

***BUDGETS,
LAWS
and
VIRGINIA
LOCAL
GOVERNMENTS***

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Virginia local governments have complex financial structures. They derive funding to operate from many diverse revenue sources authorized by law. These revenues include real and personal property taxes, Federal grants, Commonwealth shared revenues, sales taxes, business licenses and many others. The responsibility to oversee the appropriate use of these funds has gradually led to a complex array of laws, historical practices and administrative procedures dictating how, when, and where monies are expended - all subject to public scrutiny. Hence, financial reporting for local governments may appear to be complicated, lack clarity or be excessively detailed. The constant changes in governmental financial reports and reporting standards have only served to confirm this belief. Only by making a thorough review and analysis of relevant Virginia laws will the finances of Virginia Localities become more straightforward and understandable.

The formal process authorizing local government finance for Virginia localities begins and ends with the statutes of the Commonwealth of Virginia. Without legal standing, no funds can be collected, recorded, expended or reported by a locality. All authority for financial matters is granted and controlled by laws of these statutes. The interplay and evolution of the Virginia Constitution, general laws enacted by General Assembly, local government ordinances, and general case law has been as lengthy and complex as Virginia history. By the 21st century, the financial administration of local governmental budgets has changed dramatically. From manual accounting, Virginia localities have evolved to employ solid business practices such as central purchasing and central accounting. Despite these developments strict accountability for public funds must be maintained. It is an accepted practice in Virginia that all financial transactions of a locality must be expressly authorized by state or local laws and not implied because of the "Dillon" rule. Only after all legal requirements have been met can financial transactions be reported in accordance with Generally Accepted Accounting Principles (GAAP) as promulgated by the Governmental Accounting Standards Board (GASB) and incorporated into a locality's Comprehensive Annual Financial Report (CAFR).

This publication seeks to identify the primary relevant and controlling Virginia statutes that provide the authority to manage local government finance. These statutes are organized under the section that relates to the local government budget and its operations. The strength of a locality's financial position must first and foremost begin with a realistic and achievable budget. Success in governance is achieved through an effective County budget supplemented with internal control systems.

BUDGETS-The Plan

The historical importance of the budget to Virginia localities is described in the extant Virginia County Supervisors' Manual 1968 which states, "No act that a member of a board of supervisors can take is more important than his review of the annual county budget". The budget is the cornerstone for all legislative spending plans. Important Virginia statutes that are applicable to a County's budget are discussed below.

Section 15.2-950. Appropriations

~ A locality may make appropriations for the purposes for which it is empowered to levy taxes and make assessments, for the support of the locality, for the performance of its functions, and the accomplishment of all other lawful purposes and objectives, subject to such limitations as may be imposed by law.

Included under the Additional Powers section of the Code of Virginia as amended, any Virginia locality can make lawful appropriations to carry out its purposes. There are many sections of the Code that specifically authorize a locality to levy funds and appropriate monies for that intended purpose such as Section 10.1-1127 (forest protections). Presumably, these sections are added for support and clarity where the lack of a public purpose to expend funds may be questioned. An appropriation is a law authorizing the expenditure of money. It is enacted only by a legislative body not by executive fiat. Therefore, in order for a local government to incur expenditures, the County must have adopted a budget in place before the fiscal year starts and prepared an appropriation resolution or ordinance.

Section 15.2-2503. Time for preparation and approval of budget; contents.

This code section structures and orders the entire budget schedule for a local government; which begins in earnest after the end of each calendar year. Budget planning is now a year round activity from preparation and adoption to reporting, monitoring and adjusting.

- ~ Requires all officers, heads of departments, offices, divisions, boards, commissions and agencies to prepare and submit to the governing body an estimate of the amount of money needed during the ensuing fiscal year. If none is submitted, the locality's clerk or agent can prepare one.
- ~ The governing body must prepare by April 1st of each year and approve a budget for "*informative and fiscal planning purposes only*"
- ~ The budget must contain a complete itemized and classified plan of all contemplated expenditures and all estimated revenues and borrowings for the locality for the ensuing fiscal year.
- ~ The budget must be approved and a tax rate fixed no later than the date on which the fiscal year begins.
- ~ After approval of the budget it shall annually publish the approved budget on the locality's website, if any or shall otherwise make the approved budget available in hard copy as need to citizens for inspection.

Presumably a locality could wait until July 1st of the fiscal year to adopt a budget and establish a tax rate, but that creates a time compression problem for a locality when it becomes necessary to incur expenditures immediately. The itemized and classified plan, referred to by statute, usually takes the form of a detailed line item accounting document. Prior to 1968, the Auditor of Public Accounts (APA) was required to furnish each locality with all necessary forms for the preparation of the budget; however, they were not required to use them. During the 1930's T. Coleman Andrews, APA, published the first County Budget Manual with complete instructions. Most counties followed this

exact system for decades and hence Virginia's long history of uniform accounts, budgets, and audits has continued to this day.

