



# **COMMONWEALTH of VIRGINIA**

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April 1, 2009

The Honorable Richard L. Saslaw  
Member, Senate of Virginia  
P.O. Box 1856  
Springfield, Virginia 22151-0856

The Honorable Robert D. Hull  
Member, House of Delegates  
P.O. Box 2331  
Falls Church, Virginia 22042

The Honorable James M. Scott  
Member, House of Delegates  
P.O. Box 359  
Merrifield, Virginia 22116-0359

Dear Senator Saslaw and Delegates Hull and Scott

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 § 46.2-1209 authorizes a county to prohibit persons from parking and leaving vehicles “unattended” on public residential streets. If so, you inquire concerning the appropriate legal definition of the word “unattended” as applied to such local restriction.

## **Response**

It is my opinion that § 46.2-1209 does not authorize a county to enact an ordinance prohibiting persons from parking and leaving vehicles “unattended” on public residential streets. However, pursuant to § 46.2-1213 a county may enact ordinances to provide for removal of certain vehicles that are: (1) left unattended on public highways or other public property that constitute a traffic hazard; (2) illegally parked; (3) left unattended for more than ten days on public property; or (4) immobilized on a public roadway by weather or other emergency conditions. It further is my opinion that pursuant to § 46.2-1220 a county may enact an ordinance to regulate parking, stopping, and standing of vehicles within its jurisdictional limits, subject to limitations imposed in other sections of Article 3, Chapter 12 of Title 46.2. Finally, it is my opinion that the term “unattended” should be given its ordinary meaning, “lacking a guard, escort, caretaker, or other watcher” or “unaccompanied.”

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## **Background**

You suggest that § 46.2-1209 provides enabling authority for “counties, cities, and towns to enact local ordinances providing for the removal of certain motor vehicles, trailers, semitrailers, and parts or combinations thereof that are left unattended.” You also note that in Fairfax County persons sometimes park their motor vehicles and trailers on public residential streets for long periods and that while these vehicles bear valid inspection decals and current license plates, the vehicles are rarely moved or operated. You note that this often generates complaints from neighbors who feel that the owners of these vehicles have “expropriated a public street and made it into a storage facility for their private vehicles.”

## **Applicable Law and Discussion**

The power of a local governing body, unlike that of the General Assembly, “must be exercised pursuant to an express grant”<sup>1</sup> because the powers of a county “are limited to those conferred expressly or by necessary implication.”<sup>2</sup> “If the power cannot be found, the inquiry is at an end.”<sup>3</sup> The Dillon Rule requires a narrow interpretation of all powers conferred on local governments since they are delegated powers.<sup>4</sup> Therefore, any doubt as to the existence of power must be resolved against the locality.<sup>5</sup>

Article 2, Chapter 12 of Title 46.2, §§ 46.2-1209 through 46.2-1215, addresses removal of immobilized and unattended vehicles. Section 46.2-1209 provides, in relevant part, that:

*No person shall leave any motor vehicle, trailer, semitrailer, or part or combination thereof immobilized or unattended on or adjacent to any roadway if it constitutes a hazard in the use of the highway. No person shall leave any immobilized or unattended motor vehicle, trailer, semitrailer, or part or combination thereof longer than twenty-four hours on or adjacent to any roadway outside the corporate limits of any city or town, or on an interstate highway or limited access highway, expressway, or parkway inside the corporate limits of any city or town. Any law-enforcement officer may remove it or have it removed to a storage area for safekeeping and shall report the removal to the Department and to the owner of the motor vehicle, trailer, semitrailer, or combination as promptly as possible. Before obtaining possession of the motor vehicle, trailer, semitrailer, or combination, its owner or successor in interest to ownership shall pay to the parties entitled thereto all costs incidental to its removal or storage. In any violation of this section the owner of such motor vehicle, trailer, semitrailer or part or combination of a motor vehicle, trailer, or semitrailer, shall be presumed to be the person committing the violation; however, this presumption shall be rebuttable by competent evidence. [Emphasis added.]*

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<sup>1</sup>Nat'l Realty Corp. v. Va. Beach, 209 Va. 172, 175, 163 S.E.2d 154, 156 (1968).

<sup>2</sup>Bd. of Supvrs. v. Horne, 216 Va. 113, 117, 215 S.E.2d 453, 455 (1975) (noting corollary to Dillon Rule).

<sup>3</sup>Commonwealth v. County Bd., 217 Va. 558, 575, 232 S.E.2d 30, 41 (1977).

<sup>4</sup>See Bd. of Supvrs. v. Countryside Invest. Co., 258 Va. 497, 504-05, 522 S.E.2d 610, 613-14 (1999) (holding that county board of supervisors does not have unfettered authority to decide what matters to include in subdivision ordinance; must include requirements mandated by Land Subdivision and Development Act and may include optional provisions contained in act); Op. Va. Att'y Gen.: 2002 at 77, 78; 1974-1975 at 403, 405.

