

**OP. NO. 04-054**

**COUNTIES, CITIES AND TOWNS: POLICE AND PUBLIC ORDER**

**County may not seek reimbursement for expenses incurred by law-enforcement officer performing routine duties resulting in DUI conviction; may be compensated, in certain circumstances, for reasonable expenses incurred in providing appropriate emergency response to accident or incident related to DUI conviction, even when fire, rescue, or extra law-enforcement personnel do not participate.**

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September 23, 2004

**Issues Presented**

You ask whether a county may collect reimbursement pursuant to § 15.2-1716 where a law-enforcement officer makes a routine traffic stop and arrest that results in a conviction of driving while intoxicated ("DUI"). You also ask must fire, rescue, or extra law-enforcement personnel respond to a DUI event for it to be compensable.

**Response**

It is my opinion that a county may not seek reimbursement pursuant to § 15.2-1716 for expenses incurred by a law-enforcement officer performing routine duties that result in a DUI conviction. It is also my opinion that a county may be compensated, in limited circumstances, for reasonable expenses incurred in providing an appropriate emergency response to an accident or incident related to the DUI conviction, even when fire, rescue, or extra law-enforcement personnel do not participate.

**Background**

You provide a copy of the Amherst County Code,<sup>1</sup> which tracks the language of § 15.2-1716 prior to its 2003 and 2004 revisions.<sup>2</sup> You suggest that an "incident" is distinct from an "accident" and encompasses any event, however minor. Thus, you believe every DUI case triggers civil liability, because a DUI offense is an

"emergency" that requires a law-enforcement officer to respond. You further suggest that such an event is compensable even if fire, rescue, or extra law-enforcement personnel are not involved.<sup>3</sup>

### **Applicable Law and Discussion**

You ask whether a county may collect reimbursement pursuant to § 15.2-1716 where a law-enforcement officer makes a routine traffic stop and arrest that results in a conviction of driving while intoxicated. Section 15.2-1716(A) provides that a locality may adopt an ordinance providing that a person convicted of certain offenses, including DUI,<sup>4</sup> "shall be liable in a separate civil action for reasonable expenses incurred by the locality ... when providing an appropriate emergency response to any accident or incident related to such violation." Section 15.2-1716(B) allows the locality to "bill a flat fee of \$250 or a minute-by-minute accounting of the actual costs incurred."<sup>5</sup> Section 15.2-1716(B) further states that the phrase "appropriate emergency response," as used in § 15.2-1716, "includes all costs of providing law-enforcement, fire-fighting, rescue, and emergency medical services." Moreover, § 15.2-1716(B) allows court-ordered restitution for "reasonable expenses incurred by the locality for fire-fighting, rescue and emergency medical services."

Statutes, as well as ordinances, should be construed so as to reflect legislative intent.<sup>6</sup> Analyzing legislative intent includes appraisal of the subject matter and purpose of the statute, as well as its express terms.<sup>7</sup> "The plain, obvious and rational meaning of a statute is always to be preferred to any curious, narrow or strained construction."<sup>8</sup> "[A] statute should never be construed so that it leads to absurd results."<sup>9</sup>

Section 15.2-1716 evidences the General Assembly's intent not to allow a locality to be reimbursed for costs associated with a law-enforcement officer performing *routine* duties. Section 15.2-1716(A) speaks of "an appropriate emergency response to any accident or incident" related to certain offenses. An "emergency" typically means "an unforeseen combination of circumstances or the resulting state that calls for immediate action."<sup>10</sup> An "accident" is a "sudden event ... occurring without intent or volition through carelessness, unawareness, ignorance, or a combination of causes and producing an unfortunate result."<sup>11</sup> An "incident" denotes a "subordinate" occurrence.<sup>12</sup> The words "accident" and "incident" are used together, and sometimes interchangeably, in other statutes.<sup>13</sup> "[T]he Code of Virginia is one body of law," and a statute should be interpreted so that it harmonizes with other statutes.<sup>14</sup> Additionally,

"the maxim *noscitur a sociis*, which translates 'it is known from its associates,' provides that the meaning of a word takes color and expression from the purport of the entire phrase of which it is a part, and it must be read in harmony with its context."<sup>15</sup>

Thus, the intent of § 15.2-1716(A) may not be construed to mean that a mere traffic stop, which leads to a DUI conviction, is an event necessitating an emergency response. Requiring an *emergency* response to an *accident or incident* signifies the legislature's intent to preclude reimbursement for ordinary responses in the performance of routine patrol duties. If the General Assembly had intended to allow reimbursement for routine duties that resulted in convictions, it simply could have permitted reimbursement whenever an officer made any response to any event.<sup>16</sup>

Moreover, even though § 15.2-1716(B) defines an "appropriate emergency response" to include "all costs of providing law-enforcement, fire-fighting, rescue, and emergency medical services," the 2004 amendment allows court-ordered restitution only for "*the reasonable expenses incurred by the locality for fire-fighting, rescue and emergency medical services.*"<sup>17</sup> Court-ordered restitution for law-enforcement services, however, is not included. When the General Assembly amends a statute, a presumption arises that the legislature intended to change existing law.<sup>18</sup> Thus, the statute does not allow reimbursement for the performance of routine law-enforcement duties.<sup>19</sup>

You also ask must fire, rescue, or extra law-enforcement personnel respond to a DUI event for it to be compensable. It is my opinion civil liability may arise in limited circumstances even if fire, rescue and extra law enforcement personnel are not involved in the event. For example, there may be instances where a law-enforcement officer responds to a minor single vehicle accident involving only the defendant and no fire, rescue, or extra law-enforcement officers are involved. To the extent such an event is an accident or incident as contemplated by the statute and not a routine traffic stop, a locality may bill the defendant for reasonable costs under § 15.2-1716(B). Such expenses associated with the single law-enforcement officer, however, could not be part of any court ordered restitution under § 15.2-1716(B) since the statute specifically omits such expenses in that situation.

