



COMMONWEALTH of VIRGINIA

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February 11, 2009

The Honorable David L. Bulova
Member, House of Delegates
P.O. Box 406
Richmond, Virginia 23218

The Honorable Mark D. Sickles
Member, House of Delegates
P.O. Box 406
Richmond, Virginia 23218

Dear Delegate Bulova and Delegate Sickles:

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 Fairfax County is subject to §§ 46.2-1222.1 and 46.2-1224(B)-(C) regarding regulation of parking on roads in the secondary systems of highways or whether it may exercise the authority provided by § 46.2-1222.

Response

It is my opinion that Fairfax County may exercise the specific authority provided by § 46.2-1222 to regulate parking on roads in the secondary system of highways within its boundaries. The County is not limited by §§ 46.2-1222.1 and 46.2-1224(B)-(C) in the exercise of such authority.

Background

You advise that Fairfax County officials are hesitant to exercise the authority provided by § 46.2-1222 to regulate parking on secondary roads within the County. You relate that such officials are concerned that their authority is limited by §§ 46.2-1222.1 and 46.2-1224(B)-(C). You note that the County operates under the urban county executive form of government and has a population in excess of 500,000; thus, the County may meet the eligibility guidelines of §§ 46.2-1222.1 and 46.2-1224(B)-(C).

Applicable Law and Discussion

Section 46.2-1222 provides, in part, that:

Notwithstanding any other provisions of law, the governing bod[y] of Fairfax ... Count[y] by ordinance may (i) restrict or prohibit parking on any part of the state secondary system of highways within their respective boundaries, (ii) provide for

classification of vehicles for the purpose of these restrictions and prohibitions, and (iii) provide that the violation of the ordinance shall constitute a traffic infraction and prescribe penalties therefor.

The express language of § 46.2-1222 specifically applies to Fairfax County and grants authority to the County to enact an ordinance regulating parking on secondary roads within its boundaries.

On the other hand, § 46.2-1222.1(A) permits “[a]ny county operating under the urban county executive form of government” to regulate or prohibit the parking of watercraft, boat trailers, motor homes, and camping trailers on any public highway. Additionally, § 46.2-1222.1(B) permits any such county to regulate or prohibit parking of trailers or semitrailers, vehicles with three or more axles, vehicles with a gross vehicle weight rating of 12,000 pounds or more, vehicles designed to transport sixteen or more passengers, and vehicles being used to transport hazardous materials “on any public highway in any residence district.” Thus, § 46.2-1222.1 applies to any county with an urban county executive form of government and has a more general application than the authority contained in § 46.2-1222, which applies specifically to Fairfax County.¹

Likewise § 46.2-1224(B) authorizes “counties with populations greater than 500,000” to regulate by ordinance the parking of certain “commercial vehicles”² on the highways in areas zoned for residential use. Further, § 46.2-1224(C) authorizes “counties with populations greater than 500,000” to regulate the parking of certain commercial vehicles³ in areas zoned for commercial or industrial use on highways that “do not comply with the current geometric design standards of the Virginia Department of Transportation Road Design Manual or Subdivision Street Requirements.”⁴ Again, § 46.2-1224 provides a more general application than § 46.2-1222.

Generally, when there is an apparent conflict between several different statutes, the more specific statute prevails.⁵ An accepted principle of statutory construction is that when it is not clear which of a number of statutes is applicable, the more specific prevails over the more general.⁶ In this situation, § 46.2-1222 specifically names and authorizes Fairfax County to regulate parking of any type of vehicle on the secondary roads lying within its jurisdictional boundaries. Section 46.2-1222 specifically addresses parking on the state secondary system of highways as opposed to “highways” generally. While § 46.2-1222.1 does provide authority for counties operating under the urban county executive form of government or the county manager plan of government to regulate parking of certain vehicles on public highways within their boundaries, it is not meant to limit the operation of, or the authority granted by,

¹The fact that Fairfax County is the only county in Virginia that presently utilizes the urban county executive form of government does not alter this conclusion.

²See VA. CODE ANN. § 46.2-1224(B) (Supp. 2008) (defining “commercial vehicles” for purposes of § 46.2-1224).

³See *id.*

⁴See § 46.2-1224(B)-(C) (2008).

⁵See *Lynchburg Div. of Soc. Srvs. v Cook*, 276 Va. 465, 480-81, 666 S.E.2d 361, 368-69 (2008); see also *Alliance to Save Mattaponi v. Commonwealth Dep’t of Env’tl. Quality ex rel. State Water Control Bd.*, 270 Va. 423, 439-40, 621 S.E.2d 78, 87 (2005).

⁶See 2003 Op. Va. Att’y. Gen. 6, 9.

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§ 46.2-1222 as applied to secondary highways in Fairfax County. Likewise, while § 46.2-1224(B)-(C) provides additional authority for Fairfax County to regulate parking on highways in certain zoning districts within its boundaries, it also does not limit the operation of § 46.2-1222. Therefore, any conflict between § 46.2-1222 and §§ 46.2-1222.1 and 46.2-1224(B)-(C) would be resolved in favor of § 46.2-1222, the statute specific to Fairfax County, which applies notwithstanding any other provision of law.

Conclusion

Accordingly, it is my opinion that Fairfax County may exercise the specific authority provided by § 46.2-1222 to regulate parking on roads in the secondary system of highways within its boundaries. The County is not limited by §§ 46.2-1222.1 and 46.2-1224(B)-(C) in the exercise of such authority

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in cursive script that reads "Robert F. McDonnell". The signature is written in black ink and is centered on the page.

Robert F. McDonnell