



# COMMONWEALTH of VIRGINIA

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August 28, 2018

Ms. Shannon Dion  
Director, Virginia Department of Criminal Justice Services  
Washington Building  
1100 Bank Street  
Richmond, Virginia 23219

Dear Ms. Dion:

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 Department of Criminal Justice Services (DCJS) may issue a valid temporary registration or valid registration to one or more public school teachers, or other school personnel, seeking to be appointed as an armed special conservator of the peace for school safety purposes.

## Background

You advise that the Lee County School Board recently voted to request that the Lee County Circuit Court appoint public school teachers and other staff members as special conservators of the peace (SCOPs), in an apparent effort to secure authorization for these individuals to carry firearms on school grounds. You have received an application from a Lee County School Board employee seeking temporary registration by DCJS as a prerequisite to appointment by the circuit court as an armed SCOP.

## Applicable Law and Discussion

1. Virginia law requires a temporary registration issued by DCJS prior to a circuit court order appointing a qualified individual as a SCOP and also a valid registration after the circuit court enters an order of appointment.

Section 9.1-150.1 defines a “special conservator of the peace” as “any individual appointed pursuant to § 19.2-13 on or after September 15, 2004.”<sup>1</sup> Section 19.2-13 provides

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<sup>1</sup> VA. CODE ANN. § 9.1-150.1 (2012).

[u]pon the submission of an application [. . .] from [. . .] any sheriff or chief of police of any county, city, or town [. . .], a circuit court judge of any county or city shall appoint special conservators of the peace [. . .] upon a showing by the applicant of a necessity for the security of property or the peace and presentation of evidence that the person or persons to be appointed as a special conservator of the peace possess a valid registration issued by the Department of Criminal Justice Services[. . .]

The order of appointment shall provide that a special conservator of the peace may perform only the duties for which he is qualified by training as established by the Criminal Justice Services Board.<sup>[2]</sup>

Prior to July 1, 2018, the order of appointment could provide that a SCOP “shall have all the powers, functions, duties, responsibilities and authority of any other conservator of the peace.”<sup>3</sup> This language was removed, however, with the passage of House Bill 151 in the 2018 session of the General Assembly and now provides that a SCOP “may perform only the duties for which he is qualified by training as established by the Criminal Justice Services Board.”<sup>4</sup> Additionally, the order of appointment shall specify the geographical limitation of the SCOP’s authority.<sup>5</sup> Application and procedures for the appointment of SCOPs, including the powers of DCJS with respect to training and registration, are set forth in §§ 9.1-150.1 through 9.1-150.4.<sup>6</sup>

Section 19.2-13 states that “[n]o person shall seek appointment as a special conservator of the peace from a circuit court judge without possessing a valid registration issued by the Department of Criminal Justice Services . . . . [A] temporary registration may be issued in accordance with regulations established by the Criminal Justice Services Board while awaiting the results of a state and national fingerprint search.”<sup>7</sup> “Each special conservator shall provide to the circuit court a temporary registration letter issued by the Department of Criminal Justice Services to include the results of the background check prior to seeking an appointment by the circuit court.”<sup>8</sup>

DCJS shall not issue a valid registration or temporary registration until the applicant has (i) complied with or been exempted from mandatory training, (ii) submitted his fingerprints for a national and state criminal history records search, (iii) submitted the results of a background investigation completed by a state or local law enforcement agency, and (iv) met all other requirements of state law and regulations of the Criminal Justice Services Board.<sup>9</sup> DCJS “may conduct [additional] investigations to determine the suitability of applicants for registration, including a drug and alcohol screening.”<sup>10</sup>

Assuming the issuance of a temporary registration by DCJS and that all statutory requirements are satisfied, the circuit court may then enter the order of appointment and the applicant may receive from

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<sup>2</sup> VA. CODE ANN. § 19.2-13(A) (Supp. 2018).

