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Prince William County
PUBLIC SCHOOLS
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DATE: April 29, 2016

TO: The Prince William County School Board
Superintendent of Schools, Dr. Steven L. Walts

FROM: Mary McGowan, Interim Division Counsel

SUBJECT: Authority of the Board of County Supervisors to Direct The Use of Funds
Appropriated to the School Board.

A. The School Board's Exclusive Jurisdiction Over the Operation of the Public
Schools

The legal framework establishing the relationship and respective powers and duties of the School Board and the Board of County Supervisors is a construct of certain provisions of the Virginia Constitution and the Code of Virginia, as interpreted by the Virginia Supreme Court, the Virginia Circuit Courts, opinions of the Virginia Attorney General, and the federal courts, when applying Virginia law.

The School Board and the Board of Supervisors are separate and distinct governmental agencies of the state. Section 7 of the Virginia Constitution provides that "the supervision of schools in each school division shall be vested in a school board," as does Virginia Code § 22.1-71. The courts have consistently recognized that pursuant to this constitutional and statutory authority, the power to operate, maintain and supervise the public schools in Virginia is within the exclusive jurisdiction of the local school board. *Underwood v. Henry County School Board*, 245 Va. 127, 427 S.E. 2d 330 (1993); *Bristol Virginia School Board v. Quarles*, 235 Va. 108, 366 S.E. 2d 82 (1988); *Board of Supervisors of Chesterfield County v. County School Board*, 182 Va. 266, 28 S.E. 2d 698 (1944); *Harold v. Warren County Board of Supervisors*, 38 Va. Cir. 467, 471-72 (Cir. Ct. Warren County, 1996); See also, *Bradley v. School Board*, 462 F. 2d. 1058, 1067 (4th Cir.1972), affirmed, 412 U.S. 92, 93 S. Ct. 1952, 36 L. Ed. 2d 771 (1973); *Bacon v. City of Richmond*, 475 F. 3d 633 (4th Cir. 2007) (holding that "the City exercises no operational control over City school buildings or school services and activities. Virginia law vests the School Board with exclusive authority over Richmond's public schools," citing to §7 of the Virginia Constitution for the proposition that "[t]he Virginia Code

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implements this provision by establishing the Commonwealth's school boards as independent corporate bodies, (Va. Code Ann. § 22.1-71), given the responsibility by law of establishing, maintaining and operating the school system." 475 F. 3d, 640, citing also to *Underwood, Bristow, and Chesterfield*.¹

Title 22.1, Chapter 8 of the Virginia Code prescribes the manner in which local school boards are funded. School boards themselves have no authority to raise funds by levying taxes or incurring debt. Instead, "funds available to the school board" for the "establishment, support and operation of the public schools in the school division shall consist of state funds appropriated for public school purposes and apportioned to the school board, federal funds appropriated for educational purposes and apportioned to the school board, *local funds appropriated to the school board by a local governing body*, or such other funds as shall be raised by local levy and authorized by law, donations or the income arising therefrom, and any other funds that may be set apart for public school purposes." Va. Code § 22.1-88. (emphasis added).

As required by Va. Code § 22.1-94, the local governing body (here, the County Board of Supervisors) must appropriate to the school board sufficient funds to at least satisfy the Virginia Standards of Quality in the amount established by the state (Va. Code §§ 22.1-253.13:1, et. seq.), and may only appropriate local funds as a lump sum total or, if it chooses, by the major classifications established by Virginia Code § 22.1-115. Those classifications are: "(i) instruction, (ii) administration, attendance and health, (iii) pupil transportation, (iv) operation and maintenance, (v) school food services and other non-instructional operations, (vi) facilities, (vii) debt and fund transfers, (viii) technology and (ix) contingency reserves." Va. Code § 22.1-115.

