

Dear Mayor Oberndorf,

Thank you for your letter of April 25, 2006, regarding the level of funding provided to the City of Virginia Beach by the Commonwealth of Virginia. In response, I would offer the following comments.

Public Education

In your letter, you wrote that it was your belief that the city's school division would not be able to maintain its 98.77 percent full-accreditation status if superfluous local choice funding were reduced. I would like to provide you with some additional information about accreditation and the required local effort (RLE) expenditures reported by the Department of Education.

As you may recall, in my letter dated April 6, 2006, I mentioned that the Standards of Quality (SOQ) funding formula determines the total cost of education, which is then divided between the Commonwealth and each locality based upon a locality's composite index. The formula contains specific teacher to pupil ratios as well as various other staffing ratios that divisions are required to comply with to receive state funds. The State Board of Education has determined these ratios are sufficient for the provision of a successful educational environment.

The funding formula requirements and calculations, based largely on these staffing ratios, obligate both the Commonwealth and localities to provide a minimum amount of spending. The Commonwealth pays its share of the costs associated with all SOQ related positions - both instructional and support staff. However, the number of positions hired by a locality above the level required by the SOQ is not tied to that locality's ability nor is it necessary, to achieve fully-accredited status.

The state Department of Education reported at the end of fiscal year 2005 that the Virginia Beach Public School System ranked 11th of the 136 public school divisions for the highest percentage of funding spent above RLE - commonly referred to as local choice spending. Interestingly, out of the ten school divisions that spent a higher percentage than Virginia Beach, six had a division-wide full-accreditation percentage less than Virginia Beach. Of the remaining 125 divisions, well over half spent a smaller percentage above RLE than Virginia Beach, and, yet, earned a 100 percent full-accreditation status. Specifically, one school division spent only 0.55 percent above RLE and earned 100 percent full accreditation. I believe this data demonstrates that it is indeed possible to spend less and achieve 100 percent full-accreditation status.

Constitutional Officers

In response to the issues you have raised regarding the Commonwealth's support for local constitutional officers, I would reiterate that the Constitution of Virginia does not require any state support for these local offices. Be that as it may, in fiscal year 2005, the Commonwealth provided more than \$19.5 million to support Virginia Beach's local

constitutional officers, a 9 percent increase over the amounts provided in fiscal year 2004.

Consequently, while you have chosen to emphasize the number of positions for which the city provides funding, I would emphasize the fact that nearly 72 percent of the positions shown in your letter are supported by the Commonwealth. In fact, the number of state-supported positions is even larger than that shown in your table, because the number of state-supported positions for the Sheriff's office does not include the deputies assigned to the local jail.

In addition, it must be recognized that the city provides funding for many of the positions shown in your table because of local, rather than state, mandates. For instance, state staffing for Commonwealth's attorneys is based solely upon the number of felonies tried within the City of Virginia Beach. Accordingly, if the City of Virginia Beach has determined that the Commonwealth's attorney should also pursue misdemeanor cases, then the city would be responsible for providing the additional positions necessary to support that local mandate. Nevertheless, solely using the figures shown in your table, the Commonwealth provides more than 86 percent of the city's Commonwealth's attorney's positions.

Similarly, the city requires local commissioners of the revenue and treasurers to perform a number of duties that are not state-mandated. In fact, the primary reason for the state's support of these offices is the processing of state tax returns. However, given that only 34 percent of local residents' tax returns were processed by these offices during fiscal year 2005 (a number that has been declining each year), it would appear the state may also be supporting the local functions performed by these offices. For instance, based on your letter's table, the Commonwealth currently provides 51.4 percent of the positions in the commissioner of the revenue's office and 77.9 percent of the positions in the treasurer's office. I would imagine this level of support is in excess of what would be required to solely support the processing of state tax returns.

Your letter also states that the salaries paid for state-supported local constitutional officer positions are inadequate. While that may be the case in Virginia Beach, the Commonwealth establishes the salaries for these local positions using data from across Virginia, including the salaries paid to state employees for similar services. In many localities, the salary level established by the Commonwealth for these positions does attract high quality job candidates. Again, while this may not be the case in Virginia Beach, I still believe that the state salary support provided for the positions assigned to the city's local constitutional offices is a substantial portion of the employee's overall compensation, and that it is likely that it exceeds any supplements provided by the city.

Regardless, the State Compensation Board has recently revised a number of its policies regarding the use of local constitutional officers' approved budgets. These policy changes now permit local constitutional officers to assign salaries based upon pay practices and pay factors similar to those used by the Commonwealth's state agencies, as

long as the constitutional officer does not exceed their established budget and maintains appropriate justification for any salary decisions. These revised policies provide local constitutional officers with greater flexibility in the use of any savings from other areas of their budgets to provide internal job alignment salary increases or other pay adjustments for their employees.

