

OP. NO. 03-032

ADMINISTRATION OF GOVERNMENT: STATE OFFICERS AND EMPLOYEES.

Meaning of 'members of collegial bodies appointed at state level,' 'state level' for purposes of receiving compensation and expense payments for service on collegial bodies. Only members of collegial bodies established or authorized by General Assembly are entitled to compensation or reimbursement for expenses; members of *ad hoc* collegial bodies established on authority of state-level official or entity are not entitled to compensation and expense payments. Collegial body members are not entitled to compensation or expenses if enabling legislation establishing body specifically prohibits such payments; § 2.2-2813 applies to compensation where collegial body's enabling statute provides specifically for expense reimbursement but is silent as to compensation; § 2.2-2813 provides method and amount of compensation and reimbursement of expenses for collegial body members where enabling statute is silent as to such payments. Only in instances where § 2.2-2813 and enabling statute are irreconcilably repugnant or inconsistent would timing of enactment be implicated.

The Honorable Stephen H. Martin
Member, Senate of Virginia
September 11, 2003

Issues Presented

You ask several questions pertaining to compensation and expense reimbursement for members of state-level boards and commissions ("collegial bodies"¹), pursuant to § 2.2-2813. Each question, and subsequent answer, is set forth under a separate heading within this opinion.

Applicable Law and Discussion

Section 2.2-2813 is a portion of Chapter 28 of Title 2.2, and pertains to compensation and expense payments from state funds for members serving on collegial bodies. Section 2.2-2813(A) defines the following terms as used in Chapter 28, relating to state officers and employees:

"Compensation" means any amount paid in addition to reimbursement for expenses.

"Expenses" means all reasonable and necessary expenses incurred in the performance of duties.

"Salary" means a fixed compensation for services, paid to part-time and full-time employees on a regular basis.

Section 2.2-2813(B) provides that, subject to § 2.2-2813(C) and (D),²

mMembers of boards, commissions, committees, councils and other collegial bodies, who are appointed at the state level, shall be compensated at the rate of \$50 per day, unless a different rate of compensation is specified by statute for such members, plus expenses for each day or portion thereof in which the member is engaged in the business of that body.

Section 2.2-2823(A) provides:

Pursuant to § 2.2-2825, any person traveling on state business shall be entitled to reimbursement for certain actual expenses as are necessary and ordinarily incidental to travel. If transportation is by public means, reimbursement shall be at the actual cost thereof. If transportation is by private means, reimbursement shall be at the rate as specified in the current general appropriation act.

Section 2.2-2825 provides that "[p]ersons conducting official business of the Commonwealth shall be reimbursed for their reasonable and necessary travel expenditures that shall include transportation as provided in § 2.2-2823, parking, and lodging."

Question One

You ask whether the phrase in § 2.2-2813(B), "members of ... collegial bodies, who are appointed at the state level," includes persons appointed by state-level officials or entities and persons appointed to their position by enabling legislation.

Absent a statutory definition, words used in a statute are to be given their ordinary meaning.³ For the purposes of this opinion, I must assume that "members of ... collegial bodies, who are appointed at the state level" are those persons who are appointed by an authorized state official or entity, or as set forth in the collegial bodies' enabling legislation. I must further assume that the phrase "state level" refers only to those collegial bodies established or authorized by the General Assembly to function at the state level and does not include such bodies that operate at a local government level.

Question Two

You ask whether a collegial body, including its membership, must be established by statute in order for its members to be entitled to compensation and reimbursement for expenses. As an example, you cite § 51.5-72. Section 51.5-72(B) requires the Board for the Blind and Vision Impaired to establish an advisory board for each of the manufacturing and services industries established by the section.

Given the assumptions that collegial body members "appointed at the state level" are those persons who are appointed by an authorized state official or entity, or as set forth in the enabling statute of the body in question, and that the phrase "state level" refers only to those collegial bodies established pursuant to enabling legislation, I conclude that only members of collegial bodies that are established or authorized to be established by the General Assembly are entitled to compensation or reimbursement for expenses under § 2.2-2813.

If the legislature creates a state-level advisory, supervisory or policy collegial body to advise an agency or public official or to exercise some portion of the Commonwealth's sovereignty and fails to establish a specific limitation on membership, I cannot say that members of such a body are precluded from receiving compensation for their services pursuant to § 2.2-2813. In the example you cite, however, § 51.5-72(B) authorizes the Board for the Blind and Vision Impaired to create advisory boards and limits the membership on each board to nine persons. Accordingly, members of the Board are entitled to receive compensation and reimbursement for expenses pursuant to § 2.2-2813.

