



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Robert F. McDonnell
Attorney General

August 24, 2006

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

The Honorable Frank W. Wagner
Member, Senate of Virginia
P.O. Box 68008
Virginia Beach, Virginia 23471

Dear Senator Wagner:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether pursuant to § 56-49.01 a natural gas company may enter onto the property of landowner where such landowner has not responded to notices provided by the natural gas company.

Response

It is my opinion that a natural gas company may enter onto the property of a landowner where such landowner has not responded to the notices given by the natural gas company, provided the company complies with the notice requirements in § 56-49.01.

Applicable Law and Discussion

Section 56-49.01 provides, in part, that:

A. Any firm, corporation, company, or partnership, organized for the bona fide purpose of operating as a natural gas company as defined in 15 U.S.C. § 717a, as amended, may make such examinations, tests, hand auger borings, appraisals, and surveys for its proposed line or location of its works ... and for such purposes ... may enter upon any property without the written permission of its owner if (a) the natural gas company has requested the owner's permission to inspect the property as provided in subsection B, (b) the owner's written permission is not received prior to the date entry is proposed, and (c) the natural gas company has given the owner notice of intent to enter as provided in subsection C....

B. A request for permission to inspect shall (i) be sent to the owner by certified mail, (ii) set forth the date such inspection is proposed to be made, and (iii) be made not less than 15 days prior to the date of the proposed inspection.

C. Notice of intent to enter shall (i) be sent to the owner by certified mail, (ii) set forth the date of the intended entry, and (iii) be made not less than 15 days prior to the date of mailing of the notice of intent to enter.

D. Any entry by this section shall not be deemed a trespass.

“[A] fundamental rule of statutory construction requires that courts view the entire body of legislation and the statutory scheme to determine the ‘true intention of each part.’ In construing statutes, courts should give the fullest possible effect to the legislative intent embodied in the entire statutory enactment.”¹ One must look to the entire statute to ascertain the intent of the General Assembly.²

Section 56-49.01 clearly sets forth a procedure for the right of entry onto private land by natural gas companies to the extent necessary “for the bona fide purpose of operating a natural gas company.” Section 56-49.01(B) contemplates that the initial step by the natural gas company to enter private property is to seek the permission of the landowner by providing notice of an inspection not more than fifteen days prior to the proposed inspection. Section 56-49.01(C) addresses the potential problem of a landowner that fails to respond to the request for permission to enter or who denies the natural gas company the right to enter by providing a mechanism for such company to notify the landowner of its intent to enter upon the property.³

I also note that § 56-49.01(D) provides that entry onto private land pursuant to § 56-49.01 “shall not be deemed a trespass.” Section 56-49.01(D) would be meaningless should a natural gas company be required to have the explicit permission of a landowner to enter onto private land. An important rule of statutory construction is that “every part of a statute is presumed to have some effect and no part will be considered meaningless unless absolutely necessary.”⁴ Thus, § 56-49.01(D) confirms that entry onto private land by a natural gas company without permission to enter is authorized as long as such company complies with the notice provisions of § 56-49.01.

Conclusion

Accordingly, it is my opinion that a natural gas company may enter onto the property of a landowner where such landowner has not responded to the notices given by the natural gas company, provided the company complies with the notice requirements in § 56-49.01.

¹Va. Real Estate Bd. v. Clay, 9 Va. App. 152, 157, 384 S.E. 622, 625 (1989) (quoting McDaniel v. Commonwealth, 199 Va. 287, 292, 99 S.E.2d 623, 627 (1957)) (citation omitted).

²See Commonwealth v. Jones, 194 Va. 727, 731, 74 S.E.2d 817, 820 (1953) (noting that to derive true purpose of act, “statute should be construed so as to give effect to its component parts.”).

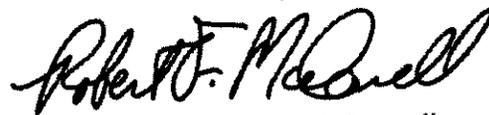
³The purpose of § 56-49.01 is to “provide[] interstate natural gas companies with the same limited right of entry for survey and study purposes that is granted to intrastate natural gas companies.” See 2004 S.B. 663, Fiscal Impact Statement (enrolled) (Mar. 25, 2004), available at <http://leg1.state.va.us/cgi-bin/legp504.exe?041+oth+SB663FER171+PDF>.

⁴Sansom v. Bd. of Supvrs., 257 Va. 589, 595, 514 S.E.2d 345, 349 (1999) (quoting Hubbard v. Henrico Ltd. P’ship, 255 Va. 335, 340, 497 S.E.2d 335, 338 (1998)), quoted in 2000 Op. Va. Att’y Gen. 117, 118.

The Honorable Frank W. Wagner
August 24, 2006
Page 3

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, reading "Robert F. McDonnell". The signature is written in a cursive style with a large, prominent initial "R".

Robert F. McDonnell

1:875; 1:941/06-064