



COMMONWEALTH of VIRGINIA

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The Honorable Brenda L. Pogge
Member, House of Delegates
Post Office Box 1386
Yorktown, Virginia 23692

Dear Delegate Pogge:

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 aquaculture is considered an agricultural operation for purposes of the Virginia Right to Farm Act.¹

Response

It is my opinion that aquaculture does not constitute an agricultural operation under the Virginia Right to Farm Act.

Applicable Law and Discussion

The Virginia Right to Farm Act (the "Act") is intended to "limit the circumstances under which agricultural operations may be deemed to be a nuisance"² by restricting localities' ability to "unreasonably restrict or regulate farm structures or farming and forestry practices in an agricultural district or classification" through zoning ordinances.³

The Act defines "agricultural operation" as "any operation devoted to the bona fide production of crops, or animals, or fowl including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silviculture activity."⁴

¹ VA. CODE ANN. §§ 3.2-300 through 3.2-302 (2008).

² Section 3.2-301 (2008).

³ *Id.*

⁴ Section 3.2-300 (2008).

When statutory language is clear and unambiguous, the plain meaning of the language used should determine the legislative intent, unless such a literal construction would lead to a manifest absurdity.⁵ Also, related statutes must be considered together in construing their various material provisions.⁶ Finally, statutes must be construed to give meaning to all of the words enacted by the General Assembly, and thus, interpretations that render statutory language superfluous are to be avoided.⁷

Aquaculture is defined as “the propagation, rearing, enhancement, and harvest of aquatic organisms in controlled or selected environments, conducted in marine, estuarine, brackish, or fresh water.”⁸ “Aquatic organisms” in turn are “any species or hybrid of aquatic *animal* or plant[.]”⁹

Although the Virginia Right to Farm Act does not define the word “animal,” it is clear that “animal” can be defined as to include virtually all living creatures, including the fish and other non-plant organisms that are part and parcel of aquaculture. For example, *The American Heritage Dictionary, New College Edition*, defines “animal” in the first instance as meaning “[a]ny organism of the kingdom Animalia, distinguished from plants by certain typical characteristics, such as the power of locomotion, fixed structure and limited growth, and nonphotosynthetic metabolism.”¹⁰ Similarly, another provision of the Code¹¹ defines “animal” as “any organism of the kingdom Animalia, other than a human being.”¹² Accordingly, in certain contexts, the word “animal” is broad enough to encompass at least some of the products of aquaculture.

While in certain circumstances “animal” may be so construed, the relevant analysis necessary to answer your inquiry is whether such a construction is possible given the language of the Right to Farm Act, for “[t]he meaning of a word . . . takes color and expression from the purport of the entire phrase of which it is a part, and it must be construed so as to harmonize with the context as a whole.”¹³ Reading the

⁵ See *HCA Health Servs. of Va., Inc. v. Levin*, 260 Va. 215, 220, 530 S.E.2d 417, 419-420 (2000). See also *Wright v. Commonwealth*, 278 Va. 754, 759, 685 S.E.2d 655, 657 (2009).

⁶ See *Colbert v. Commonwealth*, 47 Va. App. 390, 395, 624 S.E.2d 108, 110 (2006).

⁷ See *Cook v. Commonwealth*, 268 Va. 111, 114, 597 S.E.2d 84, 86 (2004).

⁸ Section 3.2-2600 (2008).

⁹ *Id.* (emphasis added).

¹⁰ THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, NEW COLLEGE EDITION 52 (1981).

¹¹ See *First Nat'l Bank of Richmond v. Holland*, 99 Va. 495, 504, 39 S.E. 126, 129-30 (1901) (examining various sections of Code and history of legislation to determine whether terms “goods or chattels” were intended to embrace “choses in action” and stating that the “Code is one act, prepared and adopted as such, and therefore in construing section 2414 we are not confined to the language of that section, but can look to other sections of the Code where the same terms are employed.”). See also 1975-76 Op. Va. Att’y Gen. 3, 4-5 (the statutory definition of law-enforcement officer, while limited for use in Chapter 16, Title 9 of the Code, “does provide assistance in defining the term ‘law-enforcement officer’ in other sections of the Code”).

¹² Section 3.2-5900 (2008). The express language of Section 3.2-5900, however, limits the application of its definition of “animal” and other terms to instances where the terms are “used in this subtitle . . .” Section 3.2-5900 is in Subtitle V of Title 3.2. The Right to Farm Act is not part of Subtitle V, but rather, is part of Subtitle I of Title 3.2.

¹³ *Kohlberg v. Va. Real Estate Comm’n*, 212 Va. 237, 239, 183 S.E.2d 170, 172 (1971) (explaining doctrine of *noscitur a sociis*, a canon of construction based on Latin phrase meaning “it is known by its associates,” BLACK’S LAW DICTIONARY 1084 (7th ed. 1999)). See also *Va. Beach v. Bd. of Supvrs.*, 246 Va. 233, 236-37, 435 S.E.2d 382, 384 (1993) (noting that words in statute are construed according to context in which they are used and by considering language used in statute and in other statutes dealing with closely related subjects).

language of the Right to Farm Act in its entirety leads to the conclusion that “animal” in the Act was not intended to encompass fish or other non-mammals.

Specifically, in the Right to Farm Act, the General Assembly did not exempt from certain local zoning actions only operations regarding “animals,” but rather, exempted operations related to “the bona fide production of . . . animals, or fowl”¹⁴ *The American Heritage Dictionary, New College Edition*, defines “fowl” as “[a]ny of various birds of the order Galliformes; especially the common, widely domesticated chicken, *Gallus gallus*.”¹⁵

Clearly, chickens and other fowl are part of the kingdom Animalia. Therefore, if the General Assembly intended for “animal” in the Right to Farm Act to include all organisms belonging to the kingdom Animalia, there would have been no need to add the phrase “or fowl” to the statute.¹⁶ To interpret “animal” to include all members of the kingdom Animalia renders the phrase “or fowl” superfluous, and thus, such a construction must be rejected if possible.¹⁷

Given basic dictionary definitions, alternative constructions for “animal” are possible. *The American Heritage Dictionary, New College Edition*, secondarily defines “animal” as “[a]ny such organism other than a human being; especially, a mammal.”¹⁸ Interpreting the word “animal” in the Right to Farm Act as including common barnyard animals (cows, pigs, horses, etc.) with a general limitation that such animals also be mammals is consistent with the secondary dictionary definition of “animal” and gives meaning to the General Assembly’s inclusion of the phrase “or fowl” in the Right to Farm Act. Accordingly, under the canons of statutory construction detailed above, this interpretation should be adopted.

Conclusion

Accordingly, it is my opinion that aquaculture does not constitute an agricultural operation under the Right to Farm Act.

With kindest regards, I am

Very truly yours,



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¹⁴ Section 3.2-300 (2008) (emphasis added).

¹⁵ THE AMERICAN HERITAGE DICTIONARY, *supra* note 10, at 520.

¹⁶ In fact, if the General Assembly wished to include the production of non-plant products of aquaculture within the Right to Farm Act’s exemption, it would only need to delete the phrase “or fowl” from the statute.

¹⁷ See *Cook*, 268 Va. at 114, 597 S.E.2d at 86.

¹⁸ THE AMERICAN HERITAGE DICTIONARY, *supra* note 10, at 52 (emphasis added).