



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

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Mr. James E. Barnett  
County Attorney for York County  
P.O. Box 532  
Yorktown, Virginia 23690

Dear Mr. Barnett:

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 York County School Board may prohibit the possession of firearms at school board meetings that are not held on school division property.

## Response

It is my opinion that the *Code of Virginia* does not grant to the York County School Board the authority to prohibit the possession of firearms at school board meetings that are not held on school property.

## Background

You report that the York County School Board holds its monthly meetings in York Hall, a building owned by the York County, rather than on school grounds or in a school building within the York County School Division. You state that York Hall has two meeting rooms, one large meeting room on the second floor where the School Board conducts its meetings and one small meeting room on the ground floor. You relate that the first floor meeting room remains open for public use while the School Board meeting takes place on the second floor.

## Applicable Law and Discussion

In order to determine whether the York County School Board may prohibit attendees from bringing firearms to its meetings, I must review the powers granted to local school boards by the General Assembly and examine Virginia's general laws regarding possession of firearms.

Article VIII, § 7 of the Constitution of Virginia and § 22.1-28 provide that "[t]he supervision of schools in each school division shall be vested in a school board." The Supreme Court of Virginia has held that local "[s]chool boards ... constitute public quasi corporations that exercise limited powers and

functions of a public nature granted to them expressly or by necessary implication, and none other.”<sup>1</sup> For many years, Virginia has followed the Dillon Rule of strict construction concerning the powers of local governing bodies, limiting such powers to those conferred expressly by law or by necessary implication from such conferred powers.<sup>2</sup> “[T]he Dillon Rule is applicable to determine in the first instance, from express words or by necessary implication, whether a power exists at all. If the power cannot be found, the inquiry is at an end.”<sup>3</sup> Where a power is found to exist, but the question is whether it has been exercised properly, the “reasonable selection of method” rule may apply, and the inquiry is directed to whether there is implied authority to execute the power in the particular manner chosen.<sup>4</sup> Therefore, according to the Dillon Rule, I must examine the statutes governing the powers of school boards to determine whether there is an express grant of authority to school boards to ban firearms from their meetings.

The General Assembly has assigned various duties and granted certain powers to local school boards to carry out their constitutional responsibilities.<sup>5</sup> Section 22.1-71 declares that a school board “is vested with all the powers and charged with all the duties, obligations and responsibilities imposed upon school boards by law.” Section 22.1-79(3) sets out the powers and duties of school boards, including the instruction to “[c]are for, manage and control the property of the school division.” I do not, however, find express authority for a school board to prohibit the possession of firearms at school board meetings held off school division property, nor am I able to find a grant of power from which such authority reasonably may be inferred.

The right of a citizen, with a properly issued permit, to carry a concealed handgun exists generally in the Commonwealth, subject to limited constraints.<sup>6</sup> The common law right to carry a nonconcealed handgun has not been revoked by the General Assembly.<sup>7</sup> The General Assembly specifically has set out places where the carrying of a concealed handgun is prohibited.<sup>8</sup> Of particular importance here is § 18.2-308.1(B), which makes it a class 6 felony for any person to possess a firearm

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

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<sup>1</sup>Kellam v. Sch. Bd., 202 Va. 252, 254, 117 S.E.2d 96, 98 (1960); *see also* Commonwealth v. County Bd., 217 Va. 558, 574, 232 S.E.2d 30, 40 (1977).

<sup>2</sup>*See* 1999 Op. Va. Att’y Gen. 101, 102 and citations therein.

<sup>3</sup>*County Bd.*, 217 Va. at 575, 232 S.E.2d at 41.

<sup>4</sup>*Id.*; *see also* 1999 Op. Va. Att’y Gen. 72, 74.

<sup>5</sup>*See* VA. CODE ANN. tit. 22.1, ch. 7, §§ 22.1-71 to 22.1-87 (2006) (“General Powers and Duties of School Boards”).

<sup>6</sup>VA. CODE ANN. § 18.2-308 (Supp. 2006).

<sup>7</sup>*See* § 18.2-287.4 (Supp. 2006) (prohibiting carrying of certain large ammunition capacity weapons); *see also* § 18.2-308 (prohibiting carrying of concealed weapons without permit).

<sup>8</sup>*See, e.g.*, § 18.2-283 (2004) (places of worship); § 18.2-283.1 (2004) (courthouses); 18.2-308(J3) (places licensed for on-premises alcoholic beverage consumption); 18.2-308(O) (where prohibited by private property owner; *see also* VA. CODE ANN. § 15.2-915(A) (Supp. 2006) (limiting ability of locality or local governmental entity to adopt ordinance governing “carrying, storage or transporting of firearms”).

functions or activities are taking place; or (iii) any school bus owned or operated by any such school[.]

Since the York County School Board does not hold its meetings in an elementary, middle, or high school building, or on the grounds thereof, the issue becomes whether school board meetings qualify as "school-sponsored functions."

A 2000 opinion of the Attorney General has concluded that "the nature and function of the [school] board meeting is a meeting of adults with official business and policymaking duties."<sup>9</sup> Further, the 2000 opinion concluded that such meetings are "a fundamentally adult atmosphere rather than ... a student-oriented or school-oriented atmosphere."<sup>10</sup> Further, the fact that "students voluntarily attend such meetings to provide input ... does not transform the board's meetings from a policy and rule-making function into an official school function akin to a graduation ceremony or classroom instruction."<sup>11</sup>

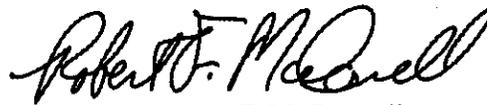
The analysis that reached these conclusions was conducted with regard to concerns over the constitutionality of a school board opening its meetings with a prayer.<sup>12</sup> These conclusions, although removed from the constitutional context, are still valid in guiding an analysis of whether § 18.2-308.1(B)(ii) applies to school board meetings and thereby prohibits the possession of firearms. Based on such analysis, I must conclude that it does not. Likewise, since this conclusion is based upon statutory constructions rather than constitutional jurisprudence, the General Assembly is capable of amending the statute to provide a clear grant of authority to school boards to prohibit possession of weapons at their meetings.

### Conclusion

Accordingly, it is my opinion that the *Code of Virginia* does not grant to the York County School Board the authority to prohibit the possession of firearms at school board meetings that are not held on school property.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

6:1185; 1:941/06-072

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<sup>9</sup>2000 Op. Va. Att'y Gen. 109, 110.

<sup>10</sup>*Id.* at 111.

<sup>11</sup>*Id.* at 110-11

<sup>12</sup>*Id.* at 110.