



Virginia Local Government Law

Sheriff — Not of the Locality, Not of the Commonwealth: *Doud v. Commonwealth of Virginia*

By: Andrew McRoberts. Friday, September 16th, 2011

The Virginia Supreme Court has issued new opinions for September, but none are cases involving local governments, at least not on appeal. Here is the link to the opinions of the Virginia Supreme Court: <http://www.courts.state.va.us/scndex.htm>.

There is one opinion, however, that will be of interest to local government attorneys — *Doud v. Commonwealth*, Record No. **100285**, opinion by Senior Justice Russell. The *Doud v. Commonwealth* opinion addresses the topics of sovereign immunity, the need for a clear and express waiver thereof, and the relationship between a sheriff/constitutional officer and the Commonwealth under the Virginia Tort Claims Act.

This case arose from alleged injuries against an inmate caused by the actions of the County Sheriff's deputies. Originally, Russell County, the Sheriff and a host of others were named as defendants, but all except the Commonwealth were nonsuited before the circuit court's final order. In this order, the circuit court dismissed the remaining claim against the Commonwealth of Virginia on sovereign immunity grounds.

On appeal, the issue presented was "whether such an express waiver of sovereign immunity renders the Commonwealth liable for the negligent acts or omissions of deputies and jailors employed by a county sheriff." The Court recited the strength of sovereign immunity and again reiterated the need for a clear and express waiver of sovereign immunity. The Virginia Tort Claims Act (VTCA) waives sovereign immunity for certain cases against the Commonwealth and, as applicable here, "employees."

The Court quoted *Carraway v. Hill*, 265 Va. 20, 24, 574 S.E.2d 274, 276 (2003): "[A] constitutional officer is an independent public official whose authority is derived from the Constitution of Virginia even though the duties of the office may be prescribed by statute. While constitutional officers may perform certain functions in conjunction with units of county or municipal government, neither the officers nor their offices are agencies of such governmental units."

The Court then reasoned as follows: "Constitutional officers are responsible to the voters who elected them but do not depend upon either the government of the Commonwealth or upon the governing bodies of their counties or cities for their authority. Accordingly, we hold that the sheriff of Russell County was not an "employee" of the Commonwealth within the definitions contained in the VTCA. The sheriff's deputies and jailors were employees of the sheriff, not of the Commonwealth. The sheriff had sole authority to employ them, to discharge them, and to direct their work. They were responsible to the sheriff and not to the government of the Commonwealth."

Thus, the Court concluded that "they were not "employees" of the Commonwealth within the express waiver of sovereign immunity contained in the VTCA" and affirmed the circuit court's dismissal of the case against the Commonwealth arising from the conduct of the Sheriff and his deputies.

A Sheriff, like all constitutional officers under Article VII, Section 4 of the **Constitution of Virginia**, is a quasi-state, quasi-local office whose power is drawn directly from the voters by means of the authority of the Virginia Constitution itself. A constitutional officer is quite often, as shown here, not of the locality and not of the Commonwealth.

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