### **Conclusion**

Accordingly, it is my opinion that a county may not seek reimbursement pursuant to § 15.2-1716 for expenses incurred by a

law-enforcement officer performing routine duties that result in a DUI conviction. It is also my opinion that a county may be compensated, in limited circumstances, for reasonable expenses incurred in providing an appropriate emergency response to an accident or incident related to the DUI conviction, even when fire, rescue, or extra law-enforcement personnel do not participate.

<sup>1</sup>Amherst County, Va., Code § 9-3 (2003). In instances when a request requires an interpretation of a local ordinance, the Attorney General has declined to respond in order avoid becoming involved in matters solely of local concern and over which the governing body has control. See, e.g., 2002 Op. Va. Att'y Gen. 85, 86, and opinions cited at 90 n.3. I, therefore, confine my comments to the interpretation of § 15.2-1716.

<sup>2</sup>See 2004 Va. Acts ch. 273, available at <http://leg1.state.va.us/cgi-bin/legp504.exe?041+ful+CHAP0273>; 2003 Va. Acts ch. 796, at 1104, 1104-05.

<sup>3</sup>Section 2.2-505(B) requires that an opinion request from a county attorney "shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions."

<sup>4</sup>See Va. Code Ann. § 15.2-1716(A)(1) (LexisNexis Supp. 2004).

<sup>5</sup>The 2004 Session of the General Assembly increased the flat fee in § 15.2-1716(B) from \$100 to \$250. See 2004 Va. Acts, *supra* note 2.

<sup>6</sup>See *Branch v. Commonwealth*, 14 Va. App. 836, 839, 419 S.E.2d 422, 424-25 (1992).

<sup>7</sup>See *Vollin v. Arlington Co. Electoral Bd.*, 216 Va. 674, 222 S.E.2d 793 (1976); see also *Wood v. Henry Co. Pub. Sch.*, 255 Va. 85, 94-95, 495 S.E.2d 255, 260-61 (1998) (discussing statutory construction rules of *ejusdem generis* and *noscitur a sociis*).

<sup>8</sup>*Vollin*, 216 Va. at 679, 222 S.E.2d at 797; see *Branch*, 14 Va. App. at 839, 419 S.E.2d at 424.

<sup>9</sup>*Branch*, 14 Va. App. at 839, 419 S.E.2d at 424.

<sup>10</sup>Webster's Third New International Dictionary of the English Language Unabridged 741 (1993).

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

<sup>12</sup>*Id.* at 1142.

<sup>13</sup>See, e.g., Va. Code Ann. § 3.1-249.56(A) (Michie Repl. Vol. 1994) (requiring "reporting of significant pesticide accidents or incidents which constitute a threat to humans or the environment," and requiring further that "accident reporting requirements shall be consistent with similar reports required under other laws"); Va. Code Ann. § 32.1-45.2(A) (Michie Repl. Vol. 2004) (requiring employee of public safety agency, who is involved in "possible exposure prone incident," to "notify the agency of the incident in accordance with the agency's procedures for reporting workplace accidents"); Va. Code Ann. § 44-146.37(B) (LexisNexis Repl. Vol. 2002) (addressing "reimbursement from any party causing or contributing to an accident or incident involving hazardous materials"); Va. Code Ann. § 46.2-1212.1(A) (LexisNexis Repl. Vol. 2002) (addressing removal of vehicles, cargo, or other personal property from roadway following "motor vehicle accident or incident").

<sup>14</sup>*Branch*, 14 Va. App. at 839, 419 S.E.2d at 425.

<sup>15</sup>*Turner v. Commonwealth*, 226 Va. 456, 460, 309 S.E.2d 337, 339 (1983).

<sup>16</sup>See 2003 Op. Va. Att'y Gen. 60, 61; *id.* at 65, 71 n.32, and opinions cited therein (noting that when General Assembly intends statute to impose requirements, it knows how to express its intention).

<sup>17</sup>2004 Va. Acts, *supra* note 2 (quoting § 15.2-1716(B)). As originally drafted, the proposed amendment raised the flat fee to "\$500," and provided that "[s]uch fee may be assessed as part of the court costs in criminal or traffic court proceedings," without providing for restitution. 2004 H.B. 303 (quoting § 15.2-1716(B)), available at <http://leg1.state.va.us/cgi-bin/legp504.exe?041+ful+HB303>.

<sup>18</sup>See *Commonwealth v. Bruhn*, 264 Va. 597, 602, 570 S.E.2d 866, 869 (2002).

<sup>19</sup>See 2000 Op. Va. Att'y Gen. 125 (concluding that, because county has discretion to provide fire-fighting and rescue services, county also has discretion to seek reimbursement for actual cost of emergency equipment used by fire and rescue organizations in responding to emergency calls). *Compare* State v. Storlie, 647 N.W.2d 926, 927 (Wis. Ct. App. 2002) (holding that police are not entitled to restitution for replacing "stop sticks" used to halt defendant's vehicle, because replacement expense was cost of normal law-enforcement procedure).

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