



COMMONWEALTH of VIRGINIA

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The Honorable Robert G. Marshall
Member, Virginia House of Delegates
Post Office Box 421
Manassas, Virginia 20108-0421

Dear Delegate Marshall:

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 inquire whether § 3-6.03 of House Bill 1500 is consistent with the requirements of Article IV, § 12 of the Constitution of Virginia.

Response

It is my opinion that the enactment of § 3-6.03 of House Bill 1500 is consistent with Article IV, § 12 of the Constitution of Virginia.

Applicable Law and Discussion

Section 18.2-270.01(A) imposes a \$50 fee for persons convicted of certain crimes. It provides that

[T]he court shall order any person convicted of a violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, 18.2-266.1 or § 46.2-341.24 who has been convicted previously of one or more violations of any of those sections or any ordinance, any law of another state, or any law of the United States substantially similar to the provisions of those sections within 10 years of the date of the current offense to pay \$50 to the Trauma Center Fund for the purpose of defraying the costs of providing emergency medical care to victims of automobile accidents attributable to alcohol or drug use.

Section 3-6.03 of the 2011 House Bill 1500, the Appropriations Act, provides that “[n]otwithstanding § 18.2-270.01 of the Code of Virginia, the driver’s license reinstatement fee payable to the Trauma Center Fund shall be \$100.”

In reviewing the constitutionality of laws duly enacted by the General Assembly,

[e]very presumption is made in favor of the constitutionality of an act of the legislature. A reasonable doubt as to its constitutionality must be solved in favor of the validity of the

law . . . and it is only in cases where the statute in question is plainly repugnant to some provisions of the Constitution that the courts can declare it to be null and void.^[1]

The second clause of Article IV, § 12 of the Virginia Constitution specifies that no law shall “be revived or amended with reference to its title, but the act revived or the section amended shall be reenacted and published at length.” In examining a Michigan constitutional provision similar to Virginia’s Article IV, § 12,² Justice Cooley of the Supreme Court of Michigan explained the purpose behind the adoption of such clauses:

The mischief designed to be remedied was the enactment of amendatory statutes in terms so blind that legislators themselves were sometimes deceived in regard to their effect, and the public, from the difficulty in making the necessary examination and comparison, failed to become apprised of the changes made in the laws. An amendatory act which purported only to insert certain words, or to substitute one phrase for another in an act or section which was only referred to but not republished, was well calculated to mislead the careless as to its effect, and was, perhaps sometimes drawn in that form for that express purpose. Endless confusion was introduced into the law, and the constitution wisely prohibited such legislation.^[3]

The Supreme Court of Virginia has noted that the “single object” rule of Article IV, § 12 is “to be liberally construed and treated, so as to uphold the law, if practicable,” and the same logic applies to the second clause of Article IV, § 12.⁴ Article IV, § 12 is not a substantive modification on the power of the General Assembly. Rather, it imposes a procedural requirement, when it applies.

Section 3-6.03 plainly does not “revive” a law. The question then is whether it “amends” a particular law. As you note, by its plain text, § 3-6.03 does not purport to amend § 18.2-270.01(A). The language in the budget bill, however, unquestionably does have an *impact* on the application of § 18.2-270.01(A) by effectively raising the fee from \$50 to \$100. The net *effect* of § 3-6.03 is to neutralize the \$50 fee imposed in § 18.2-270.01(A) and substitute for it a higher fee. To fall within the constitutional prohibition, however, the statute must literally amend a specific Code provision.

One could argue that, by displacing the fee imposed in § 18.2-270.01(A), and replacing it with a different fee, § 3-6.03 violates the *spirit* animating Article IV, § 12. Citizens reading § 18.2-270.01(A) may conclude that the fee is \$50, when, in fact, a separate enactment makes the fee higher. Under existing case law, however, courts have allowed legislatures to enact a separate statute that neutralizes or modifies another law, so long as it does not literally amend the actual text of the previously enacted statute, in this case § 18.2-270.01(A).

Beale v. Pankey,⁵ illustrates the difference between what is prohibited and the scenario at issue here. In *Beale*, the Supreme Court of Virginia held that the General Assembly had infringed upon the predecessor to Article IV, § 12 when it voted to pass “[a]n act to amend and re-enact” a prior statute incorporating the town of Pamplin City. The act at issue, however, did so without republishing the prior

¹ *City of Charlottesville v. DeHaan*, 228 Va. 578, 584, 323 S.E.2d 131, 133 (1984) (quoting *Ex Parte Settle*, 114 Va. 715, 719, 77 S.E. 469, 497 (1913)).

² See MICH. CONST. art. IV, § 25. The provision at issue was amended to its current form, but the amendment does not affect the analysis here.

³ *People ex rel. Drake v. Mahaney*, 13 Mich. 481, 497 (1885).

⁴ *Commonwealth v. Brown*, 91 Va. 762, 772, 21 S.E. 357, 360 (1895).

⁵ 107 Va. 215, 219, 57 S.E. 661, 662 (1907).

statute. In other words, the act expressly set about to amend and re-enact a specific prior law, and ran afoul of Article IV, § 12 when it did not republish the entire law being amended. It did not, as here, enact a separate law that has the effect of altering a separate provision of the Code.

One reason for the broad latitude courts have afforded to legislatures in this area is a practical concern: if the General Assembly were required to “publish at length” a statute that is greatly impacted by another statute, bills would become unwieldy and voluminous. As the Supreme Court of Illinois remarked,

[a]ny new law may, in a sense, be said to change the prior system of laws, and wherever there is a conflict between two acts, the rule is that the later act prevails, and if not amendatory in form it is not within the prohibition of the constitution. Were it to be held that whenever a new act is passed all prior acts indirectly modified or affected by it shall be re-enacted and published at length, such rule would require that at each session of the legislature a large part of the entire statute must be re-published, some parts many times.^[6]

Finally, I note that an abundance of persuasive authority from other jurisdictions supports the conclusion that the enactment of § 3-6.03 does not violate Article IV, § 12, because § 3-6.03 is not expressly amendatory of § 18.2-270.01(A).⁷ In other words, to fall within the Constitutional prohibition, the General Assembly would have had to modify the actual text of § 18.2-270.01(A) without republishing it “at length.”

Conclusion

Accordingly, it is my opinion that the enactment of § 3-6.03 of House Bill 1500 is consistent with Article IV, § 12 of the Constitution of Virginia.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
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⁶ *Illinois v. Milauskas*, 149 N.E. 294, 297 (Ill. 1925). *See also* *Evernham v. Hulit*, 45 N.J.L. 53, 56-57 (N.J. 1883) (noting the “most embarrassing results” that would flow from a requirement that “the legislature can pass no act changing any part of the statute law in force in this state without re-enacting at length every section in the whole body of existing statutes that might be affected by the new legislation.”).

⁷ *See Ex Parte Pollard*, 40 Ala. 77, 100 (1866) (the Constitutional “prohibition is directed against the practice of amending or revising laws by additions, or other alterations, which without the presence of the original are usually unintelligible. If a law is in itself complete and intelligible, and original in form, it does not fall within the meaning and spirit of the Constitution.”). *See also* *Milauskas*, 149 N.E. at 296-97; *Mahaney*, 13 Mich. at 496-97; *Evernham*, 45 N.J.L. at 55-60; *Home Ins. Co. v. Taxing Dist.*, 72 Tenn. 644 (1880); *Snyder v. Compton*, 28 S.W. 1061 (Tex. 1894); *Spokane Grain & Fuel Co. v. Lyttaker*, 109 P. 316 (Wash. 1910).