

**COUNTIES, CITIES AND TOWNS: GENERAL - BUDGETS - PUBLIC FINANCE ACT.
EDUCATION: POWERS AND DUTIES OF SCHOOL BOARDS - PUBLIC SCHOOL FUNDS -
SCHOOL PROPERTY.**

Absent clear statutory authority, governing body may not assume control over construction of public schools or expenditure of funds for that purpose. Such body may review appropriations made to recipient agencies to ensure proper expenditure of public funds and may consolidate certain duplicative functions. Board of supervisors may not remove statutory authority of school board to erect, furnish and equip necessary school buildings; to manage and control funds made available to school board for public schools; and to incur costs and expenses.

Mr. Jack Roberts

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You ask whether, pursuant to § 15.120.2 of the *Code of Virginia*, the board of supervisors may consolidate the administration of the county's school construction program with the construction program for capital projects for other county facilities.

You advise that the board of supervisors administers the construction of various public facilities within the county, such as libraries, recreational facilities and government offices. This administrative function includes the procurement of architectural and construction services, as well as management of the contracts during construction. It is the position of the board of supervisors that the county school board's separate management of the construction of school projects results in a duplication of this administrative function.

Section 15.120.2 authorizes the governing body of a county, city or town to require any board, commission or authority to which it has appropriated public funds to furnish the governing body information and records so that the governing body may review "the use of past and the proposed use of future appropriations, the method of management, control and organization of the recipient agency and its present and proposed programs." The purpose of the review is to enable the governing body to determine that the appropriation will not result in the dissipation of public funds.¹ Section 15.120.2 further provides:

If the governing body determines that a particular administrative function or activity of the recipient organization duplicates the services provided by the governing body and that public funds may be conserved by combining, consolidating or coordinating the activities of the recipient agency with those of the county, it may in lieu of an appropriation of funds for that function or activity provide the recipient agency with the necessary goods and services; and the governing body may assign officers and employees to coordinate the functions and activities of the governing body and those of the various recipient agencies.

While a local governing body has a limited oversight role in school expenditures through the budget and appropriations process,² this oversight role has not been interpreted as authorizing the governing body to exercise general control over school board expenditures.³ Moreover, the Supreme Court of Virginia and numerous prior opinions of the Attorney General have recognized

the statutory authority of local school boards to control the construction of public schools and the expenditure of funds for that purpose.⁴ Section 22.179(3) provides that a school board shall "[c]are for, manage and control the property of the school division and provide for the erecting, furnishing, [and] equipping ¼ of necessary school buildings." Section 22.189 provides that "[e]ach school board shall manage and control the funds made available to the school board for public school and may incur costs and expenses."⁵

This statutory language and the case law and opinions interpreting the language indicate that, absent clear authority, a governing body may not assume control over the construction of public schools or the expenditure of funds for that purpose. Section 15.120.2 provides a means by which a local government may review appropriations to its "recipient agencies" to ensure the proper expenditure of public funds and may consolidate certain duplicative administrative functions.⁶ It is my opinion that § 15.120.2 is not sufficient legislative authority to permit the board of supervisors to remove from the school board its statutory authority to "provide for the erecting, furnishing, [and] equipping ¼ of necessary school buildings"⁷ and to "manage and control the funds made available to the school board for public schools and [to] incur costs and expenses."⁸

¹Section 15.120.2.

²See 1989 Op. Va. Att'y Gen. 49, 51, and opinions cited therein; see also § 15.1163(A) (governing body may require school board to furnish information governing body deems advisable in connection with budget process).

³See 1989 Op. Va. Att'y Gen., *supra*, at 51 (school system's administrative costs have significant relationship to governing body's oversight role of school expenditures through budget and appropriation process; thus, governing body may conduct study of school system's administrative operations, provided conduct of study does not interfere with day-to-day operation of schools; governing body has no authority, however, to implement any changes in school system's administrative operations).

⁴See *County School Board v. Farrar*, 199 Va. 427, 43233, 100 S.E.2d 26, 30 (1957) (Constitution and pertinent statutes grant school board authority over school property; board of supervisors has no authority to expend proceeds of bonds issued for construction of schools or to prohibit school board from expending proceeds for legitimate and proper purpose); Op. Va. Att'y Gen.: 1991 at 149, 15051 (school board has broad authority over school property, including right to charge students fee for parking on school property); 19861987 at 192, 193 (once funds for repair of school property are appropriated to school board, school board has exclusive right to determine and control their expenditure); 19731974 at 44, 45 (after referendum is held and bonds are issued for school construction, funds become subject to control of school board; *Farrar* decision controls); 19571958 at 232, 233 (when governing body has appropriated funds to school board for school construction and funds have been deposited in separate account, school board may expend such funds without further authority from governing body); 19561957 at 221, 222 (once bonds have been issued for school construction purposes, school board has full and complete authority to award construction contract; statutes reserve no authority to governing body); *id.* at 222, 224 (school board has control over execution of school construction program); see also §§ 22.1138 to 22.1140 (authorizing State Board of Education and Superintendent of Public Instruction to regulate and advise school boards regarding plans, specifications and erection of public schools).

⁵Pursuant to § 22.188, "[t]he funds available to the school board of a school division for the establishment, support and maintenance of the public schools in the school division ¼ consist of

state funds appropriated for public school purposes[,] ¼ federal funds[,] ¼ local funds appropriated to the school board by a local governing body[,] ¼ and any other funds that may be set apart for public school purposes." While § 22.194 requires a governing body to appropriate to a school board an amount at least sufficient to maintain a "program meeting the standards of quality for the several school divisions prescribed as provided by law," the governing body may appropriate additional funds, including funds for school construction purposes. Once the governing body has appropriated an amount sufficient to satisfy § 22.194, any additional amount may be placed in a contingency fund and appropriated to the school board on a periodic basis throughout the year. See 1980-1981 Op. Va. Att'y Gen. 9, 11. Amounts placed in a contingency fund are not subject to the control of the school board until appropriated. See 1986-1987 Op. Va. Att'y Gen., *supra* note 4, at 193. Funds for school construction also may be provided through the issuance of bonds for capital projects for school purposes pursuant to the Public Finance Act of 1991, §§ 15.1227.1 to 15.1227.65. The school board has the authority to control the disposition of the proceeds of such bonds. See *County School Board v. Farrar*, 199 Va. at 43233, 100 S.E.2d at 30; 1973-1974 Op. Va. Att'y Gen., *supra* note 4, at 4546.

⁶See 1976-1977 Op. Va. Att'y Gen. 46, 48 (§ 15.120.2 is not applicable to constitutional office because such office is not "board, commission or authority" which may be combined or consolidated with local government agency).

⁷Section 22.179(3).

⁸Section 22.189.