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CRIMINAL JUSTICE SERVICES NUMBER 88-1429

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August 10, 2006

Lisa Hahn
Private Security Services Chief
Virginia Department of Criminal Justice Services
P.O. Box 10110
Richmond VA 23240-9998

Dear Ms. Hahn:

I received your recent memorandum entitled "Use of Blue Lights and Seal of Virginia." I respectfully disagree with your interpretation of Virginia Code § 1-505 for the reasons stated below. Use of the official Seal of Virginia by Special Conservators of the Peace is an official governmental purpose permitted by the Code and is therefore, lawful and appropriate.

Within your memorandum, you assert that Special Conservators of the Peace appointed under Virginia Code § 19.2-13 are not permitted to utilize the official Seal of Virginia. Virginia Code § 1-505 states *inter alia* that "[t]he seals of the Commonwealth shall be deemed the property of the Commonwealth; and no persons shall exhibit, display, or in any manner utilize the seals or any facsimile or representation of the seals of the Commonwealth *for nongovernmental purposes* unless such use is specifically authorized by law" [emphasis added].

As described within the DCJS website, "the Special Conservators of the Peace program is administered within the Private Security Services Section of the Department. However, it will be treated as a separate regulatory program with its own set of regulations."¹ Virginia Special Conservators of the Peace appointed under Virginia Code § 19.2-13, as may be provided according to the terms of their appointment, "shall have all the powers, functions, duties, responsibilities and authority of any other conservator of the peace within such geographical limitations as the court may deem appropriate..." No Virginia law or regulation specifically prohibits the use of the seals by Special Conservators of the Peace.

¹ [HTTP://www.dcjs.virginia.gov/pss/documents/scp/infoPackage.pdf](http://www.dcjs.virginia.gov/pss/documents/scp/infoPackage.pdf).

Lisa Hahn
August 10, 2006
Page Two

Conservators of the Peace are not private security guards.² A Conservator of the Peace is defined as a *public* official authorized to conserve and maintain the public peace.³ “As conservator of the peace in his county or bailiwick, he is the representative of the king, or sovereign power of the State for that purpose.”⁴

There is no distinction to be made by who is the specific employer of the Special Conservator of the Peace, as these conservators perform their police duties as a public officer on behalf of the Commonwealth regardless of whether their employer is public or private.

The police officers of a city are not regarded as servants or agents of the municipality. They are conservators of the peace, and exercise many of the functions of sovereignty; they are appointed and paid by the municipality as a convenient mode of exercising the functions of government; they assist the city in the performance of its governmental duties, and not in the discharge of its proprietary obligations. And the municipality is not responsible for their unlawful or negligent acts in the discharge of their duties.⁵

...where an individual... acts as a conservator of the peace, he... represents the sovereign power of the State for that purpose, and is entitled to all the immunities of such sovereign; and that the right to hold the State, or its duly delegated agents, responsible for a failure to conserve the peace, rests only upon express statute, and does not exist otherwise.⁶

² See Frias v. Commonwealth, 34 Va. App. 193, 200 (2000) (“Furthermore, appellant contends that a common law definition of ‘conservator of the peace’ exists which encompasses ‘registered armed security officers.’ Appellant cites no authority for this assertion. We find none.”)

³ BLACK’S LAW DICTIONARY, 6th ED. See also Rucker v. Harford County, 316 Md. 275, 281 (1989) (quoting Duncan v. Koustenis, 260 Md. 98 (1970) (“...public officials include those who ‘can be called on to exercise police powers as conservators of the peace.’”)).

⁴ South v. Md., 59 U.S. 396, 401 (1856). See also Somerset Bank v. Edmund, 76 Ohio St. 396, 404-405 (1907) (“Whether, then, a constable arrests a person upon a warrant duly issued, or, pursuant to the authority vested in him by virtue of his office, as a conservator of the peace, arrests without a warrant, in either case, he is but performing his sworn duty as a public officer, and will be held to have acted in his official capacity.”)

⁵ Hall v. Shreveport, 157 La. 589, 594 (1925). See Austin v. Paramount Parks, Inc., 195 F.3d 715, 731 (4th Cir. 1999) (citing Norfolk & W. Ry. Co. v. Haun, 167 Va. 157 (1936); Glenmar Cinestate, Inc. v. Farrell, 223 Va. 728 (1982)).