<sup>5</sup>2A EUGENE MCQUILLEN, THE LAW OF MUNICIPAL CORPORATIONS § 10.19, at 369 (3d ed. 1996); see also Op. Va. Att'y Gen.: 2002 at 83, 84; 2000 at 75, 76.

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Section 46.2-1209 merely provides authority for law-enforcement officers to remove or arrange for removal of the offending vehicles from specific roadways and highways, and does not authorize a county to enact an ordinance regarding such removal.

Although § 46.2-1209 does not authorize a county to adopt an ordinance to remove such unattended vehicles, the inquiry is not at an end. I note that § 46.2-1213(A) authorizes counties, cities, and towns to enact ordinances to provide for the removal of immobilized or unattended motor vehicles in certain instances:

A. The governing body of any county, city, or town may by ordinance provide for the removal for safekeeping of motor vehicles, trailers, semitrailers, or parts thereof to a storage area if:

1. It is left unattended on a public highway or other public property and constitutes a traffic hazard;
2. It is illegally parked;
3. It is left unattended for more than ten days either on public property or on private property without the permission of the property owner, lessee, or occupant;
4. It is immobilized on a public roadway by weather conditions or other emergency situation.

B. Removal shall be carried out by or under the direction of a law-enforcement officer. The ordinance, however, shall not authorize removal of motor vehicles, trailers, semitrailers, and parts thereof from private property without the written request of the owner, lessee, or occupant of the premises. The ordinance may also provide that the person at whose request the motor vehicle, trailer, semitrailer, or part of a motor vehicle, trailer, or semitrailer is removed from private property shall indemnify the county, city, or town against any loss or expense incurred by reason of removal, storage, or sale thereof. Any such ordinance may also provide that it shall be presumed that such motor vehicle, trailer, semitrailer, or part thereof is abandoned if it (i) lacks either a current license plate; or a current county, city or town license plate or sticker; or a valid state safety inspection certificate or sticker; and (ii) it has been in a specific location for four days without being moved. As promptly as possible, each removal shall be reported to a local governmental office to be designated in the ordinance and to the owner of the motor vehicle, trailer, or semitrailer. Before obtaining possession of the motor vehicle, trailer, semitrailer, or part thereof, the owner shall pay to the parties entitled thereto all costs incidental to its removal and storage and locating the owner. If the owner fails or refuses to pay the cost or if his identity or whereabouts is unknown and unascertainable after a diligent search has been made, and after notice to him at his last known address and to the holder of any lien of record with the office of the Department against the motor vehicle, trailer, semitrailer, or part of a motor vehicle, trailer, or semitrailer, the vehicle shall be treated as an abandoned vehicle under the provisions of Article 1 (§ 46.2-1200 et seq.) of [Chapter 12].

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Thus, 46.2-1213(A) specifically authorizes a county to enact an ordinance to remove vehicles from public highways or other public property in certain situations, *i.e.*, when such unattended vehicles cause traffic hazards, are illegally parked, or are left unattended for more than ten days. Additionally, a county may enact an ordinance providing for removal of vehicles immobilized on a public roadway due to weather or other emergency conditions.

Additional statutes governing the regulation of parking are set forth in Article 3, Chapter 12 of Title 46.2, §§ 46.2-1216 through 46.2-1239 (“Article 3”). Article 3 provides localities with authority to enact ordinances regulating parking. Specifically, § 46.2-1220 provides that the “governing body of any county, city, or town may by ordinance provide for the regulation of parking, stopping, and standing of vehicles within its limits.” Section 46.2-1220 further provides that such an ordinance may “determine the length of time a vehicle may be parked, and designate a department, official, or employee of the local government to administer the provisions of the ordinance.” While § 46.2-1220 grants general authority to the governing bodies of counties, cities, and towns to enact ordinances relating to parking, Article 3 also provides additional authority, restrictions, or requirements that regulate parking that are based on various factors, including the locality, the nature or location of the roads, and the type of vehicle involved.<sup>6</sup> It is well established that statutes should not be read in isolation.<sup>7</sup> Statutes relating to the same subject should be considered *in pari materia*.<sup>8</sup> Moreover, statutes dealing with the same subject matter should be construed together to achieve a harmonious result, resolving conflicts to give effect to legislative intent.<sup>9</sup> Thus, while § 46.2-1220 provides general authority for localities to regulate parking, Article 3 must be read as a whole, to determine the extent to which a locality may regulate parking in residential districts or areas.

Section 46.2-1213(A) is the statute that governs the circumstances under which a locality may enact an ordinance providing for the removal of unattended vehicles left on public streets in the enumerated situations. However, such removal must “be carried out by or under the direction of a law-enforcement officer.”<sup>10</sup> On the other hand, § 46.2-1220 provides broad authority for a county to enact

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<sup>6</sup>See also, *e.g.*, VA. CODE ANN. § 46.2-1222 (2005) (providing that “governing bodies of Fairfax, James City, Loudoun, Montgomery, Prince George, Prince William, and York counties by ordinance may (i) restrict or prohibit parking on any part of the state secondary system of highways within their respective boundaries; [and] (ii) provide for the classification of vehicles for the purpose of these restrictions and prohibitions”); § 46.2-1222.1(A)-(B) (2005) (providing that any county operating under urban county executive form of government or county manager plan of government and certain other adjacent localities may enact an ordinance to regulate or prohibit parking of certain vehicles on any public highway within their boundaries and parking of certain vehicles on public highways within residence districts).