<sup>3</sup> See 2018 Va. Acts ch. 792.

<sup>4</sup> VA. CODE ANN. § 19.2-13(A).

<sup>5</sup> *Id.*

<sup>6</sup> VA. CODE ANN. §§ 9.1-150.1 – 9.1-150.4 (2012 & Supp. 2018).

<sup>7</sup> VA. CODE ANN. § 19.2-13(C).

<sup>8</sup> VA. CODE ANN. § 19.2-13(F).

<sup>9</sup> VA. CODE ANN. § 19.2-13(C).

<sup>10</sup> VA. CODE ANN. § 9.1-150.3(A) (2012).

DCJS a registration document.<sup>11</sup> “Each registered individual shall comply with all applicable administrative requirements and standards of conduct and shall not engage in any acts prohibited by applicable sections of the Code of Virginia . . . .”<sup>12</sup>

2. DCJS cannot issue a temporary registration letter or valid registration document to a SCOP applicant seeking to possess firearms on school property because SCOPs are not legally authorized to carry firearms on school property.

Section 18.2-308.1(B) of the *Code* generally prohibits individuals from knowingly possessing firearms on school property and makes it a Class 6 felony to violate this statute, as follows:

If any person knowingly possesses any firearm designed or intended to expel a projectile by action of an explosion of a combustible material while such person is upon (i) any public, private or religious elementary, middle or high school, including buildings and grounds; (ii) that portion of any property open to the public and then exclusively used for school-sponsored functions or extracurricular activities while such functions or activities are taking place; or (iii) any school bus owned or operated by any such school, he is guilty of a Class 6 felony.<sup>13</sup>

The statute also provides for a mandatory minimum sentence of five years for knowingly possessing a firearm on school property with an intent or attempt to use the weapon.<sup>14</sup>

There are several exceptions to the general prohibition against carrying a firearm on school grounds, including those in §§ 18.2-308 and 18.2-308.016 incorporated into § 18.2-308.1 by reference,<sup>15</sup> and those set out explicitly in § 18.2-308.1(C).<sup>16</sup> However, no exemptions or exceptions apply to SCOPs. While § 18.2-308(D)(3) permits certain “conservators of the peace” to carry concealed firearms on school property in the discharge of their official duties or while in transit to or from such duties,<sup>17</sup> there is no parallel statutory provision allowing SCOPs to possess firearms on school property.

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<sup>11</sup> See VA. CODE ANN. § 19.2-13(E).

<sup>12</sup> 6 VA. ADMIN. CODE § 20-230-30(F), *see also* 6 VA. ADMIN. CODE § 20-230-140(A)(1).

<sup>13</sup> VA. CODE ANN. § 18.2-308.1(B) (Supp. 2018).

<sup>14</sup> *Id.* at subsection C.

<sup>15</sup> *See id.* (providing that the exemptions in §§ 18.2-308 and -308.016 are incorporated into § 18.2-308.1, *mutatis mutandis*).

<sup>16</sup> Included among the exemptions set out in § 18.2-308.1(C) is the possession of weapons “as a part of the school’s curriculum or activities” or “as a part of any program sponsored or facilitated by either the school or any organization authorized by the school to conduct its programs either on or off the school premises.” Earlier versions of these exemptions have been included in the statute since its original enactment in 1979 and are commonly used to accommodate student educational programs, such as Junior Reserve Officers’ Training Corps (JROTC) (§ 22.1-277.07(D)) and hunter safety education programs (§ 22.1-204.2). The language allowing firearms as part of a curriculum, activity, or program supports the use of firearms for purposes of educating and training students. The language does not expressly or impliedly authorize a program to arm educational and administrative school board employees, such as teachers and administrators, nor has the General Assembly enacted such language when presented with bills that would allow school boards to arm its teachers and other personnel. *See infra*, notes 37-40 and accompanying text.

<sup>17</sup> *See* VA. CODE ANN. § 18.2-308(D)(3) (Supp. 2018).

