



COMMONWEALTH of VIRGINIA

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May 5, 2008

The Honorable H. Morgan Griffith
Member, House of Delegates
P.O. Box 1250
Salem, Virginia 24153

Dear Delegate Griffith:

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 § 18.2-270.2 requires the Commission on the Virginia Alcohol Safety Action Program to adopt regulations pursuant to the Administrative Process Act¹ that govern the certification of ignition interlock systems. Further, you ask whether § 18.2-270.2 requires the Commission, in adopting such regulations, to allow any ignition interlock system that meets the certification requirements regardless of the vendor. In other words, you ask whether such regulations must provide for the possibility of multiple vendors of ignition interlock systems when such vendors' systems meet the certification requirements of the Commission.

Response

It is my opinion that the Commission on the Virginia Alcohol Safety Action Program is required to adopt regulations pursuant to the Administrative Process Act to govern the certification of ignition interlock systems. It further is my opinion that any regulatory scheme must allow for multiple vendors of ignition interlock systems if in fact their systems meet such certification requirements.

Background

You relate that the Commission on the Virginia Alcohol Safety Action Program (VASAP)² ("Commission") currently does not have regulations governing ignition interlock systems and services in Virginia. Further, you note that the Commission has selected one vendor through a request for proposal ("RFP") to provide such services.³ You note that a similar RFP in 2007 to solicit bids may result in the selection of two or more vendors. Therefore, you seek clarification regarding the adoption of regulations to govern this process.

¹See VA. CODE ANN. tit. 2.2, ch. 40, §§ 2.2-4000 to 2.2-4031 (2005 & Supp. 2007).

²See VA. CODE ANN. § 18.2-271.2(A) (Supp. 2007) (establishing Commission on VASAP in legislative branch of Commonwealth).

³The materials accompanying your request relate that the current vendor scheme evolved from a 2003 request for proposal that resulted in a single vendor being selected to provide ignition interlock system services throughout the Commonwealth.

Applicable Law and Discussion

Section 18.2-270.2(A) provides that:

The Executive Director of the Commission on VASAP or his designee shall, pursuant to approval by the Commission, certify ignition interlock systems for use in this Commonwealth and adopt *regulations* and forms for the installation, maintenance and certification of such ignition interlock systems. [Emphasis added.]

The General Assembly has directed the Executive Director or his designee to adopt regulations governing ignition interlock systems subject to approval by the Commission. The Administrative Process Act (“APA”) requires “any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases”⁴ and to provide notice and public comment procedures for the enactment of regulations.⁵

The Commission is a “unit of state government” in the legislative branch.⁶ I am not aware of any exemption from APA requirements for the Commission.⁷ Entities that are exempt are expressly enumerated by statute, and the Commission is not one of them.⁸ It is 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.”⁹ It is unnecessary to resort to any rules of statutory construction when the language of a statute is unambiguous.¹⁰

You relate that the Commission currently does not have regulations on this subject that have been adopted pursuant to the Administrative Process Act. I must conclude that the Commission is required to promulgate such regulations pursuant to the APA.

In adopting regulations, you ask whether § 18.2-270.2 requires the Commission to allow any ignition interlock system that meets certification requirements regardless of the vendor. Specifically, you ask whether the regulations must provide for multiple vendors of ignition interlock systems provided such systems meet the Commission’s certification requirements.

The final paragraph of § 18.2-270.2(A) provides that:

The Commission shall publish a list of certified ignition interlock *systems* and shall ensure that such systems are available throughout the Commonwealth. The local alcohol

⁴ See § 2.2-4001 (Supp. 2007) (defining “agency”).

⁵ See § 2.2-4007.01 (Supp. 2007); 1996 Op. Va. Att’y Gen. 217, 218 (citing § 9-6.14:7.1, predecessor statute to § 2.2-4007.01).

⁶ See § 18.2-271.2(A) (establishing Commission in legislative branch of Commonwealth); see also Virginia General Assembly website, “More Legislative Agencies,” available at http://legis.state.va.us/1_home/more_agencies.html (listing Commission on VASAP as state agency)..

⁷ See, generally, § 2.2-4002 for exemptions from APA.

⁸ *Id.*

⁹ Temple v. Petersburg, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944).

¹⁰ See 1996 Op. Va. Att’y Gen., *supra* note 5, at 218.

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safety action program shall make the list available to eligible offenders, who shall have the responsibility and authority to choose which certified ignition interlock company will supply the offender's equipment. A manufacturer or distributor of an ignition interlock system that seeks to sell or lease the ignition interlock system to persons subject to the provisions of § 18.2-270.1 shall pay the reasonable costs of obtaining the required certification, as set forth by the Commission. [Emphasis added.]

This provision clearly indicates an intention that offenders would have a choice of certified ignition interlock companies. The Commission, in determining which systems and companies to certify, is required to "ensure that such systems are available throughout the Commonwealth."¹¹ The proposed 2008 RFP should follow regulations established pursuant to the APA and provide for the possibility of multiple vendors.

Conclusion

Accordingly, it is my opinion that the Commission on the Virginia Alcohol Safety Action Program is required to adopt regulations pursuant to the Administrative Process Act to govern the certification of ignition interlock systems. It further is my opinion that any regulatory scheme must allow for multiple vendors of ignition interlock systems if in fact their systems meet such certification requirements.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

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¹¹Section 18.2-270.2(A) (2004).