<sup>7</sup>2B NORMAN J. SINGER & J.D. SHAMBIE SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 51:2 (West 7th ed. 2008); Op. Va. Att’y Gen.: 1999 at 22, 22; 1998 at 123, 124; *id.* at 19, 21; 1996 at 197, 198; 1995 at 146, 147; 1993 at 160, 162; *id.* at 135, 137; 1992 at 108, 112.

<sup>8</sup>See Prillaman v. Commonwealth, 199 Va. 401, 405-06, 100 S.E.2d 4, 7-8 (1957); 1996 Op. Va. Att’y Gen. 134, 135. “*In pari materia*” is the Latin phrase meaning “[o]n the same subject; relating to the same matter.” BLACK’S LAW DICTIONARY 807 (8th ed. 2004).

<sup>9</sup>See 2A SINGER & SINGER, *supra* note 7 at § 46:5 (West 7th ed. 2008); 2000 Op. Va. Att’y Gen. 182, 185.

<sup>10</sup>Section 46.2-1213(B) (2005).

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ordinances governing parking, including the length of time a vehicle may be parked, which authority is limited only to the extent dictated by other sections in Article 3. Therefore, a county may enact an ordinance governing parking, stopping, and standing of vehicles within its limits, which could include public residential streets, to the extent authorized in Article 3.

The inquiry then focuses upon the meaning of the term “unattended.” I find no statutory definition of the term “unattended.” When a particular word in a statute is not defined therein, it must be given its ordinary meaning.<sup>11</sup> The common or ordinary meaning of the word “unattended” is “lacking a guard, escort, caretaker, or other watcher” or “unaccompanied.”<sup>12</sup> The term “unattended” also may refer to the condition of being “neglected” or “not cared for.”<sup>13</sup> Such meaning could be attributed to the term when used in § 46.2-1213(A). However, the General Assembly, when referring to the condition of a vehicle in Title 46.2, utilizes other terms, such as “inoperable”<sup>14</sup> or “abandoned.”<sup>15</sup> Accordingly, it is my opinion that the term “unattended” as used in §§ 46.2-1209 and 46.2-1213(A) means “lacking a guard, escort, caretaker, or other watcher” or “unaccompanied.”

### Conclusion

Accordingly, it is my opinion that § 46.2-1209 does not authorize a county to enact an ordinance prohibiting persons from parking and leaving vehicles “unattended” on public residential streets. However, pursuant to § 46.2-1213 a county may enact ordinances to provide for removal of certain vehicles that are: (1) left unattended on public highways or other public property that constitute a traffic hazard; (2) illegally parked; (3) left unattended for more than ten days on public property; or (4) immobilized on a public roadway by weather or other emergency conditions. It further is my opinion that pursuant to § 46.2-1220 a county may enact an ordinance to regulate parking, stopping, and standing

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<sup>11</sup> See *McKeon v. Commonwealth*, 211 Va. 24, 27, 175 S.E.2d 282, 284 (1970).

<sup>12</sup> WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 2482 (1993).

<sup>13</sup> *Id.*

<sup>14</sup> See, e.g., § 46.2-734(C) (2005) (providing that hobbyist may store unlicensed operable or inoperable vehicles on his property with certain restrictions); § 46.2-1200 (2005) (including term “inoperable” within definition of “abandoned motor vehicle”); see also VA. CODE ANN. § 15.2-905 (2008) (providing that as used in this section “an ‘inoperable motor vehicle’ means any motor vehicle, trailer or semitrailer which is not in operating condition; or does not display valid license plates; or does not display an inspection decal that is valid or does display an inspection decal that has been expired for more than 60 days”).

<sup>15</sup> “‘Abandoned motor vehicle’ means a motor vehicle, trailer, or semitrailer or part of a motor vehicle, trailer, or semitrailer that:

“1. Is inoperable and is left unattended on public property, other than an interstate highway or primary highway, for more than forty-eight hours, or

“2. Has remained illegally on public property for more than forty-eight hours, or

“3. Has remained for more than forty-eight hours on private property without the consent of the property’s owner, regardless of whether it was brought onto the private property with the consent of the owner or person in control of the private property, or

“4. Is inoperable, left unattended, or both, on an interstate highway, or

“5. Is inoperable, left unattended, or both, on the shoulder of a primary highway.”

Section 46.2-1200.

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of vehicles within its jurisdictional limits, subject to limitations imposed in other sections of Article 3, Chapter 12 of Title 46.2. Finally, it is my opinion that the term “unattended” should be given its ordinary meaning, “lacking a guard, escort, caretaker, or other watcher” or “unaccompanied.”

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, appearing to read "W. C. Mims". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

William C. Mims