Conservators of the peace and SCOPs are two different positions governed by two separate sections of the *Code*. Conservators of the peace are statutorily designated by virtue of holding a specific state or federal position. They include, for example, judges, attorneys for the Commonwealth, magistrates, special agents of the U. S. Department of Justice and criminal investigators of various state and federal agencies, among many other individuals with roles in criminal justice or administrative law enforcement, expressly identified by the General Assembly.<sup>18</sup>

In contrast, a SCOP is not statutorily designated as such by virtue of holding a particular public office or position; but rather, as discussed above, a SCOP must be appointed by a circuit court upon application of a sheriff, chief of police, or one of various business and property owners, proprietors, and custodians.<sup>19</sup> Also, DCJS training standards for SCOPs differ significantly in depth and scope from those required for law enforcement officers. Specifically, law enforcement officers must receive a minimum of 580 hours of training to be certified as such by DCJS.<sup>20</sup> In contrast, armed SCOPs need only satisfy 130 hours of training under relevant statutory requirements.<sup>21</sup>

As previously discussed, § 18.2-308(D)(3) permits, by exemption, “conservators of the peace” to carry firearms on school property “while in the discharge of their official [law enforcement] duties, or while in transit to or from such duties.”<sup>22</sup> No such exemption from the prohibition against possessing firearms on school property exists for SCOPs. Well settled rules of statutory construction recognize the maxim *expressio unius est exclusio alterius*, meaning that to express or include one thing implies the exclusion of others.<sup>23</sup> Applied here, the General Assembly’s exclusion of SCOPs from the conservators of the peace listed in § 19.2-12 and from the exemptions in § 18.2-308(D)(3) shows an intent that the general prohibition against possessing firearms on school property applies to SCOPs.<sup>24</sup>

As also discussed above, state law provides that DCJS may issue a temporary registration to a SCOP applicant in accordance with regulations promulgated by the Criminal Justice Services Board.<sup>25</sup> DCJS may also deny a registration for, among other things, certain criminal convictions, testing positive on any drug and alcohol screening, making false or misleading statements, and failing to maintain good standing in the jurisdiction where appointed.<sup>26</sup> Although the regulations do not expressly state that a registration may be denied when the appointment will contravene Virginia law, such power is axiomatic

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<sup>18</sup> VA. CODE ANN. § 19.2-12 (Supp. 2018).

<sup>19</sup> VA. CODE ANN. § 19.2-13(A).

<sup>20</sup> 6 VA. ADMIN. CODE § 20-20-21.

<sup>21</sup> VA. CODE ANN. § 9.1-150.2 (Supp. 2018).

<sup>22</sup> VA. CODE ANN. § 18.2-308(D).

<sup>23</sup> *GEICO v. Hall*, 260 Va. 349, 255, 533 S.E.2d 615, 617 (2000) (quoting *Turner v. Wexler*, 244 Va. 124, 127, 418 S.E.2d 886, 887 (1992)).

<sup>24</sup> In addition, I note that in 2002, the General Assembly expressly eliminated the ability of school security officers to be appointed SCOPs for purposes of maintaining safety in a public school. *See* VA. CODE ANN. § 19.2-13 (F) (Supp. 2018), which states that “[e]ffective July 1, 2002, no person employed by a local school board as a school security officer, as defined in § 9.1-101, shall be eligible for appointment as a conservator for purposes of maintaining safety in a public school in the Commonwealth. All appointments of special conservators of the peace granted to school security officers as defined in § 9.1-101 prior to July 1, 2002 are void.”

<sup>25</sup> VA. CODE ANN. § 19.2-13(C).

