

01-114

**CONSTITUTION OF VIRGINIA: LOCAL GOVERNMENT  
(COUNTY AND CITY OFFICERS).**

**Sheriff maintains custody of individual transported to medical facility for emergency medical evaluation and treatment until individual is delivered to temporary detention facility upon final execution of order.**

The Honorable Robert J. Deeds  
Sheriff for Williamsburg-James City County  
March 29, 2002

**Issue Presented**

You ask whether, once a patient is transported to a medical facility for evaluation and treatment pursuant to the issuance of an order of temporary detention under § 37.1-67.1 of the *Code of Virginia*, the office of sheriff is responsible for the custody of the patient after delivery of such patient.

**Response**

It is my opinion that a sheriff discharges his duty when he transports an individual to a hospital, and that he is not required to remain for the screening process, unless the temporary detention order includes a specific requirement to transport the person to such other medical facility as may be necessary to obtain emergency medical evaluation or treatment prior to placement of the individual. In such situations, the custody of the individual remains with the sheriff until the individual is delivered to the temporary detention facility.

**Facts**

You acknowledge that a temporary detention order customarily is issued by a magistrate subsequent to an evaluation by a local community services board employee. You also represent that, upon issuance of such order, the office of the sheriff is required, pursuant to § 37.1-67.1, to transport a person certified for emergency medical evaluation or treatment to a hospital. You report that your office has encountered problems at various medical facilities in relinquishing custody of the patient. Your office has been told that the transporting deputies continue to maintain custody of the patient while a physical examination is performed, and that such

deputies remain responsible and, therefore, are liable for the individual while at the facility. Consequently, you advise that your deputies remain with the individual while various administrative matters are accomplished.

### **Applicable Authorities**

The office of sheriff is a constitutional office created pursuant to Article VII, § 4 of the Constitution of Virginia. The duties of a sheriff "shall be prescribed by general law or special act" of the General Assembly.<sup>1</sup> While the powers and duties of a constitutional officer are those prescribed by statute,<sup>2</sup> except as limited by law, the constitutional officer is free to discharge his prescribed powers and duties in the manner he deems appropriate. The Dillon Rule of strict construction, under which local public bodies may exercise only those powers conferred expressly or by necessary implication,<sup>3</sup> is, however, applicable to constitutional officers.<sup>4</sup>

### **Discussion**

The term "custody" encompasses physical possession and control over the person, and the responsibility to make placement decisions for an individual, as well as decisions concerning an individual's clinical treatment and management.<sup>5</sup> The sheriff has the specific statutory responsibility to provide transportation of prisoners in his custody to the courts, hospitals and medical appointments.<sup>6</sup> Consequently, the sheriff has "custody" of such person during the period of transport unless and until such custody is transferred to another.<sup>7</sup>

A 1980 opinion of the Attorney General responds to the inquiry whether a transporting officer is required under § 37.1-70 to remain at a hospital during the screening process of a person who has been judicially certified as mentally ill.<sup>8</sup> The opinion concludes:

The Code's failure to impose upon a sheriff the specific responsibility to remain at a hospital pending the determination of the person's mental state is in distinct contrast to the duty placed upon him under § 37.1-67.1 to execute an order of temporary detention. It also contrasts with other statutes detailing various duties and powers of a sheriff with regard to mental patients. I further note that if a sheriff were required to stay at a hospital until a decision had been made concerning the patient, then as much as twenty-four hours might elapse before he were free to

resume his other duties. In the absence of any indication in the Code that the legislature contemplated such a potential drain on the time and resources of a sheriff's department, I conclude that a sheriff discharges his duty when he transports a certified individual to a hospital and he is not required to remain for the screening process.<sup>[9]</sup>

The General Assembly has taken no action to alter the conclusion of the 1980 opinion. The Supreme Court of Virginia has stated that "[t]he legislature is presumed to have had knowledge of the Attorney General's interpretation of the statutes, and its failure to make corrective amendments evinces legislative acquiescence in the Attorney General's view."<sup>10</sup>

In the event, however, that the temporary detention order includes a specific requirement to transport the person "to such other medical facility as may be necessary to obtain emergency medical evaluation or treatment prior to placement,"<sup>11</sup> the custody of the individual remains with the sheriff until the individual is delivered to the temporary detention facility. Consequently, in such situations, the sheriff must maintain custody of such individual until final execution of the order.

## **Conclusion**

It is my opinion that a sheriff discharges his duty when he transports an individual to a hospital, and that he is not required to remain for the screening process, unless the temporary detention order includes a specific requirement to transport the person to such other medical facility as may be necessary to obtain emergency medical evaluation or treatment prior to placement of the individual. In such situations, the custody of the individual remains with the sheriff until the individual is delivered to the temporary detention facility.

<sup>1</sup>Va. Const. art. VII, § 4.

<sup>2</sup>See *Hilton v. Amburgey*, 198 Va. 727, 729, 96 S.E.2d 151, 152 (1957); *Old v. Commonwealth*, 148 Va. 299, 302, 138 S.E. 485, 486 (1927).

<sup>3</sup>See *Commonwealth v. Arlington County Bd.*, 217 Va. 558, 232 S.E.2d 30 (1977).

<sup>4</sup>See 1984-1985 Op. Va. Att'y Gen. 284, 284.

<sup>5</sup>See 1987-1988 Op. Va. Att'y Gen. 409, 411. "Custody," as used in the 1988 opinion, refers to a defendant found not guilty of a criminal charge by reason of insanity or mental retardation, who is committed to the custody of the Commissioner of Mental Health, Mental Retardation and Substance Abuse services pursuant to § 19.2-181. Section 19.2-182.2 replaces predecessor § 19.2-181, and does not affect the conclusions reached in this opinion. See 1991 Va. Acts ch. 427, at 637.

<sup>6</sup>See Op. Va. Att'y Gen.: 1997 at 144, 145; 1982-1983 at 294, 294 (noting that regional jail superintendent has same responsibility as sheriff to transport prisoners in his care to courts, hospitals, etc.).

<sup>7</sup>See 1997 Op. Va. Att'y Gen., *supra*, at 145.

<sup>8</sup>1979-1980 Op. Va. Att'y Gen. 314, 314.

<sup>9</sup>*Id.* at 315

<sup>10</sup>*Deal v. Commonwealth*, 224 Va. 618, 622, 299 S.E.2d 346, 348 (1983).

<sup>11</sup>Va. Code Ann. § 37.1-67.1 (Michie Supp. 2001).

[Back to March 2002 Index](#)