



COMMONWEALTH of VIRGINIA

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September 9, 2002

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The Honorable Richard H. Black
Member, House of Delegates
20978 Flatboat Court
Sterling, Virginia 20165

Dear Delegate Black:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether the Department of Conservation and Recreation exceeded its authority in issuing a regulation prohibiting, within state parks, the carrying of concealed handguns by holders of valid permits.

Response

It is my opinion that the Department of Conservation and Recreation exceeded its statutory authority in prohibiting the carrying of concealed handguns by holders of valid permits.

Background

The Department of Conservation and Recreation is established under Article 1, Chapter 1 of Title 10.1, §§ 10.1-100 through 10.1-104.3. Section 10.1-104(A)(4) authorizes the Department “[t]o prescribe rules and regulations necessary or incidental to the performance of duties or execution of powers conferred by law.” In accord with this authority, the Department has adopted the following firearm regulation:

No person except employees, police officers, or officers of the department shall carry or possess firearms of any description, or airguns, within [a state] park. This regulation shall not apply in areas designated for hunting by the Department of Conservation and Recreation.¹

The Department is the state agency responsible for the management of all state parks.² State parks are open to the general public and are located in areas of the Commonwealth suitable to the development of outdoor recreational activities, including, but not limited to, camping, boating, hunting, fishing, horseback riding, and swimming.³

¹ 4 VAC 5-30-200. (Law. Coop. 1996).

² VA. CODE ANN. §§ 10.1-200 to 10.1-205 (Michie Repl. Vol. 1998 & LexisNexis Supp. 2002).

³ See § 10.1-200 (Michie Repl. Vol. 1998); Department of Conservation and Recreation Internet site, at http://www.dcr.state.va.us/pub_list.htm.

Applicable Authorities and Discussion

Section 10.1-104(A) empowers the Department of Conservation and Recreation to employ personnel to carry out the duties of the Department;⁴ enter into contracts;⁵ accept funds and grants and gifts of real and personal property;⁶ and assess civil penalties for state park admittance and parking violations.⁷ In addition, the Director of the Department may request the Governor to commission designated conservation officers⁸ "to uphold and enforce the laws of the Commonwealth."⁹

Section 10.1-200 sets out the duties of the Department of Conservation and Recreation related to parks and outdoor recreation and grants the Department the power to administer funds to accomplish the purposes of parks and recreation;¹⁰ study and develop a comprehensive plan for the Commonwealth's outdoor recreational needs and programs and establish standards for outdoor recreational facilities;¹¹ apply for federal aid respecting outdoor recreation;¹² act independently or jointly with another department to carry out the Department's powers and duties;¹³ and report annually to the Governor and General Assembly on the development of a standard by which the public may determine whether park and recreational needs are being met by the Commonwealth.¹⁴ In addition, the Department shall engage in state park master planning;¹⁵ prescribe and impose penalties for littering;¹⁶ prohibit admission to a state park for which a charge has been assessed and regulate vehicle parking in such parks;¹⁷ acquire property by gift, purchase or eminent domain;¹⁸ pay gifts and funds for state parks to the Conservation Resources Fund;¹⁹ establish a card authorizing persons receiving social security disability payments to enter state parks free of charge;²⁰ protect and maintain the Appalachian Trail and the statewide system of trails;²¹ and manage False Cape State Park.²²

⁴VA. CODE ANN. § 10.1-104(A)(1), (5) (LexisNexis Supp. 2002).

⁵Section 10.1-104(A)(2).

⁶Section 10.1-104(A)(3).

⁷Section 10.1-104(A)(6); *see also* § 10.1-200.3 (LexisNexis Supp. 2002).

⁸VA. CODE ANN. § 10.1-115(A) (Michie Repl. Vol. 1998).

⁹VA. CODE ANN. § 10.1-117(A) (Michie Repl. Vol. 1998).

¹⁰Section 10.1-200(1).

¹¹Section 10.1-200(2)-(4).

¹²Section 10.1-200(6).