To determine the proper level of yearly appropriations, the governing body must approve an annual budget for educational purposes. Va. Code § 22.1-93. It must then pass an ordinance making an actual appropriation, since budget approval alone does not constitute an appropriation. Va. Code §§ 22.1-94, 15.2-2506. Finally, the local governing body must raise by local levies funds sufficient to fulfill that appropriation. Va. Code § 22.1-94, 95. In sum, as to school funding, the Board of County Supervisors' role is limited to the approval of a budget, making appropriations, raising the funds to cover those appropriations, and having its treasurer disburse the appropriated funds as the school board directs.

¹ The scope of the School Board's operational authority is set forth in some detail within various provisions of the Virginia Code and includes, but is not limited to, ensuring that schools "are conducted according to law" Va. Code § 22.1-79 (A) (2); the authority to "care for, manage and control" school property, id, § 22.1-79 (A) (3); "provide for the erecting, furnishing, equipping, and non-instructional operation of necessary school buildings and appurtenances", id.; the authority to hire, transfer, discipline and dismiss employees, §§ 22.1-293, et seq.; consolidation of schools and setting school boundaries, § 22.1-79 (A) (4); and to determine the studies to be pursued, the methods of teaching and the government to be employed in the schools. § 22.1-79 (A) (5).

B. The School Board's Exclusive Authority Over the Management of Appropriated School Funds.

Significantly, the local governing body may not dictate how school monies are spent. The only constraint on the School Board is that it may not expend funds in excess of the total amount appropriated and, if the County appropriates funds to the School Board by major classification, those funds must be spent within the designated major classifications. Va. Code § 22.1-91. As stated by the Virginia Supreme Court:

[T]he board of supervisors has the right, within the limits prescribed by law, in their discretion, to fix the amount of money to be raised by local taxation for school purposes at whatever amount they see fit, but they are concerned only with the total amount of tax to be levied, and not with the individual items of the school budget, except in so far as it helps them to determine the total amount of tax to be levied. After the board of supervisors has appropriated money for schools, the exclusive right to determine how this money shall be spent is in the discretion of the school board, so long as they stay within the limits set up within the budget.

Board of Supervisors of Chesterfield County v. County Sch. Bd. 182 Va. 266, 275, 28 S.E. 2d 698, 702 (1944); See also, *Bacon v. City of Richmond*, (“With the exception of raising taxes and providing funding, the City is not charged by law with the establishment, maintenance and operation of the public school system. It cannot dictate school services or programs. Indeed, the City cannot specify how the funds it appropriates to City schools may be spent.” 475 F. 3d 633, at 641, citing also to *Chesterfield.*); *Fluvanna County v. Farrar*, 199 Va. 427, 100 S.E. 2d 26 (1957); Opinion of the Attorney General, 1980 Va. AG LEXIS 177, 1979-80 Op. Atty. Gen. Va. 122 (“School boards are governmental entities separate and distinct from the local governing body. All funds sets aside for county school purposes automatically vest, by operation of law, in the county school board. . . Accordingly, once the appropriation is made, the funds automatically vest within the exclusive dominion of the school board, and the county would have no authority to otherwise divert such funds for any other purpose without the consent of the county school board.”) Report of the Attorney General (1977-78) at 350.

Since officials of the local governing body have no role in supervising or operating the school system, the courts have squarely rejected attempts by local governing bodies to exercise control over funds appropriated to the local school board. In *Bd. of Supv. of Chesterfield County v. County Sch. Bd.*, the Virginia Supreme Court stated:

It would be illogical to make the School Board solely responsible for the efficient conduct of the school system and then give another board control over the expenditures to be made by the School Board. The school boards, because of the duties placed upon them by law, know accurately its personnel, its mode and manner of operation and the importance of the various parts of the system. This information the Board of Supervisors does not have.

Id at 275-76, 28 S.E. 2d at 702; *Accord, County Sch. Bd. of Fluvanna County v. Farrar*, 199 Va. 427, 100 S.E. 2d 26 (1957).