The electronic era now shows local government budgets on the World Wide Web. Most localities publish their adopted budgets using a PDF file or link it to another secure web site. Computer security is vital because the files can be altered. This new publishing requirement is only an annual one but makes it necessary to make a hard copy available as needed to citizens for inspection if a locality does not have a website. Most localities have always made final budget copies available for public inspection once the budget has been adopted.

Section 22.1-92. Estimate of monies needed for public schools; notice of costs to be distributed.

~ Each Superintendent shall, with the school board's approval:

- Submit to the body appropriating funds by April of each year (sec. 15.2-2503) an estimate of the money needed during the next fiscal year by each major category prescribed by the Board of Education or such headings or items as may be necessary.
- Prepare and distribute a notification including average per pupil costs for the coming year and actual state and local costs per pupil for the previous year on a one page form developed by the Board of Education.

Before the school board gives a final approved budget to the governing body, one public hearing must be held with required public notice ten days prior to the hearing. Passage of the budget by the local government shall be conclusive evidence of compliance with the requirements of this section.

Evidently, the legislature wanted to prevent a locality from citing non-compliance with this section as an "illegal budget" after the governing body had adopted a school budget. Even a "one line" school budget amount would be sufficient for compliance with this section.

Section 15.2-2504. What budget to show.

~ In separate parallel columns opposite each item of contemplated expenditure the budget shall show:

- Aggregate amount appropriated during the preceding fiscal year
- Amount expended during the preceding fiscal year
- Aggregate amount appropriated and expected to be appropriated during the current fiscal year, and
- Increases or decreases in contemplated expenditures for the ensuing year compared with the expected appropriations for the current year

~ Accompanying the budget will be:

- A statement of the contemplated revenue and disbursements, liabilities, reserves and surplus or deficit of the locality as of the date of the preparation of the budget.
- An itemized and complete financial balance sheet at the close of the preceding fiscal year.

Many budgets prepared by Virginia local governments lack a copy of the balance sheet as well as a projection of the fund balance as of the date of the preparation of the budget. They do, however, often display audited revenues and expenditures over the last five fiscal years. With sophisticated spreadsheets many more visual reports such as pie charts and bar graphs are incorporated into budget documents. Local government budgets now often contain over one hundred pages and present a formidable challenge to analyze.

Section 15.2-2505. Budget may include reserve for contingencies and capital improvements.

Any locality may include in its budget a reasonable reserve for contingencies and capital improvements. For years localities were cautious about carrying over fund balances from one year to the next. This statute clearly

permits such a practice in the form of a “reasonable reserve for contingencies and capital improvements.”

Taxpayers and special interest groups rarely succeed in convincing elected officials that their fund balances are excessive. Surplus funds are usually transferred to Capital Improvement Programs. Many local governments have adopted fiscal policies requiring minimum fund balance levels. Section 15.2-2511.1 does permit any locality to return a local surplus to taxpayers if they decide to do so. In practice, it is much easier for a locality to reduce the tax rates for the upcoming fiscal year.

Section 15.2-2506. Publication and notice; public hearing; adjournment; moneys not to be paid out until appropriated.

Keeping the public informed requires the following actions by a governing body:

- ~ A brief synopsis shall be published once in a newspaper (or written on printed handbills if no paper of general circulation exists) having general circulation and notice given to conduct one or more public hearings.
- ~ The meeting notice must be at least 7 days prior to the meeting.
- ~ The public hearing must be at least 7 days before the Board approves the budget. With respect to the School budget, which shall include the estimated required local match, such hearing shall be at least seven days prior to the approval of the budget as prescribed in Section 22-1-93. The governing body may adjourn such hearing from time to time.
- ~ Most importantly, “In no event, including school division budgets, shall such preparation, publication and approval be deemed to be an appropriation. No money shall be paid out or become available to be paid out for any contemplated expenditure unless and until there has first been made an annual, semiannual, quarterly or monthly appropriation for such contemplated expenditure by the governing body.”

~ All appropriations lapse after one year except that localities with the *County Executive Form of Government* may carry over outstanding grants for one year without being reappropriated.

The estimated required local match is usually the amount budgeted to be transferred from the County General Fund to the School Fund. The local match has caused much confusion and disagreement between County Boards of Supervisors and School Boards where the obligation to fund appropriations is not adequately understood.

Section 15.2-520 Same; expenditures and accounts.

~ No money shall be drawn for the treasury of the county, nor shall any obligation for the expenditure of money be incurred, except pursuant to appropriation resolutions. Funds appropriated for outstanding grants may be carried over for one year. Accounts shall be kept for each item appropriated by the board and shall show in detail:

- Appropriations made thereto
- The amount drawn thereon
- The unpaid obligation charged against it
- The unencumbered balance in the appropriation account
- The unpaid obligation charged against it
- The unencumbered balance in the appropriation account sufficient to meet the obligation

This statute mandates an encumbrance system of accounting which is not an integrated part of all accounting systems and cannot be accomplished without a combination of central accounting **AND** a system of central purchasing.