Finally, with respect to non-personal service costs, the Commonwealth does not provide “a token” \$5,000 for the support of these costs. Actually, according to the State Compensation Board, the budgeted amounts for office expenses in the city’s local constitutional offices include: \$10,000 for the sheriff’s office, \$40,000 for the Commonwealth attorney’s office, \$4,000 for the treasurer’s office, and \$6,000 for the commissioner of the revenue’s office. All told, those amounts would equal about \$60,000. Furthermore, based upon additional information currently shown on the State Compensation Board’s web-site, it would appear additional amounts for reimbursement of office expenses and other non-personal services were available to those local constitutional officers that applied for them.

State-Responsible Prisoner Reimbursement

In your letter, you state that the Commonwealth provides only \$2.7 million (15 percent of the total cost) in per diem reimbursements to the City of Virginia Beach for the costs it incurs for feeding, clothing, housing, and providing mandated medical care services to local and State-responsible prisoners, which you indicate cost the City of Virginia Beach about \$17.9 million. This assertion is incorrect and fails to recognize that the daily per inmate cost of \$53.55 also includes the cost of the deputies to secure the jail.

Consequently, the total reimbursement cited in your letter omits the more than \$10.5 million that the Commonwealth provided to the City of Virginia Beach in fiscal year 2005 for staffing in the sheriff’s office. In addition, the per diem payment in FY 2005 was \$3.5 million, not \$2.7 million. In total, the Commonwealth’s reimbursements equal more than \$14.0 million, or approximately 78 percent of the cost.

Furthermore, although fourth quarter per diem reimbursements were reduced during fiscal year 2003, that was a one-time action, and no reductions to fourth quarter per diem reimbursements occurred in subsequent fiscal years.

State Juvenile Probation Program

If turnover is an issue within the City of Virginia Beach, the Code of Virginia does permit localities to supplement the salaries of state juvenile probation and parole officers. According to the Director of the Department of Juvenile Justice the juvenile probation and parole offices located in Virginia Beach are currently providing all required services to the juveniles in their care.

Local Community Corrections Grant Funding

While it is correct that any locality seeking State approval for a jail expansion or construction project must submit a community-based corrections plan, § 9.1-182, Code of Virginia, states that while a locality is required to provide a local community corrections program, it is only required to provide services "...to the extent funded by the Commonwealth." Consequently, it would appear that the City of Virginia Beach is not obligated to spend any more on the local community-based corrections plan than the Commonwealth has provided. Any additional spending by Virginia Beach would, therefore, be a local decision.

VRS Costs

In response to your comments about House Bill 37, which would have permitted emergency medical technicians to participate in public safety officer retirement programs, it should be noted that Mr. Robert Mathias, the city's Deputy City Manager, spoke in support of this legislation before the Compensation and Retirement Subcommittee of the House Appropriations Committee in February 2006. At that subcommittee meeting, Mr. Mathias stated the City of Virginia Beach supported House Bill 37 and anticipated using the enhanced retirement benefits as a means of hiring and retaining emergency medical technicians. Consequently, although this legislation may not have been included in the city's official legislative package, officials from the City of Virginia Beach noted the city was in favor of the measure.

I would also take issue with your statement that the Commonwealth's reimbursements for local constitutional officers' fringe benefits are lacking. Currently, the Commonwealth's reimbursements Virginia Retirement System and group life insurance costs are capped at the maximum of the Commonwealth's employer share of state employee retirement costs. It makes no sense that the Commonwealth would reimburse localities for local officials at a higher rate than it pays to provide these benefits to its own employees.

Moreover, while your concern for the city's unfunded pension liabilities is understandable, the Virginia Retirement System independently establishes employer contribution rates for each political subdivision. While investment performance will impact each jurisdiction's unfunded liabilities, other factors, including disability retirement rates, also impact these rates. According to the Virginia Retirement System, 21 percent of all local government retirees received a disability retirement benefit in fiscal year 2004. However, in Virginia Beach, the number of retirees receiving a disability retirement benefit was 31 percent in fiscal year 2004. This difference may explain, in part, why the city's unfunded liabilities have increased.