<sup>26</sup> 6 VA. ADMIN. CODE § 20-230-120.

under the rule of law.<sup>27</sup> Section 9.1-100(B) provides that “the Director of [DCJS] shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties required by the Governor or the Criminal Justice Services Board.”<sup>28</sup> Additionally, the Director of DCJS is required to take an oath to uphold the Constitution of the United States and the Constitution of the Commonwealth of Virginia.<sup>29</sup>

The issuance of a temporary registration to a SCOP for possession of a firearm on public school property would not comply with § 18.2-308.1 and exceeds the powers vested in DCJS. Therefore, it is my opinion that DCJS lacks authority to issue a temporary or valid registration to an armed SCOP whose geographical jurisdiction includes public school grounds.

3. Virginia law authorizes school resource officers and certain school security officers to possess firearms on public school grounds as school safety personnel, but such authority is not extended to teachers and administrators.

The General Assembly has established and defined the mechanisms for school districts to employ or otherwise secure the services of properly trained school safety personnel and for certain of these personnel to carry firearms in the execution of their school safety duties. The General Assembly has authorized local law enforcement agencies to hire school resource officers (SROs) to maintain safety on public school property.<sup>30</sup> Section 9.1-101 defines an SRO as “a certified law-enforcement officer hired by the local law-enforcement agency to provide law-enforcement and security services to Virginia public elementary and secondary schools.”<sup>31</sup> As certified law enforcement officers, SROs are authorized by law to possess firearms on school property.<sup>32</sup>

“School security officers” (SSOs) are also statutorily charged with maintaining safety at public schools in Virginia. As defined in § 9.1-101, an SSO is “an individual . . . employed by the local school board for the singular purpose of maintaining order and discipline, preventing crime, investigating violations of school board policies, and detaining students violating the law or school board policies on school property or at school-sponsored events and who is responsible solely for ensuring the safety, security, and welfare of all students, faculty, staff, and visitors in the assigned school.”<sup>33</sup> SSOs differ from SROs in that SROs are law enforcement agency employees assigned by their law enforcement command to local schools, whereas SSOs are school employees under the direction of a school principal or designee.<sup>34</sup>

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<sup>27</sup> Specifically, it is axiomatic that public officials must execute their duties in a manner consistent with law, and may not make decisions in contravention of law. *See, e.g.*, *United States v. Leon*, 468 U.S. 897, 980 (1984) (Stevens, J., concurring in part and dissenting in part); *Weinburger v. Romero-Barcelo*, 456 U.S. 305, 323 (1982) (Stevens, J., dissenting).

<sup>28</sup> VA. CODE ANN. § 9.1-100(B) (2012).

<sup>29</sup> *See* VA. CODE ANN. § 49-1 (2013).

<sup>30</sup> VA. CODE ANN. § 9.1-101 (Supp. 2018).

<sup>31</sup> *Id.*

<sup>32</sup> VA. CODE ANN. § 18.2-308.1(C)(iv).

<sup>33</sup> VA. CODE ANN. § 9.1-101.

<sup>34</sup> *Id.* Schools may be authorized to employ other school security personnel, some of whom may be active or former law-enforcement officers authorized to carry firearms on school property as part of their duties. *See* VIRGINIA DEPARTMENT OF CRIMINAL JUSTICE SERVICES, VIRGINIA CENTER FOR SCHOOL AND CAMPUS SAFETY, THE 2017 SCHOOL SAFETY AUDIT SURVEY RESULTS (Feb. 2018).

In 2017, the General Assembly amended § 22.1-280.2:1 to authorize SSOs meeting certain criteria to carry firearms in the performance of their official duties.<sup>35</sup> Specifically, the General Assembly extended the authority of SSOs to possess firearms only to those who had been active (and, therefore, certified) law enforcement officers within 10 years immediately prior to being hired as an SSO.<sup>36</sup>

And significantly, in 2017, the General Assembly rejected a specific proposal to arm teachers and other school employees.<sup>37</sup> House Bill 1469 would have permitted local school boards to authorize trained employees to carry handguns on school property; however, the bill was not reported out of committee.<sup>38</sup> Similar bills introduced in the 2013 Session (House Bill 1557), the 2014 Session (House Bill 21), the 2015 Session (House Bill 1467), and the 2016 Session (House Bill 76) also failed to report out of committee.<sup>39</sup>