⁶ State use of Cocking v. Wade, 87 Md. 529 (1898) (citing State v. Mayor and City Council of N. O., 109 U.S. 285 (1883); M. & C. C. of Balto. v. Poultney, 25 Md. 107 (1866); M. & C. C. v. Dechert, 32 Md. 369 (1870); M. & C. C. v. Dehner, 37 Md. 180 (1872)).

In other words, being a conservator of the peace he is thereby taken out of the control of the company, and out of the sphere of the company's responsibility for his acts, provided he chooses to assume to act under the guise of a conservator of the peace without any reference to the question whether or not he was, in good faith, justified in assuming that role.⁷

When a Special Conservator of the Peace issues a Virginia Uniform Summons as provided under Virginia Code § 19-74 (B), of course, that conservator does so as an agent of the Commonwealth, not as a private entity. No private security guard in Virginia has such governmental authority. Virginia Code § 19-74 (B) requires that the conservator be in uniform or display his badge of office at the time the summons is issued. Displaying the official Seal of Virginia upon such uniform or badge represents the governmental authority bestowed upon the conservator by virtue of the conservator's appointment and properly informs the summoned that the conservator acts on behalf of the Commonwealth by issuing the summons. There is no known purpose for requiring the uniform or badge to be displayed under Virginia Code § 19-74 (B) other than to publicly announce the conservator's authority. Such use of the official Seal of Virginia is an appropriate governmental purpose and otherwise lawful under Virginia Code § 1-505.

To deprive the Special Conservator of the Peace of the authority to display the seal representative of his governmental authority is to unnecessarily risk confusing the public regarding such authority. If a conservator stops or seizes a person for a breach of the peace, the conservator does so in the name of the Commonwealth and the conservator's display of the seal of the Commonwealth is appropriate and necessary. In a time of such an emergency, there should be no question to the person seized as to the authority of such conservator. Otherwise, the conservator must commit an otherwise unnecessary escalation of force to maintain the stop or seizure.

With regard to such ministers of justice who in right of their offices are conservators of the peace, and in that right alone interpose in the case of riots and affrays, it is necessary, in order to make the offence of killing them amount to murder, that the parties concerned should have some notice of the intent with which they interpose. If the officer be within his proper district and known, or but generally acknowledged to bear the office he assumes; or if in order to keep the person he produces his staff of office or any other known ensign of authority[.]⁸

Special Conservators of the Peace appointed under Virginia Code § 19.2-13 have police authority statutorily granted to them by the Commonwealth.⁹ They exercise such authority solely on behalf of the Commonwealth.

⁷ Haun, 167 Va. at 161.

⁸ State v. Bowen, 17 S.C. 58, 61 (1882) (quoting 1 East's PLEAS OF THE CROWN, 314).

⁹ CODE OF VIRGINIA § 19.2-18 [1950] *as amended*.

Lisa Hahn
August 10, 2006
Page Four

The office of conservators of the peace is a very ancient one, and their common law authority to make police inspection, without a search warrant, extends throughout the territory for which they are elected or appointed, as the case may be, in private as well as in public places, and upon private as well as public property, unless inhibited from entry for such purpose without a search warrant by some rule of the common law, or by Constitution, or by statute.¹⁰

The Seal of Virginia appropriately represents such authority and the conservator's display thereof when taking official action on behalf the Commonwealth is an appropriate and lawful governmental purpose under Virginia Code § 1-505. Please refer in its entirety to my paper on the subject of Special Conservators of the Peace located at <HTTP://www.commonwealthprotection.org/scoppaper.pdf> for further information regarding the historical origins, legal definitions and authority of conservators.

For the reasons stated above, I respectfully request that you revise your position regarding the use of the seals of the Commonwealth by Special Conservators of the Peace to bring it into harmony with the existing case law and the inherent authority of the conservator's office. I welcome any opportunity to discuss this matter with you further at our mutual convenience.

Most sincerely,

Matthew LeFande
Training Director

¹⁰ Williams v. Commonwealth, 142 Va. 667, 669-670 (1925) (quoting McClannan v. Chaplain, 136 Va. 1, 12 (1923)).