Social Services

As I indicated in my earlier comments, § 63.2-401, Code of Virginia, requires that localities be reimbursed by the Commonwealth at an amount determined by the State Board of Social Services, but that this reimbursement is not to be less than 50 percent of

the locality's administrative costs. While the State Board of Social Services has historically set this reimbursement rate at 80 percent of a locality's administrative costs for some core social services, in fact, the reimbursement rates vary by social service program. For instance, there are a number of programs for which localities do not bear any costs. These programs include: food stamps, day care, and the fraud prevention program. Other programs, such as the eligibility determination and service administration programs require localities to provide a 20 percent local match. However, there are also programs for which localities are required to provide larger local matches. To access the federal pass-through dollars provided for eligibility determinations and funding of the for Title IV-E program, localities must provide a 50 percent local match. The foster parent training program requires an even larger local match – 55 percent.

Regardless, in reviewing the total administrative budget allocation provided by the Department of Social Services to the City of Virginia Beach, it appears that for fiscal year 2006, the city's share of the funding for administrative costs will be about 31.7 percent, far better than the 50 percent minimum threshold established in § 63.2-401, Code of Virginia. Furthermore, when the total budget allocation for social services in the city is examined, including both the amounts for administrative costs and benefits, the City of Virginia Beach provides only 21.6 percent of the support necessary for the provision of social services to its residents.

Virginia Medicaid – Mental Retardation

In response to the issues you raise regarding Medicaid and mental health, mental retardation, and substance abuse services, I would respond that the Comprehensive State Plan you reference is simply a planning document for use by the Department of Mental Health, Mental Retardation, and Substance Abuse Services. This plan is updated every two years, as required by the Code of Virginia, and is used to identify needs and their associated costs.

Regardless what may be contained in that planning document, the Code of Virginia only requires that Community Services Boards provide emergency services and “subject to the availability of funds appropriated for them, case management services.” Any other service offered to local residents represents a choice made by the Community Services Board and the locality that it serves. Moreover, while the Commonwealth will provide funding for these additional services pursuant to an annual performance contract established between the local Community Services Board and the Department of Mental Health, Mental Retardation, and Substance Abuse Services, that contract must also be approved by a formal vote of the locality's governing board. Therefore, it is not accurate to state that the Commonwealth is under-funding its legal responsibilities to the residents of Virginia Beach, because the Commonwealth actually provides funding for services through a performance agreement reliant upon local choices about the services to be provided and the populations to be served.

Moreover, when the total funding for mental health, mental retardation, and substance abuse services provided to the City of Virginia Beach is examined for fiscal

year 2005, it becomes difficult to assert the Commonwealth is not providing adequate resources for the mental health needs of city residents. In fiscal year 2005, the City of Virginia Beach provided a \$705,110 match for mental health services to its residents. During that same fiscal year, however, the city received \$2.3 million in federal grants for these services, \$6.9 million in state general fund support, and \$11.4 million in funding from – primarily – the state Medicaid program (which it should be noted also requires a 50 percent state general fund match) and other third party payors. Consequently, in fiscal year 2005, the City of Virginia Beach paid less than 3.3 percent of the costs of providing its citizens with mental health services.

Looking forward into fiscal year 2006, the assertion that the Commonwealth is not providing sufficient resources for the mental health needs of Virginia Beach's residents becomes even more tenuous, because the city actually reduced its level of support for mental health services even as the total expenditures for these services in the city increased. For fiscal year 2006, the City of Virginia Beach will provide only a \$616,990 match for the mental health, mental retardation, and substance abuse services its citizens receive. In contrast, the city will receive \$2.7 million in federal grants, \$6.2 million in state general fund dollars, and \$12.8 million in funds primarily from the state Medicaid program (again, half of which are state general fund dollars) and other third party payors. Consequently, in fiscal year 2006, the City of Virginia Beach will contribute less than 2.7 percent of the costs of providing mental health services to its residents, which represents a reduction of 12.5 percent from the previous fiscal year.

Not Guilty by Reason of Insanity

In your letter, you assert the Commonwealth provides only a “token amount” of assistance to the City of Virginia Beach for the supervision and treatment of individuals who were conditionally released into the community because they were found not guilty by reason of insanity. This assertion is based on a claim that the Commonwealth only provides the city with up to \$3,500 per year for such cases. However, it appears this figure may be dated. According to the Department of Mental Health, Mental Retardation, and Substance Abuse Services, the state agency responsible for providing funds to local community services boards to care for these individuals, the City of Virginia Beach will receive \$6,000 per case to treat these individuals' needs in this current fiscal year. Given this amount is much larger than the figure cited in your letter; it would appear the Commonwealth will be providing more than a “token amount” to assist with these cases.

Conclusion

I understand the pressures that you and the members of the City Council face, because the members of the General Assembly face similar pressures from a host of interest groups. However, I would also hope that given the information contained in this response to your letter that you too would recognize that the Commonwealth does adequately support the services provided to the City of Virginia Beach's residents.