

**OP. NO. 03-084**

**MENTAL HEALTH GENERALLY: ADMISSIONS AND DISPOSITIONS IN GENERAL – TRANSPORTATION OF ADMITTED PERSONS; ESCAPE.**

**100-road-mile qualification applicable to sheriffs transporting persons certified for involuntarily admission to hospital applies to magistrates directing transportation of persons under emergency custody orders or temporary detention orders.**

The Honorable Lenny Millholland  
Sheriff for the City of Winchester  
October 10, 2003

**Issue Presented**

You ask whether § 37.1-71(B), which requires the sheriff of the jurisdiction where a person is a resident to transport the person unless that sheriff's office is more than 100 road miles from the nearest boundary of the jurisdiction in which civil commitment proceedings took place, is applicable to § 37.1-71(A), which governs magistrates directing the transportation of persons under emergency custody orders or temporary detention orders.

**Response**

It is my opinion that the 100-road-mile qualification in § 37.1-71(B), applicable to sheriffs transporting persons certified for involuntarily admission to a hospital, applies also to magistrates directing the transportation of persons under emergency custody orders or temporary detention orders pursuant to § 37.1-71(A).

**Applicable Law and Discussion**

The 2003 Session of the General Assembly amended § 37.1-71 by adding a subsection B designation as a result of adding new language as subsection A, as follows:

*A. When a person is the subject of an emergency custody order pursuant to § 37.1-67.01 or a temporary detention order pursuant to § 37.1-67.1, the magistrate shall direct the transportation of that person by a law-enforcement officer from a specified agency and jurisdiction to such other medical facility as may be necessary to obtain emergency medical evaluation or treatment prior to the placement of the individual in the temporary detention facility.<sup>[1]</sup>*

The rules of statutory construction that govern my response to your inquiry include the recognized rule that a statute must be read as a whole, and all of its parts must be examined so as to make it harmonious, if possible.<sup>2</sup> Furthermore, statutes relating to the same subject should not be read in isolation.<sup>3</sup> If an act of the legislature "is complete in itself and stands alone . . . , it is only necessary that its provisions be observed; otherwise it should be read in connection with other

cognate general statutes; that is to say, those which deal with [the] general subject."<sup>4</sup> Moreover, I am also required to apply the rule that statutes dealing with the same subject matter must be read together to give effect to the legislative intent.<sup>5</sup> "A statute should be construed, where possible, with a view toward harmonizing it with other statutes."<sup>6</sup> The construction placed upon language used in one section of the Code may be considered in determining the meaning of similar or the same language used in another section.<sup>7</sup> Thus, related sections of the Code must be considered and construed together.<sup>8</sup>

"While not part of the code section, in the strictest sense, the caption may be considered in construing the statute, as it is 'valuable and indicative of legislative intent.'"<sup>9</sup> The caption to § 37.1-71 reads: "Transportation of person in civil commitment process." Both subsections A and B of § 37.1-71 deal with the transportation of persons in the civil commitment process. Section 37.1-71(B), therefore, obviously is a statutory provision on this same subject and relates to the same subject matter of your inquiry. The second paragraph of § 37.1-71(B) provides:

The sheriff of the jurisdiction where the person is a resident shall be responsible for transporting the person unless the sheriff's office of such jurisdiction is located more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place. In cases where the sheriff of the jurisdiction of which the person is a resident is more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place, it shall be the responsibility of the sheriff of the latter jurisdiction to transport the person. The cost of transportation of any person so applying or certified for admission pursuant to § 37.1-67.3 or § 37.1-67.4 shall be paid by the Commonwealth from the same funds as for care in jail.

A 1988 opinion of the Attorney General concludes that this particular provision requires the sheriff of the jurisdiction in which a person resides to provide the transportation to the hospital unless that sheriff's office is located outside the mileage range specified in the statute.<sup>10</sup> The opinion also notes that the purpose of the qualified mileage range in § 37.1-71

is to relieve the sheriff of a large metropolitan area or a jurisdiction in which there exists a regional medical facility from the responsibility of transporting all persons from surrounding localities to such hospitals. It requires the sheriff of the locality in which the person resides to share in that responsibility. When a person is certified for admission in a jurisdiction far from his place of residence, however, such a requirement is impractical.<sup>[11]</sup>

