



COMMONWEALTH of VIRGINIA

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The Honorable Ronald K. Elkins
Commonwealth's Attorney
Wise County & City of Norton
206 East Main Street, Suite 123
Wise, Virginia 24293

Dear Mr. Elkins:

I am responding to your request for an official advisory Opinion in accordance with § 2.2-205 of the *Code of Virginia*.

Issue Presented

You inquire whether the temporary prohibition against use of an “unmanned aircraft system” by state or local law enforcement departments, as set forth in Chapter 755 of the 2013 Acts of Assembly (“Chapter 755”),¹ applies to the use by law enforcement of a single unmanned aerial vehicle operating to gather evidence pursuant to a search warrant.

Response

It is my opinion, based on the accepted industry definition of an “unmanned aircraft system” and what I understand to be legislative intent, that Chapter 755, which is effective until July 1, 2015, temporarily prohibits the use of even a single remotely controlled aerial vehicle by state or local law enforcement for the purpose of gathering evidence pursuant to a search warrant. Chapter 755, however, does not prohibit the use of unmanned aircraft systems for specified humanitarian purposes.

Background

You relate that the Wise County Sheriff's Office “possesses unmanned, remote controlled quadcopters equipped with cameras that can take photographic images and record video,” and you indicate that these instruments “have an approximate 20-minute flight time, and require human control.” You inquire

¹ Your opinion request refers to House Bill 1611, introduced during the 2012 legislative session. The substance of the 2012 bill was more recently addressed by the General Assembly during its 2013 session when it considered House Bill 2012, recorded as Chapter 755 of the 2013 Acts of Assembly (the enactment is uncodified). This Opinion refers only to the enacted, more recent bill, which is currently in effect.

whether Chapter 755 prohibits the Sheriff's Office from deploying one of these devices to gather evidence pursuant to a search warrant.²

Applicable Law and Discussion

In 2013, the General Assembly passed H.B. 2012 which was enacted, without codification, as Chapter 755. Chapter 755 provides, in pertinent part, as follows:

No state or local government department, agency, or instrumentality having jurisdiction over criminal law enforcement and regulatory violations, including but not limited to the Department of State Police, and no department of law enforcement as defined in § 15.2-836 of the Code of Virginia of any county, city, or town shall utilize an unmanned aircraft system before July 1, 2015.^{3]}

Beyond reasonable debate, the legislation evinces a legislative intent temporarily to prohibit use of this emerging technology - unmanned aircraft systems - by law enforcement. Nevertheless, it does provide several humanitarian exceptions to the prohibition. Specifically, an unmanned aerial system may be deployed when responding to an Amber Alert, a Senior Alert, or a Blue Alert, or during a search and rescue mission "where use of an unmanned aircraft system is determined to be necessary to alleviate an immediate danger to any person," or "for training exercises related to such uses."⁴ None of these exceptions can be reasonably interpreted to include a search for evidence pursuant to a warrant.

As an initial matter, I note the following principles of statutory construction that guide this analysis. "When construing a statute, our primary objective is 'to ascertain and give effect to legislative intent,' as expressed by the language used in the statute."⁵ Nonetheless, statutes are not to be interpreted by singling out a particular word, but as a whole,⁶ and, although undefined terms are to be construed according to their "plain and ordinary meaning," "courts should be guided by 'the context in which [the word or phrase] is used.'"⁷ And, of particular importance, "[t]echnical terms or terms of art in a statute have their technical, absent legislative intent to the contrary, or other overriding evidence of a different meaning."⁸ Similarly, "[i]n general, commercial terms in a statute related to trade or commerce have their trade or commercial meaning."⁹ In an overall sense, "[s]tatutes must be construed . . . so as to reasonably

² VA. CODE ANN. § 19.2-56.2 (Supp. 2014), which sets forth the manner of obtaining warrants for "tracking devices," defines "use of a tracking device" as excluding "the capture, collection, monitoring, or reviewing of images." The devices you describe, therefore, do not fall within the ambit of this statute.

³ 2013 Va. Acts ch. 755.

⁴ *Id.*

⁵ *Cuccinelli v. Rector & Visitors of the Univ. of Va.*, 283 Va. 420, 425, 722 S.E.2d 626, 629 (2012) (quoting *Commonwealth v. Amerson*, 281 Va. 414, 418, 706 S.E.2d 879, 882 (2011)) (further citation and internal quotation marks omitted).

⁶ *See Commonwealth v. Jones*, 194 Va. 727, 731, 74 S.E.2d 817, 820 (1953) ("A statute should be construed so as to give effect to its component parts. Its meaning should not be derived from single words isolated from the true purpose of the Act.").

