



COMMONWEALTH of VIRGINIA

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October 30, 2008

The Honorable Harry B. Blevins
Member, Senate of Virginia
P.O. Box 16207
Chesapeake, Virginia 23328

Dear Senator Blevins:

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 juvenile probation and parole officers, as described § 16.1-237, are “law-enforcement officers” for purposes of the Virginia Law Officers’ Retirement System.

Response

It is my opinion that the probation and parole officers described in § 16.1-237 are not “law-enforcement officers” for purposes of the Virginia Law Officers’ Retirement System.

Applicable Law and Discussion

Chapter 2.1 of Title 51.1, §§ 51.1-211 through 51.1-221, governs the Virginia Law Officers’ Retirement System (the “Retirement System”). Section 51.1-213 mandates compulsory membership in the Retirement System “for all employees.” Section 51.1-212 defines the term “employee,” which governs the law-enforcement officers¹ eligible to participate in the Retirement System, as

any (i) member of the Capitol Police Force as described in § 30-34.2:1, (ii) campus police officer appointed under the provisions of Chapter 17 (§ 23-232 et seq.) of Title 23, (iii) conservation police officer in the Department of Game and Inland Fisheries appointed under the provisions of Chapter 2 (§ 29.1-200 et seq.) of Title 29.1, (iv) special agent of the Department of Alcoholic Beverage Control appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.), (v) law-enforcement officer employed by the Virginia Marine Resources Commission as described in § 9.1-101, (vi) correctional officer as the term is defined in § 53.1-1, and including correctional officers employed at a juvenile correction facility as the term is defined in § 66-25.3, (vii) any parole officer appointed pursuant to § 53.1-143, and (viii) any commercial vehicle enforcement officer employed by the Department of State Police.

¹I note that state police officers have a separate retirement fund. See VA. CODE ANN. §§ 51.1-200 to 51.1-210 (2005 & Supp. 2008).

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The juvenile probation and parole officers you describe are selected pursuant to § 16.1-235 and have the powers, duties, and functions set forth in § 16.1-237. You indicate that the Director of the Court Services Unit in one of the Juvenile and Domestic Relations Courts questions whether such probation and parole officers should be included in the Virginia Law Officers' Retirement System.

When a statute is clear and unambiguous, the rules of statutory construction dictate that the statute is interpreted according to its plain language.² When a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.³ Where a statute specifies certain things, the intention to exclude that which is not specified may be inferred.⁴ Employees qualified to participate in the Retirement System specifically are defined in § 51.1-212. Because juvenile probation and parole officers are not included in the statutory definition of an "employee," I must conclude that the General Assembly did not intend for such officers to be included in the Retirement System.⁵

Conclusion

Accordingly, it is my opinion that the probation and parole officers described in § 16.1-237 are not "law-enforcement officers" for purposes of the Virginia Law Officers' Retirement System.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

1:875; 1:941/08-075

²Va. Polytechnic Inst. & State Univ. v. Interactive Return Serv., Inc., 271 Va. 304, 309, 626 S.E.2d 436, 438 (2006).

³See 2A NORMAN J. SINGER & J.D. SHAMBIE SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 47:23 (7th ed. 2007) (explaining maxim of statutory construction, "*expressio unius est exclusio alterius*"); Op. Va. Att'y Gen.: 2002 at 117, 118; 1992 at 145, 146; 1989 at 252, 253; 1980-1981 at 209, 209-10.

⁴See *id.*; 1999 Op. Va. Att'y Gen. 215, 217-18.

⁵Had the General Assembly intended that juvenile probation and parole officers be included in the Retirement System, it could have so specified. See, e.g., 2005 Op. Va. Att'y Gen. 78, 79 n.6 and opinions cited therein (noting that when General Assembly intends statute to impose requirements, it knows how to express its intention).