Accordingly, the Board of County Supervisors may not choose whether to fund or not to fund individual line items in the school budget, nor may it alter individual line items, either by an increase or decrease. It may only fund by lump sum appropriation or by major classification, and may only increase or decrease the amount of any appropriation by lump sum or major classifications. 1978 Va. AG LEXIS 15, 1978-79 Op. Atty Gen. Va. 29 (1978).

C. The County May Not Circumvent the Constitutional and Statutory Limits On Its Authority By Reclassifying School Funds As Contingent Grant Monies.

In Virginia, under Dillon’s Rule, “the powers of county boards of supervisors are fixed by statute and are limited to those powers conferred or by necessary implication.” *County Board of Arlington v. Brown*, 229 Va. 341, 329 S.E. 2d 468 (1985), citing to *Commonwealth v. County Board of Arlington County*, 217 Va. 558, 573-74, 232 S.E. 2d 30, 40-41 (1977); *Bd. of Supervisors of Fairfax County v. Horne*, 216 Va. 113, 117, 215 S.E. 2d 453, 455-56, (1975).

The Board of County Supervisors’ authority to fund the public schools through contingent grants or any mechanism other than approval of an educational budget and appropriation of funds to support that budget is not fixed by any statute. In contrast, the statutory scheme for the funding of public schools contained at Virginia Code §§ 22.1-88, et. seq., expressly provides that the local governing body shall approve an annual budget for educational purposes and fund that budget through an appropriation, which “shall relate to its total only or to such major classifications prescribed by the State Board of Education.” Va. Code §§ 22.1-93, 22.1-94.

An important corollary of Dillon’s Rule is that “where a power is conferred and the mode of its execution is specified, no other method may be selected; any other means would be contrary to legislative intent and, therefore, unreasonable.” *Commonwealth v. County Board of Arlington County*, 217 Va. 558, 573-74, citing to *Page v. Belvin*, 88 Va. 985, 990, 14 S.E. 843, 845 (1892). See also, *Deerfield v. City of Hampton*, 283 Va. 759, 766, 724 S.E. 2d 724 (2012). As the Virginia Supreme Court explained in *Page v. Belvin*, 88 Va. 985, 990, “when the mode of power to be exercised is prescribed in a municipal charter, that mode ‘constitutes the measure of the power,’ and ‘[a]side from the mode designated, there is a want of all power on the subject.’ See also, *Logie v. Town of Front Royal*, 58 Va. Cir. 527, 538-39 (Cir. Ct. Warren County, 2002) (citing to *Commonwealth v. County Board of Arlington*, and holding that Town did not have the authority to enforce the Property Maintenance Code by terminating electric services to properties because the General Assembly had specified the method for enforcing the Property Maintenance Code through penalty provisions involving prosecution for misdemeanors and the imposition of civil fines.); *City of Virginia Beach v. Christopoulos Family, LC*, 54 Va. Cir. 95, 98-99 (Cir. Ct. City of Virginia Beach, 2000) (holding that where the Virginia Code provided the method by which the City could acquire private property for public use, the City could not expand that

authority to acquire property for use by a private entity as well as the public, noting that “the City may not select another method to acquire property than that prescribed in the statute.”).

As noted above, both the Virginia Constitution and the Virginia Code vest in the School Board exclusive control over the management and expenditure of those funds which the local governing body appropriates for school purposes. The Board of County Supervisors’ role is limited by statute to a lump sum or categorical appropriation, following which the Board of County Supervisors has no authority to direct the payment of those monies to any particular purpose nor to control expenditures of any items within major classifications (assuming an appropriation is made by classification versus lump sum). The clear legislative intent of the statutory scheme for the funding of public schools is to limit the power of the local governing body to interfere with the School Board’s exclusive jurisdiction over school expenditures.

Thus, it is my opinion that the Board of County Supervisors does not have authority to circumvent the statutory limitations on its ability to dictate how appropriated funds are spent by reclassifying school funding as “grant money” which can only be spent by the School Board for a purpose or purposes determined by the Board of County Supervisors.