

OP. NO. 05-093

ELECTIONS: ELECTIONS DISTRICTS, PRECINCTS, POLLING PLACES – REQUIREMENTS FOR ELECTION DISTRICTS, PRECINCTS, AND POLLING PLACES.

CRIMES AND OFFENSES GENERALLY: CRIMES AGAINST PROPERTY – TRESPASS TO REALTY.

No conflict between § 18.2-119 and §§ 24.2-307, 24.2-310(B), and 24.2-310.1; individual prohibited from entering school property may enter portion of school property designated as polling place solely for purpose of casting his vote.

The Honorable James M. Shuler
Member, House of Delegates
February 8, 2006

Issue Presented

You inquire whether there is a conflict between § 18.2-119, governing trespass on property, and §§ 24.2-307, 24.2-310(B), and 24.2-310.1, requiring polling places to be located in public buildings such as public school buildings.¹ In other words, you ask whether an individual forbidden to be on school property may enter the school property to vote at a designated polling place.

Response

It is my opinion that there is no conflict between § 18.2-119 and §§ 24.2-307, 24.2-310(B), and 24.2-310.1. It is further my opinion that an individual prohibited from entering school property may enter the portion of the school property designated as a polling place solely for the purpose of casting his vote.

Background

You advise that a public school principal in your district questions a potential conflict of laws when an individual has been prohibited from entering a public school property and his polling place is located in that same public school. You further advise that local governing bodies often designate portions of public school buildings as polling places on Election Day. Since school officials are charged with the safe and orderly operation of public schools, you advise that a public school principal has expressed a concern that an individual prohibited from entering school property must enter that school when it has been designated as that individual's polling place.

Applicable Law and Discussion

Title 24.2 provides for the administration of elections in the Commonwealth. Section 24.2-307 authorizes each city and county governing body to establish as many precincts as it deems necessary, but each precinct may have only one

polling place. The term "polling place," as defined in § 24.2-101, "means the one place provided for each precinct at which the qualified voters who are residents of the precinct may vote."

Section 24.2-310(B) provides:

The governing body of each county, city, and town shall provide funds to enable the electoral board to provide adequate facilities at each polling place for the conduct of elections. Each polling place shall be located in a public building whenever practicable. If more than one polling place is located in the same building, each polling place shall be located in a separate room or separate and defined space.

Section 24.2-310.1 adds the requirement that polling places may not be located in a building that

serves primarily as the headquarters, office, or assembly building for any private organization, other than an organization of a civic, educational, religious, charitable, historical, patriotic, cultural, or similar nature, unless the State Board [of Elections] has approved the use of the building because no other building meeting the accessibility requirements of [Title 24.2] is available.

Section 18.2-119 provides that "[i]f any person *without authority of law* goes upon or remains upon the lands, buildings or premises of another, ... after having been forbidden to do so ... by the owner, lessee, custodian or other person lawfully in charge thereof ... he shall be guilty of a Class 1 misdemeanor." (Emphasis added.) As a penal statute, the provisions of § 18.2-119 must be strictly construed.² In addition, when a statute is expressed in plain and unambiguous terms, whether general or limited, the legislature is assumed to mean what it plainly has expressed, and no room is left for construction.³ Since a portion of a public school may by law be designated as a polling place and an individual otherwise prohibited from entering onto the school property must enter that portion of the school designated as a polling place for purposes of voting, such an individual does so under "authority of law" for purposes of § 18.2-119.⁴

It is, however, well settled that an individual lawfully entering property who exceeds the authority or permission for which entry was granted is liable for trespass.⁵ Accordingly, an individual who is prohibited from entering a public school property may enter only that area of the school designated as a polling place solely for the purpose of casting his vote. Should that individual enter any portion of the school property that is not designated as a polling place or loiter in such designated place before or after casting his vote, he is liable for trespass.

Applying these principles to your inquiry, no conflict exists between the provisions of §§ 18.2-119, 24.2-307, 24.2-310(B), and 24.2-310.1 concerning trespass on public school property and the requirement that polling places be located in public buildings such as public school buildings.

Conclusion

Accordingly, it is my opinion that there is no conflict between § 18.2-119 and §§ 24.2-307, 24.2-310(B), and 24.2-310.1 It is further my opinion that an

individual prohibited from entering school property may enter the portion of the school property designated as a polling place solely for the purpose of casting his vote.

¹School buildings are "public places" as that term is used in Article VII, § 9 of the Constitution of Virginia and § 15.2-2100(A). See 2000 Op. Va. Att'y Gen. 62.

²Yarborough v. Commonwealth, 247 Va. 215, 218, 441 S.E.2d 342, 344 (1994); Martin v. Commonwealth, 224 Va. 298, 300, 295 S.E.2d 890, 892 (1982).

³Town of South Hill v. Allen, 177 Va. 154, 165, 12 S.E.2d 770, 774 (1941).

⁴See Reed v. Commonwealth, 6 Va. App. 65, 70-71, 366 S.E.2d 274, 278 (1988) (noting that penal statute, § 18.2-119, requires criminal intent or willful trespass; no violation of statute if person has good faith belief that he has legal right or authorization to be on premises); see also 1996 Op. Va. Att'y Gen. 86, 87 (concluding that whether person has good faith belief that he has right to be on premises is factual issue).

⁵See McClanahan v. Chaplain, 136 Va. 1, 11, 116 S.E. 495, 497 (1923); Op. Va. Att'y Gen.: 1994 at 56, 56; 1987-1988 at 446, 447; see also Raven Red Ash Coal Co. v. Ball, 185 Va. 534, 543, 39 S.E.2d 231, 235-36 (1946) (noting that in action for use and occupation, or realty damages based on assumpsit, trespasser may have had express or implied permission to occupy premises, but subsequently obtained or appropriated something to his own use).

[Back to February 2006 Opinion Index](#)