Section 22.1-93. Approval of annual budget for school purposes.

~ Notwithstanding all other laws, counties shall approve the school budget by May 1st or within 30 days of

receipt of the estimates of state funds, whichever is later. Municipalities have until May 15th.

- ~ The Superintendent of Public Instruction shall notify localities of funding estimates relative to the Basic School Aid Formula fifteen days after the final adjournment of the General Assembly.
- ~ Upon approval each local school division shall publish the approved annual budget on the division's website, including the estimated required local match, if any, of if there is no division website, the document shall otherwise be made available in hard copy as needed to citizens for inspection.

Given the delays by the legislature of approving a final appropriations act, it has been difficult for localities to comply with these deadlines. The requirement to publish the localities' estimated required local match is new statutory language but it has always been an integral part of the budget. So, from a plain reading of this new statute, one must conclude that budgets have been too complicated for the public or taxpayers to determine the general fund contribution to the school fund.

Section 22.1-94. Appropriations by county, city, or town governing body for public schools:

Every locality can and shall make appropriations to a school board as they deem necessary for accounting and budgetary control or those required by law.

- ~ A governing body may appropriate funds from local levies and other funds to schools.
- ~ The appropriation amount shall not be less than the amount to meet the standards of quality.
- ~ The amount appropriated by the governing body for public schools shall relate to its total only or to the nine major classifications prescribed by Section 22.1-115.
- ~ The appropriation may be on the same basis as all governing body appropriations, (monthly, quarterly, or annually)

Failure to appropriate school funds according to this section will make it the duty of the Attorney General to file a Writ of Mandamus in circuit court requiring the appropriation. In the event that cash flows are insufficient to meet current obligations or appropriations, Code Section 15.2-2629 authorizes any locality to borrow money in anticipation of the collection of taxes for the current year not to exceed a term of one year or exceed anticipated revenues.

The time has rightfully passed that a Board can close its public schools by failing to appropriate monies. Moreover, the fight over a County Board or City Council appropriating school funds by line item or the object level is deemed illegal. Probably, the line item appropriation over reaches upon the School Board's statutory requirement to operate the school system.

There are however serious issues addressing the classification of expenditures between the nine major funds and School Boards must have controls in place so expenditures are not erroneously classified into a major category because that category has a large expended appropriation balance.

Section 15.2-2507. Amendment of budget.

For all of the emphasis on budgets being for "*informative and fiscal planning purposes only*" this statute permits a locality to amend its budget in order to adjust the aggregate amount to be appropriated. Hence, direct linkage is made between budgets and appropriations.

- ~ Any locality may amend its budget to adjust the aggregate amount to be appropriated as shown in the currently adopted budget.
- ~ Any such amendment that exceeds 1% of the total expenditures already approved must be accomplished by publishing a notice of a meeting and a public hearing once in a newspaper, having general circulation in that area, at least 7 days prior to the meeting date.
- ~ The notice shall state the locality's intent to amend the budget and a brief synopsis of the amendment.

- ~ The governing body may approve the amendment at the advertised meeting after holding a public hearing on the amendment.
- ~ Additionally, the governing body shall appropriate as a part of its annual budget sums for constitutional officers for salaries and expenditures in an amount not less than the allowances approved by the Compensation Board.

The Auditor of Public Accounts has recently opined that Virginia has a distinct two-step process. In his letter of July 8, 2010, he writes:

“Virginia local governing bodies undergo a two part process. One is the adoption of a budget and the second process is the appropriation of funds. I believe Sections 15.2-2506 (and Sections 22.1-93 and 22.1-94 relating specifically to school boards) of the Code of Virginia clearly lays out this process, since there is an adoption of the budget with funds being appropriated either monthly, quarterly, semi-annually or annually.

The budget shows the anticipated sources of revenue and the planned expenditures for the coming period. Simply, a budget is a fiscal plan. An appropriation is the authorization to spend money in accordance with the fiscal plan. The reason for allowing appropriation either monthly, quarterly, semi-annually, or annually is it allows the governing body to monitor its cash flows and then authorize the use of cash to meet its needs.

Further, Section 15.2-2507 of the Code of Virginia requires that if the locality is planning to appropriate funds that exceed the approved budget by more than one percent of the expenditures then they must hold a public hearing. Again, this highlights the two part budget and appropriation process.

Governmental Accounting Standards Board Statement 34 requires the following:

‘To demonstrate whether resources were obtained and used in accordance with the government’s legally adopted budget, RSI should include budgetary comparison schedules for the general fund and for each major special

revenue fund that has a legally adopted annual budget. The budgetary comparison schedules should present both (a) the original and (b) the final appropriated budgets for the reporting period as well as (c) actual inflows, outflows, and balances, stated on the government's budgetary basis. This Statement also requires RSI for governments that use the modified approach for reporting infrastructure assets.'