Therefore, it is clear that the General Assembly has not empowered local school boards to arm teachers, but rather, has limited such authority to currently certified law enforcement officers or former certified law enforcement officers to carry firearms to maintain safety at public schools.<sup>40</sup>

### Conclusion

Virginia law expressly limits who may possess firearms on school grounds for safety purposes, and the General Assembly declined to enact bills presented every year from 2013 through 2017 to extend this authority to school teachers and administrators. The General Assembly has provided ways for schools to employ security personnel deemed to have met stringent training requirements who may possess firearms on school grounds in the execution of their duties as school safety personnel; however, these security personnel do not include armed SCOPs. For the reasons set forth above, I conclude that the

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<sup>35</sup> 2017 Va. Acts ch. 311.

<sup>36</sup> VA. CODE ANN. § 22.1-280.2:1 (Supp. 2018). Several other criteria apply in determining whether a SSO may carry a firearm in the performance of his duties. The full list of criteria is as follows: “(i) within 10 years immediately prior to being hired by the local school board he was an active law-enforcement officer as defined in § 9.1-101 in the Commonwealth; (ii) he retired or resigned from his position as a law enforcement officer in good standing; (iii) he meets the training and qualifications described in subsection C of § 18.2-308.016; (iv) he has provided proof of completion of a training course that includes training in active shooter emergency response, emergency evacuation procedure, and threat assessment to the Department of Criminal Justice Services . . . , provided that if he received such training from a local law-enforcement agency he received the training in the locality in which he is employed; (v) the local school board solicits input from the chief law-enforcement officer of the locality regarding the qualifications of the school security officer and receives verification from such chief law-enforcement officer that the school security officer is not prohibited by state or federal law from possessing, purchasing, or transporting a firearm; and (vi) the local school board grants him the authority to carry a firearm in the performance of his duties.” VA. CODE ANN. § 22.1-280.2:1.

<sup>37</sup> H.B. 1469, 2017 Sess. (Va. 2017).

<sup>38</sup> *See id.* (reflecting the bill’s status as of February 7, 2017, as not reported out of the House of Delegates Committee on Education).

<sup>39</sup> H.B. 1557, 2013 Sess. (Va. 2013); H.B. 21, 2014 Sess. (Va. 2014); H.B. 1467, 2015 Sess. (Va. 2015); H. B. 76, 2016 Sess. (Va. 2016).

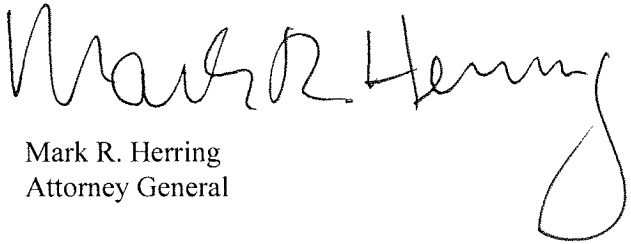
<sup>40</sup> The general authority given to school boards under Article VIII, § 7 of the Constitution of Virginia and the more specific powers given in §§ 22.1-28, -78, -79, and -253.13:7 do not expressly or by implication authorize a program to arm educational and administrative school board employees for safety purposes.

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Department of Criminal Justice Services cannot lawfully issue a temporary or valid registration for armed SCOPs with jurisdiction over public school grounds.<sup>41</sup>

With kindest regards, I am,

Very truly yours,

A handwritten signature in black ink that reads "Mark R. Herring". The signature is written in a cursive style with a large, looping "H" and a long, sweeping tail on the "g".

Mark R. Herring  
Attorney General

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<sup>41</sup> See VA. CODE ANN. § 18.2-308.1.