¹³Section 10.1-200(7).

¹⁴Section 10.1-200(8).

¹⁵Section 10.1-200.1 (Michie Repl. Vol. 1998).

¹⁶Section 10.1-200.2 (LexisNexis Supp. 2002).

¹⁷Section 10.1-200.3 (LexisNexis Supp. 2002).

¹⁸Section 10.1-201 (Michie Repl. Vol. 1998).

¹⁹Section 10.1-202 (LexisNexis Supp. 2002).

²⁰Section 10.1-202.1 (Michie Repl. Vol. 1998).

²¹Sections 10.1-203, 10.1-204 (Michie Repl. Vol. 1998).

²²Section 10.1-205 (Michie Repl. Vol. 1998).

Read as a whole, the duties imposed on the Department may be summarized into four categories: the acquisition of property; the development of recreational facilities; the handling of funds; and cooperation with other agencies. Authority to govern the recreational activities of parks is implicit in these general duties, including regulations related to safety. Particular authority to proscribe the conduct of individual citizens is limited to littering, parking and the payment of charges. Otherwise, an individual's conduct must comport with the general laws of the Commonwealth and is enforceable by Department officers charged with that responsibility.

The construction of statutes by agencies charged with administration of those statutes is entitled to great weight.²³ A decision of an agency charged by the General Assembly with statewide administration, unless it is clearly wrong, carries great weight and is entitled to deference.²⁴ The grant of regulatory authority extends only to duties or powers conferred by law. As such, "regulations, promulgated ... pursuant to definitive statutory authority, have the force and effect of law."²⁵ Moreover, those regulations which "clearly and explicitly mirror" statutory authority are likeliest to be sustained.²⁶ Any regulation of the Department must be reasonably grounded in an identifiable and definitive statutory foundation.

Regulatory authority may also be reasonably implied from statutes. The General Assembly, by grant of regulatory authority to the Department, recognizes that the legislature cannot effectively or efficiently dictate the minutia of operating parks. Regulations by implication will be upheld, even if they conflict with other statutes, unless there is "a manifest intent on the part of the legislature to preempt the field."²⁷ There is no basis for an agency regulation where the legislature has plainly, broadly and comprehensively addressed the same object.²⁸

Whereas there is no specific statutory authority granted to the Department to prohibit the carrying of concealed handguns in state parks, § 18.2-308(D) specifically establishes the privilege to carry a concealed handgun upon the issuance of a valid permit.²⁹ An individual may obtain a permit to carry a concealed handgun upon application, made under oath, to the circuit court in the locality where the applicant resides.³⁰ The permit shall be issued upon the successful completion of a criminal record check and the

²³See *Dept. Taxation v. Prog. Com. Club*, 215 Va. 732, 739, 213 S.E.2d 759, 763 (1975); *Commonwealth v. Research Analysis*, 214 Va. 161, 198 S.E.2d 622 (1973); see also *Forst v. Rockingham*, 222 Va. 270, 276, 279 S.E.2d 400, 403 (1981).

²⁴See *Virginia Real Estate Board v. Clay*, 9 Va. App. 152, 384 S.E.2d 622 (1989), cited in *Specialty Auto Body v. Cook*, 14 Va. App. 327, 330, 416 S.E.2d 233, 235 (1992); 1999 Op. Va. Att'y Gen. 159, 163.

²⁵*Carbaugh v. Solem*, 225 Va. 310, 314, 302 S.E.2d 33, 35 (1983).

²⁶1999 Op. Va. Att'y Gen., *supra*, at 163.

²⁷*City of Va. Beach v. Restaurant Assoc.*, 231 Va. 130, 133, 341 S.E.2d 198, 199 (1986); see also *City of Norfolk v. Tiny House*, 222 Va. 414, 281 S.E.2d 836 (1981); *Maritime Union v. City of Norfolk*, 202 Va. 672, 119 S.E.2d 307 (1961).