We believe the locality would need to act on both Sections 15.2-2506 and 15.2-2507 of the Code of Virginia to comply with the expectation of *'final appropriated budgets'* envisioned by the Governmental Accounting Standards Board (GASB), unless the change amounts to an increase of less than 1% of total expenditures. Finally, most localities operationally use a cash basis of budgeting, which appears more like a cash flow analysis, rather than the modified accrual basis used by GASB in its Required Supplemental Information on budget versus actual.”

Practices do vary among localities concerning the need to advertise their budget when a new expenditure exceeds 1% of the adopted budget. Some localities decide not to amend their budget – just appropriate funds. It should be noted that the amendments are not in fact cumulative. It is the prevailing practice in Virginia that a public hearing should be held to amend the budget and make an appropriation when an isolated expenditure exceeds the threshold budget.

The operative language in the statute is “to be appropriated” so the amended budget must also have an appropriation resolution as mandated by other sections of the Code. For example, if a locality's total budget is \$100 million the need to hold a total budget is \$100 million the need to hold a public hearing would not be reached unless the amendment would exceed \$1,000,000.

ACCOUNTING

All enterprises must have a system to accurately record and report their financial transactions. In Virginia, the Auditor of Public Accounts establishes the uniform financial reporting manual for all localities to follow. The

Auditor permits localities to have flexibility in creating the funds and accounts (i.e., accounting system) that will clearly reflect the transactions specific to their needs. The standardization is directed at producing comparable financial information for his office to complete the **Comparative Report of Local Government Revenues and Expenditures** that the Auditor of Public Accounts submits to the General Assembly annually. By February 1st of each year he sends a copy of his report to the General Assembly and to members and clerks of the local governing bodies. This statewide reporting system is one of the longest standing throughout Virginia and has benefited localities by giving them the ability to compare and contrast financial trends for all Virginia local governments. This report is available on the Auditor of Public Accounts' web site at www.apa.virginia.gov.

Section 15.2-2509. Auditor to devise system of bookkeeping and accounting.

~ The Auditor of Public Accounts shall devise a system of bookkeeping and accounting for use by local governments and others pursuant to Section 30-137.

When accounting and bookkeeping records were entirely manually written, the Auditor of Public Accounts developed and distributed accounting forms to each locality. One of the first documents published by the Auditor of Public Accounts was the Manual of Uniform System of Accounting published by L. McCarthy Downs, Auditor of Public Accounts in 1935. At that time it was used by all Virginia Counties. Only a few counties use it today and none in its entirety. Once computers became the modern tool for accounting, the Auditor of Public Accounts ceased this practice and permitted each locality to develop its own financial systems. This statute remains, in our opinion, as a backstop to establish oversight responsibility only. The APA has retained control over the accounts and classification of revenues and expenditures in order to prepare the Comparative Report. That data is submitted on a transmittal form and not taken from the County's audit report (CAFR) as it was in previous years.

Many localities submit their annual reports to the Governmental Finance Officers Association to obtain the

Certificate of Achievement for Excellence in Financial Reporting. This mark of excellence is an important accomplishment and should be a goal for all Virginia localities.

Section 30-137. Devising a system of bookkeeping and accounting for local offices; costs.

- ~ The Auditor of Public Accounts, under the direction of the Joint Legislative Audit and Review Commission shall devise a modern, effective and uniform system of bookkeeping and accounting for the use of all county, city, and town officials and agencies handling the revenues of the Commonwealth or any political subdivision thereof. The Auditor may approve any existing system.

- ~ The Auditor, when requested by the governing body of any unit of local government, may make a system of bookkeeping and accounting for such unit that conforms with generally accepted accounting principles. He shall develop a uniform system of financial reporting for the treasurers, chief financial officers, clerks of the courts, and school divisions. The cost of this service shall be borne by the localities.

This law has existed since the 1920's in Code Section 552 and is remarkably unchanged in its text. Through the decades the APA's office installed many manual accounting systems and conducted most audits of counties, cities and towns. Now with their shift to standard setting, statutory interpretation, quality control of audit work and state audits, the APA and his office are not involved in developing local government accounting systems. The statutes provide for approving any existing system but there is no process for doing so.

Today, compliance with governmental auditing standards, compliance with the Single Audit Act (federal law), and maintenance of an effective system of internal controls over financial transactions (i.e. accounting system) are important local government responsibilities.

Section 22.1-115. System of Accounting; statements of funds available; classification of expenditures.

~ The State Board of Education, in conjunction with the Auditor of Public Accounts, shall establish and require of each school division to maintain a modern system of accounting for all school funds, state and local, and the treasurer or fiscal agent shall render each month to the School Board a statement of funds available. The Board shall prescribe the following major classifications:

- Instruction
- Administration, attendance and health
- Pupil transportation
- Operation and maintenance
- School food services and other non-instructional operations
- Facilities
- Debt and fund transfers
- Technology
- Contingency reserves

Here the nine expenditure categories for public school divisions are codified into law. The categories were expanded from seven to include contingencies and later added technology. The original purpose of this statute was to improve the Uniform Financial Report because the Auditor of Public Accounts was reporting total school expenditures as only one line item within his annual report to the Legislature. Needless to say, it was the largest line in the report. The APA stated he lacked the authority to compel more financial information from school divisions. This Code section was added in 1979 to require uniform reporting by school divisions by the major expenditure categories.