Question Three

You ask whether members serving on *ad hoc* collegial bodies, which are established solely on the authority of a state-level official or entity, are entitled to compensation and reimbursement for expenses.

Given the assumptions that collegial body members "appointed at the state level" are those persons who are appointed by an authorized state official or entity, or as set forth in the enabling statute of the body in question, and that the phrase "state level" refers only to those collegial bodies established pursuant to enabling legislation, I must conclude that *ad hoc* collegial bodies established only on the authority of a state-level official or entity are not entitled to receive compensation and reimbursement for expenses. Such *ad hoc* bodies, by their very nature, are not created or authorized by the General Assembly. Any other interpretation would allow state officials to expend public funds without authorization by the General Assembly. Consequently, members of collegial bodies that are not created or established by the General Assembly, but, rather, are created only on authority of a state-level official or entity, are not entitled to compensation under § 2.2-2813 or travel expenses under § 2.2-2825.

Question Four

You next ask whether, pursuant to § 2.2-2813, members serving on collegial bodies are entitled to (a) compensation or expenses if such bodies' enabling legislation specifically prohibits compensation or expense reimbursement; (b) compensation if such bodies' enabling legislation authorizes reimbursement for expenses but is silent as to compensation; or (c) compensation and expenses if such bodies' enabling legislation is silent as to both.

It is well accepted that statutes relating to the same subject should not be read in isolation.⁴ Such statutes should be considered *in pari materia*.⁵ Moreover, statutes dealing with the same subject matter should be construed together to achieve a harmonious result, resolving conflicts to give effect to legislative intent.⁶ An accepted principle of statutory construction is that, when it is not clear which of two statutes applies, the more specific statute prevails over the more general.⁷ Also, when statutes provide different procedures on the same subject matter, "the general must give way to the specific."⁸

(a) You cite § 10.1-1422.03 as an example of a statute prohibiting the members of an advisory board from receiving compensation or reimbursement for expenses.⁹ Section 10.1-1422.03(B) is specific

as to the compensation and reimbursement of expenses of members of the board. As such, the specific prohibitions of § 10.1-1422.03(B) prevail over the more general provisions of § 2.2-2813. Consequently, the members of the Litter Control and Recycling Fund Advisory Board are not entitled to compensation or reimbursement of expenses under § 2.2-2813.

(b) You cite § 46.2-1503 as an example of a statute providing only for the reimbursement of actual and necessary expenses of members of the Motor Vehicle Dealer Board.¹⁰ Sections 46.2-1503 and 2.2-2813 may be read together without conflict. Because § 46.2-1503 is silent as to compensation, the compensation provisions of § 2.2-2813 apply to the members of the Board. As to expenses, to the extent the two statutes are in conflict or it is unclear which of the two statutes applies, the specific provisions of § 46.2-1503(E) dictate the method and amount of such reimbursement.

(c) You cite § 23-9.3 as an example of an enabling statute that is silent as to compensation and expense reimbursement for members of the State Council of Higher Education for Virginia. Reading § 23-9.3 in conjunction with § 2.2-2813 to achieve a harmonious result, it is evident that there is no conflict. The two statutes may be read together in harmony, with the provisions of § 2.2-2813 providing the method and amount of compensation and expense reimbursement for such members.

Question Five

Finally, with regard to the above question, you ask whether it matters if § 2.2-2813 or the specific enabling legislation of the collegial body is the later enacted statute. As an example, you note that the General Assembly enacted § 2.2-2813 following its enactment of § 10.1-1422.03. Another rule of statutory construction requires the presumption that, in enacting statutes, the General Assembly has full knowledge of existing law and interpretations thereof.¹¹ Although the repeal of statutes by implication is not favored, if two statutes are *in pari materia*, then to the extent that their provisions are irreconcilably inconsistent and repugnant, the latter enactment repeals or amends the earlier enacted statute.¹² The examples cited in the answers to question 4(a)-(c) are not irreconcilably inconsistent or repugnant. Therefore, it does not matter which of the statutes is last enacted. Only in those instances where the provisions of § 2.2-2813 and the statute in question are so irreconcilably repugnant or inconsistent would the timing of enactment be implicated.

¹For purposes of standardizing a nomenclature system, § 2.2-600 provides that every board, commission or council "established by law or executive order within the executive branch of state government" is "a permanent collegial body."

