

OP. NO. 06-022

COUNTIES, CITIES & TOWNS: VIRGINIA INDOOR CLEAN AIR ACT.

Act requires Colonial Downs to designate sufficient non-smoking areas to meet customer demand in VIP dining rooms of its satellite wagering facilities.

Mr. Stanley K. Bowker
Executive Secretary, Virginia Racing Commission
April 28, 2006

Issue Presented

You ask whether § 15.2-2801(C) of the Virginia Indoor Clean Air Act¹ requires Colonial Downs' satellite wagering facilities to provide non-smoking areas in its VIP rooms, each of which provides dining services for approximately sixty individuals.

Response

It is my opinion that § 15.2-2801(C) of the Virginia Indoor Clean Air Act requires Colonial Downs to have designated non-smoking areas, sufficient to meet customer demand, in the VIP dining rooms of its satellite wagering facilities.

Background

You advise that Colonial Downs owns a number of satellite wagering facilities in the Commonwealth. The facilities each contain between 11,000 and 20,000 square feet with the space divided between smoking and non-smoking areas in nearly equal proportions.

You also advise that several of the wagering facilities have VIP rooms that are separate from the public area. Each VIP room contains a bar with approximately twelve bar stools and dining tables for approximately sixty patrons. The VIP rooms have been designated as smoking areas for which an additional fee is charged for admission. Colonial Downs requires payment of consideration for the food ordered and consumed within each VIP dining room.

You ask whether the entire satellite wagering facility is to be treated as one facility for purposes of § 15.2-2801(C). Because there are large smoking and non-smoking areas within the wagering facility, you question whether there should also be a non-smoking VIP room. In the alternative, because dining is available in each VIP room, you inquire whether such a room must be considered to be a separate restaurant requiring a non-smoking area. You advise that the Racing Commission has received a number of complaints from customers who desire to go into a VIP room and dine, but do not do so because of smoke in the room.

Applicable Law and Discussion

Section 15.2-2801(C), a portion of the Virginia Indoor Clean Air Act, provides:

Any restaurant having a seating capacity of fifty or more persons shall have a designated no-smoking area sufficient to meet customer demand. In determining the extent of the no-smoking area, the following shall not be included as seating capacity: (i) seats in any bar or lounge area of a restaurant and (ii) seats in any separate room or section of a restaurant which is used exclusively for private functions.

In § 15.2-2800 of the Act, the General Assembly defines “restaurant” as “any building, structure, or area, excluding a bar or lounge area as defined in [Chapter 28], having a seating capacity of fifty or more patrons, where food is available for eating on the premises, in consideration of payment.” The Act further defines “bar or lounge area” as “any establishment or portion of an establishment where one can consume alcoholic beverages and hors d’oeuvres, but excluding any such establishment or portion of the establishment having tables or seating facilities where, in consideration of payment, meals are served.”²

The overriding goal of statutory interpretation is to discern and give effect to legislative intent.³ It is, however, well-settled that, “[i]f the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it.”⁴ Where the language of a statute is free from ambiguity, its plain meaning will control.⁵

You advise that each of the VIP dining rooms has a seating capacity of sixty patrons and is separate from a bar containing approximately twelve bar stools. Furthermore, you advise that food is available for customers to purchase and eat in the VIP dining rooms. The plain and unambiguous meaning of § 15.2-2801(C) requires that the VIP dining rooms be treated in the same manner as any restaurant. Therefore, Colonial Downs must designate a non-smoking area within each of the VIP dining rooms that is sufficient to meet customer demand.

Conclusion

Accordingly, it is my opinion that § 15.2-2801(C) of the Virginia Indoor Clean Air Act requires Colonial Downs to have designated non-smoking areas, sufficient to meet customer demand, in the VIP dining rooms of its satellite wagering facilities.

¹VA. CODE ANN. tit. 15.2, ch. 28 §§ 15.2-2800 to 15.2-2810 (2003).

²Section 15.2-2800.

³See *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); *Vollin v. Arlington Co. Electoral Bd.*, 216 Va. 674, 678-79, 222 S.E.2d 793, 797 (1976); 1990 Op. Va. Att’y Gen. 155, 155 and opinions cited therein.

⁴*Temple v. City of Petersburg*, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944).

⁵See *City of Portsmouth v. City of Chesapeake*, 205 Va. 259, 269, 136 S.E.2d 817, 825 (1969).