Section 15.2-1541.1. Authority of county administrator to maintain centralized system of accounting.

~ A county administrator shall maintain a centralized system of accounting for the county, including the county school board and the local board of social services, when such centralized system of accounting is authorized by the governing body under Section 30-137.

For many years there had been a question concerning the legal authority of a local government to require a system of central accounting. This Code section was added in 1998 to expressly confer that authority to the county administrator. If a central accounting system does not exist it would be necessary for a governing body to first request by resolution that the APA establish such a system pursuant to Code Section 30-137, and then he would grant approval to the Board to develop their own. It is a strong message that the Board of Supervisors can maintain central accounting regardless of the mechanics of implementation.

Section 15.2-2500. Uniform fiscal year for all localities and school divisions.

~ The fiscal year for all localities and school divisions shall begin on the first day of July and end on the thirtieth day of June.

Many small Towns have not changed to a June fiscal year and operate on an August or September year end. There are many authorities, boards and commissions (water and sewer and Industrial Development for example) that have fiscal years other than ending on June 30th.

Differing fiscal years can pose problems in budgeting and preparing consolidated financial statements so it is preferable that related political subdivisions adopt the same fiscal year.

Section 15.2-2501. Establishment of funds for accounting and budgeting; separate depository and investment accounts not required.

~ Every locality and school division may establish the funds they deem necessary for accounting and budgetary control or those required by law.

~ There is no requirement to establish a separate bank account for each fund, although there are a few instances where separate accounts are required, such as when funds are held for others (e.g, Special Welfare).

This statute clearly permits localities to use modern banking practices and pool the cash for all funds to

maximize interest earnings except where limited by other restrictions such as bond issues, etc.

Section 22.1-89. Management of funds.

“Each school board shall manage and control the funds made available to the school board for public schools...”

~ If funds are appropriated by major classification, no funds shall be expended except by such classification without the consent of the governing body appropriating the funds.

Here the strict adherence to the major classifications serves as a control over school appropriations. There is no definition or clear meaning to the language “manage and control the funds”.

Presumably, it does not conflict with the statutes governing central accounting and purchasing because they are internal processes to assist schools in their fiduciary responsibilities.

Section 22.1-89.1. Management of cafeteria funds.

A school board may, at its discretion, establish a decentralized system for management and control of cafeteria funds.

~ These decentralized cafeteria funds do not require a budget or an appropriation of “decentralized funds”.

~ These funds must be audited like all other funds.

The essential question is to what extent one can define the term “decentralized”. Some counties appropriate funds that are first remitted to the school fund from the state and federal governments and later transferred to a decentralized cafeteria fund. It is preferable, from a control perspective, to appropriate all decentralized funds regardless of this statute.

Section 22.1-122.1. Accounts to purchase certain materials and supplies.

~ A school board, by resolution and subject to the approval of the governing body, may establish accounts in each of its departments and schools.

- ~ The accounts must be committed solely for the purchase of instructional materials and office supplies.
- ~ The amount transferred may not exceed 35 percent of the funds budgeted for that school or department. A monthly report must be filed by the school head of the department with the division superintendent. All funds must be paid out on negotiable checks with two signatures.
- ~ At the close of the fiscal year, all funds remaining in the accounts shall be returned to the school board along with a simultaneous accounting. The purchases remain subject to the provisions of Section 15.2-2511 (discussed later) and the Virginia Public Procurement Act.

This statute was enacted in 1989 in order to permit many school boards to continue sending monies, called allotments, to individual school activity accounts. The principals and teachers would spend these monies as needed. This practice has now been largely discontinued because it now requires much more accountability and the funds cannot remain in the accounts from year to year as they had in the past.

BUDGET OFFICERS

Virginia localities have developed effective organizational structures supported by policies and procedures to manage their budgets. They can vary greatly in operation, personnel, and accounting systems. Virginia statutes, however, specifically identify parties who bear legal responsibility for the annual budget process. The 1927 Code of Virginia required the Board of Supervisors to file a copy of approved budget with the director of the budget. The position of the director of the budget is no longer a part of Virginia statutes but these duties are now discharged by the County Administrator or City Manager.

Section 15.2-1541. Administrative head of government.

The County Administrator in most counties is directed by this statute to perform budget duties.

- ~ The chief administrative officer shall submit to the governing body a proposed annual budget, in accordance with general law, and must include his recommendation on the budget.
- ~ The chief administrative officer must execute the budget as finally adopted by the governing body.

Most county administrators have delegated the preparation, recording and monitoring of the county budget to their chief financial officer or treasurer. There are a few counties that do not have a county administrator where in that case the clerk of the circuit court performs the budget function including its preparation.

Section 15.2-1537. Financial officer.