This stated purpose has equal application to the 100-road-mile qualification in § 37.1-71(B). The General Assembly has taken no action to alter this observation in the 1988 opinion. In addition, the General Assembly has not expressly exempted the qualification set forth in § 37.1-71(B).<sup>12</sup> The Supreme Court of Virginia has stated that "[t]he legislature is presumed to have had knowledge of the Attorney General's interpretation of the statutes, and its failure to make corrective amendments evinces legislative acquiescence in the Attorney General's view."<sup>13</sup>

Therefore, I must conclude that § 37.1-71(A) is governed by the qualification in the second paragraph of § 37.1-71(B), requiring that the sheriff of the jurisdiction where a person is a resident transport the person unless that sheriff's office is more than 100 road miles from the nearest boundary of the jurisdiction in which civil commitment proceedings took place.

### Conclusion

Accordingly, I am of the opinion that the 100-road-mile qualification in § 37.1-71(B), applicable to sheriffs transporting persons certified for involuntarily admission to a hospital, applies also to magistrates directing the transportation of persons under emergency custody orders or temporary detention orders pursuant to § 37.1-71(A).

<sup>1</sup>2003 Va. Acts ch. 151.

<sup>2</sup>See *Gallagher v. Commonwealth*, 205 Va. 666, 669, 139 S.E.2d 37, 39 (1964); 2A Norman J. Singer, *Sutherland Statutory Construction* § 46:05, at 154 (West 6th ed. 2000) ("A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole."); *Op. Va. Att'y Gen.*: 1994 at 93, 95; 1993 at 173, 174; 1992 at 48, 50; 1991 at 13, 17; 1983-1984 at 245, 246.

<sup>3</sup>*Cf. McDaniel v. Commonwealth*, 199 Va. 287, 99 S.E.2d 623 (1957) (noting that courts generally look to whole body of statute to determine intention of each part).

<sup>4</sup>*Gandy v. County of Elizabeth City*, 179 Va. 340, 344, 19 S.E.2d 97, 99 (1942). Such statutes should be considered *in pari materia*. See *Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7-8 (1957); 2B Singer, *supra* note 2, § 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).

<sup>5</sup>See *Commonwealth v. Sanderson*, 170 Va. 33, 195 S.E. 516 (1938); 2B Singer, *supra* note 4, § 51.02; *Op. Va. Att'y Gen.*: 1999 at 22, 23; 1998 at 19, 21.

<sup>6</sup>*Blue v. Va. State Bar ex rel. First Dist. Comm.*, 222 Va. 357, 359, 282 S.E.2d 6, 8 (1981); see also *Branch v. Commonwealth*, 14 Va. App. 836, 419 S.E.2d 422 (1992); *Morris v. Morris*, 4 Va. App. 539, 359 S.E.2d 104 (1987).

<sup>7</sup>See, e.g., *First Nat'l Bank v. Holland*, 99 Va. 495, 503-06, 39 S.E. 126, 129-30 (1901) (examining various sections of Code and history of legislation to determine whether terms "goods or chattels" were intended to embrace "choses in action").

<sup>8</sup>*Moore v. Downham*, 166 Va. 77, 184 S.E. 199 (1936).

<sup>9</sup>*Bell v. Commonwealth*, 21 Va. App. 693, 701, 467 S.E.2d 289, 293 (1996) (quoting *Krummert v. Commonwealth*, 186 Va. 581, 584, 43 S.E.2d 831, 832 (1947)).

<sup>10</sup>1987-1988 Op. Va. Att'y Gen. 405, 406 (citing § 37.1-71, predecessor to § 37.1-71(B)). The mileage qualification in § 37.1-71 was thirty-five miles at the time the 1988 opinion was issued.

<sup>11</sup>*Id.* at 406.

<sup>12</sup>Had the intent of the General Assembly been to exempt the 2003 amendment, it would have begun the provision with the phrase, "notwithstanding any provisions of law to the contrary." This phrase indicates a legislative intent to override any potential conflicts with earlier legislation. See Op. Va. Att'y Gen.: 1998 at 19, 21; 1996 at 197, 198; 1987-1988 at 1, 2.

<sup>13</sup>Richard L. Deal & Assocs. v. Commonwealth, 224 Va. 618, 622, 299 S.E.2d 346, 348 (1983).

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