functions with a city in order to improve efficiency and conserve public funds; however, in doing so, the school board may not abrogate any of its independence with respect to its core responsibilities. A school board cannot forfeit its independence to another entity and must retain the ability to fulfill its responsibilities.¹⁸ For example, localities and schools could centralize purchases of all supplies and equipment under the authority of one purchasing agent. However, the schools must retain the authority to determine what supplies, materials, and quantities it may need and at what cost.¹⁹ Thus, this option would be best to consider for administrative functions that may be undertaken without jeopardizing the school board’s core responsibilities of overseeing school policy, managing school property, expending funds, and supervising school personnel.²⁰

Finally, the Virginia Attorney General has opined that a locality and a school board can create a joint legal entity to assume responsibility for certain aspects of various governmental functions, including personnel, finance, operations, maintenance and construction, facilities design and engineering, and management information systems.²¹ Section 15.2-1300 of the Virginia Code authorizes political subdivisions to enter into multijurisdictional agreements for the joint exercise

¹³ Va. Code § 22.1-94.

¹⁴ 1980-81 Op. Va. Att’y Gen. 9.

¹⁵ §6.07.

¹⁶ *Id.* § 6.13.

¹⁷ *Bd. of Supervisors of Chesterfield Cnty. v. Cnty. Sch. Bd. of Chesterfield Cnty.*, 182 Va. 266 (1944); 2010 Op. Va. Att’y Gen. 120; 1979-80 Op. Va. Att’y Gen. 122.

¹⁸ 2011 Op. Va. Att’y Gen. 10-122.

¹⁹ 1978-79 Op. Va. Att’y Gen. 72.

²⁰ 2011 Op. Va. Att’y Gen. 10-122.

²¹ 1995 Va. Op. Att’y Gen. 72.

of any power that they would individually otherwise enjoy. These agreements shall be approved by ordinance (in the case of the locality) or resolution (for all other subdivisions) and must include several statutorily-mandated provisions.

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