- ~ Unless provided by other laws or the function is assigned to the constitutional offices of treasurer and commissioner of the revenue, every locality shall appoint an officer to be responsible for its financial affairs. This person shall work with the constitutional officers and perform such duties as may be assigned. Often this individual is assigned with the responsibility to oversee the county or city budget.

Localities now employ professional accountants to oversee their complex accounting software and to forecast financial information, negotiate financial agreements, oversee insurance analysis and many other complex financial procedures.

BUDGET CONTROLS

There are many different types of financial controls applicable to a local governmental budget. These controls are administrative, accounting, personnel and legal in nature. The legal controls over the budget are the appropriation statutes. The appropriation according to definition is the legal authority for the chief administrative officer and his departments to carry out the spending mandate of the governing body and comply with state law when it is mandatory to make payments for construction contracts and debt service. Additional controls are available

through centralized purchasing requirements where the spending authorization must be pre-approved. Revenues are accounted for by the treasury and accounting functions and must be constantly monitored as well as safeguarded by an adequate segregation of duties among sensitive positions within the offices. It must be remembered at all times when executing the budget that it is necessary to have an appropriation before expenditure. That axiom is sacrosanct in Virginia.

Section 15.2-1231. Centralized competitive purchasing by chief administrative officer.

- ~ The governing body of any county having a chief administrative officer may provide for the centralized competitive purchasing of all supplies, equipment, materials and commodities for all departments, officers and employees of the county, and for the school board and the board of local social services. For counties not currently engaged in centralized competitive purchasing, the local governing body and the local school board may create a centralized system only by mutual agreement.
- ~ The governing body may establish and maintain such systems of bookkeeping, accounting and controls as are necessary to the proper operation of such system of competitive purchasing and to establish such storage facilities as are necessary therefor.
- ~ Such governing bodies may require all departments to obtain their supplies, equipment, materials and commodities from the chief administrative officer.

There is a universal belief that local government purchasing is inefficient and sometimes wasteful unless purchased in large quantities. Purchasing is subject to supply, demand, scarcity, size, and obsolescence considerations. Most purchasing for Virginia localities was preferred by individual department heads or constitutional officers, and this statute authorizes the county administrator to obtain the lowest responsible cost.

Section 15.2-1543. Employment of purchasing agent; duties.

- ~ Any county may employ a county purchasing agent who shall purchase or contract for all supplies, materials, equipment, and contractual services, and shall enforce standard specifications for all items purchased for use by the local government.
- ~ The purchasing agent shall have supervision over the central storeroom.
- ~ The purchasing agent shall transfer supplies, materials and equipment between departments or shall sell obsolete items.

The purchasing agent normally sets purchasing guidelines for departments to follow when procuring goods for the locality subject to limitations set forth in the Code of Virginia. Hence, many items are independently purchased by the department heads to save time and money. The cost to issue a formal purchase order can exceed the cost of a small item where the purchase order requirements are too stringent.

Section 15.2-1237. Legal review of contracts; filing.

- ~ All contracts shall be approved as to form by the county attorney, and a copy shall be filed with the treasurer or other chief financial officer.

The importance of this requirement cannot be overlooked because of the vital importance to make a thorough audit of the claims against the locality. Each purchase supported by a contract should not only be approved by a responsible official but verified against the original contract to prevent an overpayment. This statute is one of the most overlooked by local government officials.

Section 15.2-1238. Certification of sufficient funds.

- ~ Except for an emergency, no order for any supplies or contractual services shall be awarded until the chief financial officer has *certified* that an unencumbered

balance in the appropriation, including all unpaid obligations, is adequate to pay the entire cost of the order.

Purchases violating this statute void the contract and require the responsible department head to be personally liable for the costs of such order or contract.

Violating this section is a misdemeanor and punishable as provided by Section 18.2-12.

The form of the “certification” has been left to the localities but is often extremely informal in nature or perfunctory.

Section 15.2-1242. Minutes of meetings and proceedings.

~ All bids submitted on any procurement may be contained in the minutes by reference, but a formal record of the bids shall be kept in a separate file open to public inspection at all reasonable times for a period of three years after recording.

This statute can help clarify the terms of a contract where a dispute or confusion may arise, and allow unsuccessful bidders the opportunity to challenge an award.

Section 15.2-1243. Governing body to receive, audit and approve claims; warrants.

The governing body bears a great responsibility to verify the validity of all invoices for goods and services to be paid by the locality. The use of the word “warrants” is an historical reference to a promise to pay issued by the governing body, in writing, that could be presented to the treasurer for payment. Warrants have been replaced by a “warrant check” that authorizes the bank to make the payment.

~ The governing body of every locality shall receive and audit all claims against the locality except those required to be audited by the school board.

~ The governing body shall record by resolution or recorded vote the approved claims and order warrants issued to settle the claims.

Section 15.2-1244. Limitations on issuance of warrants.

