



CHAMBERS OF
CRAIG D. JOHNSTON
JUDGE

THIRTY-FIRST JUDICIAL CIRCUIT OF VIRGINIA

PRINCE WILLIAM COUNTY
CITIES OF MANASSAS AND MANASSAS PARK

CIRCUIT COURT CHAMBERS
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July 18, 2014

Special Conservator of the Peace Task Force

Dear Task Force Members:

I have been invited to address the Task Force at its July 24 meeting on issues presented to the Court by applications for appointment as Special Conservator of the Peace. I expect to deal with the matters on my July 24 docket in time to arrive at the meeting by about 12:30 p.m., so as to address these in person on the 24th, but thought it appropriate to provide a brief outline, in case unexpected docket issues delay my departure. Please note that this is not intended to be a statement by the court in general, or to be a comment concerning any particular application.

The statute (19.2-13) provides for three classes of applications—from sheriffs and chiefs of police, from corporations authorized to do business in Virginia, and from proprietors and custodians of property.

With respect to the first category, applications from the Sheriff and Chiefs of Police, these applications generally present few issues to the court. Similarly, applications from county and state agencies, such as universities and county agencies, with respect to special conservators they need to protect their property or serve their functions, also present few issues. In most cases, the applicant and the applicant's counsel are familiar with the statute, and the scope of the application and of the proposed special conservator's powers are spelled out in the application. Orders are usually entered with few if any issues in such cases.

The applications which create the most issues are those from private corporations, and from proprietors of private property. The issues these present include the following:

- I. The largest and most fundamental issue is presented to the court arises from the fact that the court is called upon to rule with little guidance from the application, from the statute, or from any third party as to how to decide the many questions which must be answered—is the person a suitable person, when should the person be given authority to wear a badge labeled "police," what geographical bounds should be place on the person's authority, and many others. Such applications have always given me pause, as they have to other judges to whom I have spoken, as they are important ones, under which individuals are to be clothed with an important part of the police power of the Commonwealth pursuant to a statute

which gives the court broad discretion as to what to include in the order of appointment, but the applications are generally acted upon without any notice to anyone but the court, without review by anyone but the court, without a hearing, and without guidance to the court as to what is appropriate in the given circumstances. The only possible input from any knowledgeable person or agency, is through a background investigation. Even there only the applicant and the proposed special conservator are before the court, and action is frequently taken only on the paper application—there is no requirement for a hearing.

- II. A second issue, of less importance perhaps to the Task Force but perhaps worthy of review, is the awkward wording of the statute. The statute is not easy to read, even for attorneys (or judges), with the choices scattered through it. Generally, there is no attorney involved in the filing of the applications from private corporations and property owners, and applications frequently fail to specify what is requested, and even more frequently fail to specify why a particular power, location, etc, is appropriate. The applicant and the proposed special conservator of the peace have considerable difficulty simply filling out the application and presenting the court with an appropriate order. They also struggle to provide the information needed to help make the decisions required—the geographic location of powers, whether the word “police” can be used, whether there is to be a limitation on the use of lights and sirens, etc. A form has apparently been developed to help with this, but many applicants appear still to struggle simply to understand what the statute says. The statute has the look of one which has grown by accretion over many years, and if some revision is contemplated, there might be also some consideration of wholesale rewriting to make it easier to follow by everyone.
- III. There are a number of more minor issues:
 - a. The statute does not expressly make the order revocable, nor does it provide for a procedure for revocation.
 - b. There is no provision for any oversight after entry of the order, other than notice to State Police and to the sheriff or police chief.
 - c. The statute provides for application by someone besides the proposed conservator of the peace. In the case of applications by private corporations, or the owners of private property, this can create a number of issues, including:
 - i. The overall concept of the statute appears to be that some person or entity, the applicant, has need of protection of property or other need requiring the employment of someone with arrest powers, and who


makes application to the court to grant such powers to the employee. The focus of the statute is upon the qualifications of the special conservator, with little provision for anyone to examine the makeup or needs of the person or entity employing such person. (I note in this regard that the statute says that the court may order a background check including examination of "the applicant's" school and other records. Technically the applicant is not the proposed special conservator, but I assume everyone ignores this and assumes it means that there can be a background check of the proposed special conservator. However, if this assumption is made, it means there is no requirement for a background or other check of the applicant—if a private corporation, who controls the corporation and the special conservator, and whether there is any issue with this, and if a property owner, what issues may exist with respect to control of the applicant.)

- ii. Subsection D of the statute exempts certain private corporations and other entities from registration. That same subsection requires the "employing agency" to notify the court within 30 days of an employee's departure, and voids the employee's special conservator's powers at this point. I am not sure that this requirement of notice, and of voiding of powers, applies only to employees of exempt agencies, and not to employees of other private corporations or of property owners. If it does not, there may be a gap of some sort. If it does, this adds an additional inquiry which is appropriate to make of such corporations or owners, which is whether they can be relied upon to report if the special conservator is no longer employed.
- iii. The applications most often presenting these issues are those from private corporations controlled by the proposed special conservator, and from property owners who have been approached by persons who offer their services as private security guards of some sort to the property owners, and who sign an application filled out and filed by the proposed special conservator. In these cases, there may be no effective oversight at all by anyone over the actions of the special conservator, nor anyone who may be expected to report the termination of the special conservator, nor any problem with the performance of his or her duties. Whether there needs to be some limitation in such cases, I cannot comment on. I will say that I, and other judges in our Circuit, are considering referring all such applications to the Commonwealth's Attorney's office for review and

securing a background check not only on the proposed special conservator, but also the needs and qualifications of the applicant.

I hope that the foregoing assists the Task Force, and I look forward to the meeting on July 24th.

Very truly yours,

A handwritten signature in black ink, appearing to read "CD Johnston", written over a horizontal line.

Craig D. Johnston, Chief Judge