²Section 2.2-2813 (C) limits payment to reimbursement for expenses of full-time state employees or employees of local political subdivisions; § 2.2-2813(D) limits the total compensation a collegial body member shall receive to no more than "one payment of the highest per diem amount specified in subsection B for attending meetings and for services performed that day" for all collegial bodies, and any related entities of such bodies, of which such person is a member. The compensation and expenses of a member performing services or attending two or more meetings a day for two or more collegial bodies "shall be prorated among the bodies served." Va. Code Ann. § 2.2-2813(D) (LexisNexis Supp. 2003).

³See *Grant v. Commonwealth*, 223 Va. 680, 684, 292 S.E.2d 348, 350 (1982) (noting ordinary meaning of "prescribe" as applied to probation period or period of suspension within meaning of § 19.2-306); 1987-1988 Op. Va. Att'y Gen. 513, 514.

⁴2B Norman J. Singer, *Sutherland Statutory Construction* § 51.02 (West 6th ed. 2000); Op. Va. Att'y Gen.: 1999 at 22, 22; 1998 at 19, 21; *id.* at 123, 124; 1996 at 197, 198; 1995 at 146, 147; 1993 at 135, 137; *id.* at 160, 162; 1992 at 108, 112.

⁵See *Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7-8 (1957); 2B Singer, *supra* note 4, § 51.03 (West 6th ed. 2000); 1996 Op. Va. Att'y Gen. 134, 135. "*In pari materia*" is the Latin phrase meaning "[o]n the same subject; relating to the same matter." Black's Law Dictionary 794 (7th ed. 1999).

⁶See 2B Singer, *supra* note 4, § 51.02, at 191; 2000 Op. Va. Att'y Gen. 182, 185.

⁷See *Va. Nat'l Bank v. Harris*, 220 Va. 336, 257 S.E.2d 867 (1979); *Scott v. Lichford*, 164 Va. 419, 180 S.E. 393 (1935); *City of Roanoke v. Land*, 137 Va. 89, 119 S.E. 59 (1923); Op. Va. Att'y Gen.: 2001 at 17, 19; 1990 at 227, 228; 1987-1988 at 276, 277; 1980-1981 at 330, 331.

⁸*Davis v. Davis*, 206 Va. 381, 386, 143 S.E.2d 835, 839 (1965); see also Op. Va. Att'y Gen.: 2001, *supra* note 7, at 19; 2000 at 94, 95; 1976-1977 at 93, 94.

⁹Section 10.1-1422.03(B) stipulates that the Litter Control and Recycling Fund Advisory Board "shall not receive a per diem, compensation for their service , or travel expenses."

¹⁰Section 46.2-1503(E) requires that members of the Motor Vehicle Dealer Board "be reimbursed their actual and necessary expenses incurred in carrying out their duties, such reimbursement to be paid from the special fund referred to in § 46.2-1520."

¹¹See *City of Richmond v. Sutherland*, 114 Va. 688, 693, 77 S.E. 470, 472 (1913); *Op. Va. Att'y Gen.*: 1996 at 51, 52 (noting that General Assembly, in repealing one statute and enacting another, had full knowledge of existing law and construction placed upon it by Attorney General, and intended to change law); 1995 at 130, 131 (noting that General Assembly, in amending statute, had full knowledge of existing law and construction placed upon it by courts, and intended to change then existing law).

¹²See *Standard Drug Co., Inc. v. Gen. Elec. Co.*, 202 Va. 367, 378, 117 S.E.2d 289, 297 (1960) (noting that later enacted Fair Trade Act of 1958 would prevail over Antimonopoly Act if irreconcilable conflict exists); *accord* *City of South Norfolk v. City of Norfolk*, 190 Va. 591, 58 S.E.2d 32 (1950); *Am. Cyanamid Co. v. Commonwealth*, 187 Va. 831, 48 S.E.2d 279 (1948). See *Standard Drug Co. v. Gen. Elec. Co.*, 202 Va. 367, 378-79, 117 S.E.2d 289, 297-98 (1960) (declaring that later enacted Fair Trade Act of 1958 prevails over Anti-monopoly Act insofar as they conflict); *accord* *City of South Norfolk v. City of Norfolk*, 190 Va. 591, 58 S.E.2d 32 (1950); *Am. Cyanamid Co. v. Commonwealth*, 187 Va. 831, 48 S.E.2d 279 (1948).

[Back to September 2003 Index](#)