~ No county governing body shall order any warrant issued for any purpose other than the payment of a claim received, audited and approved as required by Section 15.2-1243. No clerk, deputy clerk, chairman or acting chairman of any county governing body shall sign or countersign any warrant not ordered issued by the governing body. No governing body shall expend in any year for any purpose an amount greater than the amount available for such purpose during the year or order issued against any fund at any time any warrant in excess of the amount available in such fund and in the treasurer's possession at the time such warrant is issued, taking into account all previously issued and outstanding warrants payable from such fund...Any clerk, deputy clerk or member of any county governing body who violates any of the provisions of this section shall be guilty of a misdemeanor, and in addition shall be guilty of malfeasance in office.

This code section is ancient. Boards of Supervisors would issue paper warrants and the county treasurer would redeem them for cash. It can only be presumed that **the amount available for such purpose** would be the sums appropriated less expended as well as the cash available in any fund. Violating this section carries a stiff penalty but remains a largely outdated statute. Local government finance officers will permit department heads to run negative balances and make additional appropriations near year end. While this practice is administratively expedient, it is a violation of this statute.

Section 15.2-1245. Procedure for allowance of claims.

A claim is synonymous with an invoice, bill or contract. The Code established a very strict legal standard in order to get a bill paid by a local government. By putting these laws in place, it prevented a local government from disbursing monies without specific proof that the county had received fair value for its payment. It is doubtful that this type of abuse could occur today where a Board would just pay bills as they wanted without supporting collaboration (something akin to a good old boy scheme) but rather

they might approve duplicate or false payments because of weak internal controls or the payments might be lost in the volume.

~ No account shall be allowed by the governing body unless made out in separate items with the nature of each item specifically stated. The attorney for the Commonwealth or the county attorney shall represent the county and advise the board of any claim which in his opinion is illegal or not before the board in proper form or upon proper proof or which for any other reason ought not to be allowed.

A Board that voted to pay a claim over the advice of the county attorney would be taking serious risks. He can also demand more detail on the bill or oaths given as to the authenticity of the bill.

~ If the claim has been allowed and the attorney's opinion is that it is improper, the attorney shall seek the advice of the Attorney General or the State Auditor of Public Accounts as to matters of accounting. Should the Attorney General opine that the claim is improper or illegal the matter shall be appealed by the attorney to the circuit court for the county.

~ Whenever any claim allowed by a county government is declared illegal by a court of competent jurisdiction, the attorney for the Commonwealth or county attorney shall institute proper proceeding.

~ Nothing in this section shall prevent any county governing body from disallowing any account, in whole or in part, when rendered and verified or requiring any other evidence of truth and propriety of any account as it thinks proper.

The Board of Supervisors is given the express authority and power to audit any claim presented for payment. The Code's requirement for prompt payment is notwithstanding.

Section 22.1-91. Limitation on expenditures; penalty.

~ No school board shall expend or contract to expend, in any fiscal year, any sum of money in excess of the funds available for school purposes for that fiscal year without the consent of the governing body or bodies appropriating funds to the school board. Any member of a school board or any division superintendent or other school officer violating, causing to be violated or voting to violate any provision of this section shall be guilty of malfeasance in office.

The strength of this law is not to be understated. However, it has been established by case law that malfeasance in office for causing or voting to violate a law would exist regardless of this statute. The expenditures process over school funds is long, complicated and involves many participants. Proving culpability for the penalty would be much more difficult than achieving a measure of political embarrassment.

BUDGET MONITORING and AUDITS

To monitor a budget one must prepare financial reports. The chief financial officer must have the information necessary to complete this important task. Hence, statute provides the authority to require information from any department. This is vitally important where the locality does not have a centralized and integrated accounting system. Often school divisions and social services departments maintain separate accounting systems, and the localities are not aware of their interim budget results. From time to time departments and agencies do overspend their appropriations. The sanctions for this breach, like other governing body decisions, vary from dismissal to acquittance. The long standing practice of annual audits has been in place since the first Auditor of Public Accounts and continues as a mandate today.

Section 15.2-2508. Governing bodies may require information of departments, etc.

~ The governing body may require such information as they deem advisable from departments, offices, divisions, boards, commissions and agencies.

~ Constitutional officers shall be required to furnish the required information.

Board or Council members often want reports from department heads. These reports are not always financial in nature but may be qualitative or subjective. However, where a department head or constitutional officer will not provide timely financial information this section mandates a report to the governing body.

Section 15.2-2511. Audit of local government records, etc.; Auditor of Public Accounts; audit of shortages.

~ Localities shall have all of their accounts audited as of June 30th by an independent certified public accountant. All records of any county or city officer listed in Article VII, Section 4 of the Constitution of Virginia are to be included.

~ Any shortage existing in the accounts of the locality or constitutional officer, as ascertained by the audit, shall be made public within 30 days after the shortage is discovered and filed with the APA, Board, and filed with the Clerk's office of such court.

~ The CPA performing the audit shall present a detailed report to the local governing body at a public session by the following December 31.