²⁸*Cf.* 1981-1982 Op. Va. Att'y Gen. 112, 113 (concluding that counties have no authority to adopt ordinances regulating sale of handguns except as specifically permitted by statute).

²⁹The legislature's prohibition against carrying concealed weapons and the privilege of granting exceptions to that prohibition have long been recognized. See 1838 Va. Acts ch. 101, at 76; *Withers' Case*, 109 Va. 837, 65 S.E. 16 (1909).

³⁰VA. CODE ANN. § 18.2-308(D) (LexisNexis Supp. 2002).

person is not otherwise disqualified and complies with other requirements of the court.³¹ The permittee must carry the permit and photographic identification in his or her possession at all times while carrying a concealed handgun, and must display the permit and photographic identification to any law-enforcement officer when requested to do so.³²

A person's privilege to carry a concealed handgun is considered universal within the Commonwealth subject to limited circumstances. The General Assembly has specifically set out those places where the carrying of a concealed handgun is prohibited: places of worship,³³ courthouses,³⁴ schools,³⁵ places licensed for on-premises alcoholic beverage consumption,³⁶ and such property as may be prohibited by the owner.³⁷ Section 18.2-287.4 permits the carrying of concealed handguns in public places where the unconcealed carrying of loaded firearms is otherwise prohibited. Section 18.2-308 does not identify state parks as areas of prohibition for the carrying of a concealed handgun. Under accepted rules of statutory construction, the mention of one thing in a statute implies the exclusion of another.³⁸ Further, the Department's enabling legislation does not specifically authorize the Department to prohibit the carrying of a concealed handgun by valid permit holders.

In light of the General Assembly's explicit statements regarding the limits of carrying concealed handguns, the Department may not infer authority from its enabling legislation to change those limits by prohibiting the carrying of concealed handguns by holders with valid permits within state parks. It is solely within the discretion of the General Assembly to add parks to the list of places where the carrying of concealed handguns is prohibited, or to grant explicit statutory authorization to the Department for that purpose. Therefore, the Department of Conservation and Recreation is without authority to prohibit, within state parks, the carrying of concealed handguns by holders of valid permits.

Conclusion

Accordingly, it is my opinion that the Department of Conservation and Recreation does not have the authority to issue regulations prohibiting, within state parks, the carrying of concealed handguns by valid permit holders.³⁹

³¹ *Id.*

³² Section 18.2-308(H). Properly appointed conservation officers are "law-enforcement officers." Section 10.1-117(B).

³³ VA. CODE ANN. § 18.2-283 (Michie Repl. Vol. 1996).

³⁴ VA. CODE ANN. § 18.2-283.1 (Michie Repl. Vol. 1996).

³⁵ VA. CODE ANN. § 18.2-308.1 (LexisNexis Supp. 2002).

³⁶ Section 18.2-308(J3).

³⁷ Section 18.2-308(O).

³⁸ See *Grigg v. Commonwealth*, 224 Va. 356, 364, 297 S.E.2d 799, 803 (1982) ("*Expressio unius est exclusio alterius.*"); *Op. Va. Att'y Gen.*: 1997 at 35, 35; 1994 at 9, 11.

³⁹ This opinion is distinguished from the opinion issued to you on December 6, 2001. See *op. no. 01-080*, available at <http://www.vaag.com/media%20center/Opinions/2001opns/dec01indx.htm>. The question in the prior opinion concerned whether a conflict exists between a Department of Conservation and Recreation regulation and § 18.2-308. The analysis of the prior opinion depended on whether a regulation may be considered a "law" for the purpose of exceptions to § 18.2-308. The answer to that question is correct: regulations may be considered laws

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With kindest regards. I am

Very truly yours,


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under § 18.2-308. This opinion, however, questions whether the Department of Conservation and Recreation has the authority to issue the specified regulation. Your question is directly related to authority granted to the Department by the General Assembly. This opinion concludes that the General Assembly did not grant the Department the authority to issue a regulation prohibiting the carrying of a concealed weapon by a valid permit holder.