The auditor must present a detailed written audit report to the locality at a public session by December 31st following the end of the fiscal year but often the Supervisor's agenda cannot accommodate a formal presentation. In these cases a report is presented to the local finance or audit committee and discussed later at a public session. This practice may or may not meet the requirement of this statute. It is in the interest of the local governments to guard their financial resources by insuring that audits are completed in a timely manner, accompanied by a full report personally delivered to the locality's governing body. Full discussion of internal control deficiencies is an important element of an audit but must be reported in a way not to jeopardize operational security such as sensitive computer systems or disclose information protected by the federal Privacy Act.

Section 22.1-90. Annual report of expenditures.

~ Every school board must make a report to the governing body, at least once a year, of all of its expenditures.

This section is now somewhat obsolete. Modern accounting systems can provide “on line” access to all data.

Section 22.1-100. Unexpended school and educational funds.

~ All sums of money from the Commonwealth unexpended in any year in any school division shall revert to the Commonwealth unless directed otherwise by the Board of Education.

~ All sums from local funds unexpended shall remain a part of the funds of the governing body appropriating the funds for use next year.

Obviously funds unexpended would be for use the next year. There does not appear to be clear intent on whether the funds should be used for school purposes.

Most Virginia localities have, through financial policies, directed unexpended local appropriations to be available to the school boards.

TREASURERS and the BUDGET

Section 58.1-3001. When boards of supervisors to fix and order county and district taxes; funds not available, allocated, etc., until appropriated.

~ The governing body must set the levy no later than June.

~ The imposition of a tax does not constitute an appropriation until an appropriation is made by the governing body either annually, semiannually, quarterly, or monthly.

~ There are no mandatory duties for the governing body to appropriate funds except to:

- Pay principal and interest on bonds
- Pay contracts approved by the governing body

~ Funds unexpended at year end are carried over to succeeding fiscal years and are available for appropriation for any governmental purpose.

This law has existed for many years as a reminder to Treasurers that no monies shall be paid out until appropriated. Obviously, the local tax levy must be used for school fund appropriations as well, but no reference is made to do so.

Section 58.1-3005. Cities and towns to make city and town levies; funds not available, allocated, etc., until appropriated.

~ This section parallels 58.1-3001 for counties.

Section 22.1-95. Duty to levy school tax.

All localities are directed to raise money for schools by a tax on all property subject to local taxation to meet the standards of quality...just in case somebody forgets.

Again, perhaps a rhetorical statute but it is a mandate to fund public education.

Section 58.1-3. Secrecy of Information; penalties.

A broad prohibition is mandated by statute against the divulgence of confidential tax information by any clerk, commissioner of the revenue, treasurer or any other state or local tax or revenue officer or employee. Any person violating this section is guilty of a Class 2 misdemeanor. Treasurers are placed in a juxtaposed position because they possess a voluminous amount of classified and protected information. All of this information is available to enable them to enforce and assess taxes. It is vital to have security policies and controls in place over all areas where confidential information exists.

OVERSIGHT

Local Governments now allocate resources to many related agencies, commissions and nonprofit entities. This practice has grown in popularity since the 1960's as legislation authorizing the appropriation to independent organizations has increased. Among the first to receive funds for local governments were the local Community Colleges and Volunteer Fire and Rescue entities. Now libraries, Head Start agencies, day care providers, and community service agencies routinely receive appropriated amounts for Virginia Counties. In order to insure that appropriated funds are spent legally and appropriately the Legislature gave governing bodies authority to audit and confirm the use of these monies. There have been instances where funds given to such agencies were not used for their intended purposes.

Section 15.2-1305. Review of appropriations to certain agencies; providing goods and services to such agencies in lieu of funds.

- ~ The governing body of any locality may from time to time require of any board, commission or authority, hereinafter referred to as recipient agency to which it has power to appropriate public funds and has appropriated such funds in the past or has received a request for appropriations, *such information books and records of the recipient agency as the governing body deems necessary* in order that it may be assured that an appropriation or proposed appropriation will not result in the dissipation of public funds and in order that it may determine the use of past and the proposed use of future appropriations, the management, control and organization of the recipient agency and its present and proposed programs...It may in lieu of appropriation of funds provide the agency with the necessary goods and services. The governing body may assign officers and employees to coordinate the functions and activities of the governing body and those of the recipient agencies.
- ~ It is more likely that a locality will eliminate funding to the outside agency where irregularities arise. When this is not possible such as the case of volunteer fire and rescue

organizations the locality can require independent audits or simply purchase items directly in lieu of an appropriation of cash. Many non profit entities lack formal accounting and sufficient internal controls giving way to a greater likelihood of mismanagement of funds. With the proliferation of funding to outside agencies, uniform guidelines for reporting and internal controls for recipient agencies are a cornerstone of a Virginia locality's system of internal controls.



Disclaimer Statement:

All comments contained herein are the opinions of the authors. We urge everyone to solicit expert legal advice for their locality when necessary.

***Dedicated to Daniel A. Robinson, Sr.
and his Devotion to the
laws of the Commonwealth***

and

***Special thanks to
Jeffrey G. Lenhart, Esquire
of
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