⁷ *Protestant Episcopal Church v. Truro Church*, 280 Va. 6, 21, 694 S.E.2d 555, 563 (2010) (citing *Sansom v. Bd. of Supvrs.*, 257 Va. 589, 595, 514, S.E.2d 345, 349 (1999) (quoting *Dep't of Taxation v. Orange-Madison Coop. Farm Serv.*, 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980)).

⁸ NORMAN J. SINGER & J.D. SHAMBIE SINGER, *SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION* § 47:29 (7th ed. 2007).

⁹ *Id.*, § 47:31.

and logically effectuate their intended purpose[.]”¹⁰ while interpretations producing an absurd result are to be avoided.¹¹

Your inquiry turns upon the meaning of the term “unmanned aircraft system.”¹² Neither Chapter 755 nor any other Virginia statute defines the term “unmanned aircraft system.” Although “unmanned aircraft system” could be construed narrowly to exempt single, particularized uses and to require regular, open-ended monitoring of unspecified targets, such an interpretation ignores the commonly accepted technical definition of an “unmanned aircraft system” and federal usage of that term. Further, it would circumvent the clear intent of the General Assembly, which is to temporarily limit the use of an unmanned aircraft to the humanitarian situations specifically listed in Chapter 755.

Federal law defines “unmanned aircraft system” as “an unmanned aircraft and associated elements (including communication links and the components that control the unmanned aircraft) that are required for the pilot in command to operate safely and efficiently in the national airspace system.”¹³ The Federal Aviation Administration, the federal agency responsible for regulating aircraft, defines “unmanned aircraft system” as “a UA [unmanned aircraft] and its associated elements related to safe operations, which may include control stations (ground-, ship-, or air-based), control links, support equipment, payloads, Flight Termination Systems (FTA), and launch/recovery equipment.”¹⁴ In addition, the Congressional Budget Office, the Department of Defense, commentators, and at least two other states use fundamentally identical definitions.¹⁵

¹⁰ Nelson v. Cnty. of Henrico, 10 Va. App. 558, 561, 393 S.E.2d 644, 646 (1990).

¹¹ See Jones v. Conwell, 227 Va. 176, 181, 314 S.E.2d 61, 64 (1984) (“The rules of statutory interpretation argue against reading any legislative enactment in a manner that will make a portion of it useless, repetitious, or absurd.”).

¹² Although the General Assembly - in accordance with prevailing industry standards - used the phrase “unmanned aircraft system,” or “UAS,” in its legislation, a UAS is often referred to, colloquially, as a “drone.” See, e.g., Elec. Frontier Fdn v. Dep’t of Homeland Sec., No. C12-5580PJH, 2014 U.S. Dist. LEXIS 44863, at *2 (N.D. Cal. Mar. 31, 2004) (noting that “unmanned aircraft systems” are also referred to as “drones”).

¹³ FAA Modernization and Reform Act of 2012, 112 Pub. L. 95, 126 Stat. 11, 72, § 331(9) (2012).

¹⁴ FAA Order 8900.1, Flight Standards Information Management System, Vol. 16, Ch. 1, § 2 (June 23, 2014), available at <http://fsims.faa.gov/PICDetail.aspx?docId=8900.1,Vol.16,Ch1,Sec2>.

¹⁵ See, respectively, CONG. BUDGET OFFICE, POLICY OPTIONS FOR UNMANNED AIRCRAFT SYS., Pub. No. 4083, at 4 (2011) (defining “unmanned aircraft system” as “an unmanned aircraft *plus the necessary equipment, communications network, ground stations, personnel, and infrastructure to control it.*”) (emphasis added), available at <http://www.cbo.gov/doc.cfm?index=12163>; DEP’T OF DEFENSE, JOINT PUBLICATION 3-52, JOINT AIRSPACE CONTROL, at GL-13 (May 20, 2010) (defining “unmanned aircraft system” as “[t]hat system whose components include the necessary equipment, network, and personnel to control an unmanned aircraft.”), available at www.dtic.mil/doctrine/new_pubs/jp3_52.pdf, accord DEP’T OF DEFENSE, DICTIONARY OF MILITARY & ASSOCIATED TERMS 351 (2012) (same definition); John Villasenor, *Privacy, Security, & Human Dignity in the Digital Age: Observations from Above: Unmanned Aircraft Systems & Privacy*, 36 HARV. J.L. & PUB. POL’Y, 457, 458 n.1 (2013) (discussing the term “unmanned aircraft system,” and noting that, while “unmanned aerial vehicle” refers “to the aircraft itself,” “[t]he term unmanned aircraft system (UAS) refers to an unmanned aircraft as well as the associated communication and control components used in its operations”); IDAHO CODE ANN. § 21-213(1)(a) (2014) (defining “unmanned aircraft system” as “an unmanned aircraft vehicle, drone, remotely piloted vehicle, remotely piloted aircraft or remotely operated aircraft that is a power aerial vehicle that does not carry a human operator, can fly autonomously or remotely, and can be expendable or recoverable”); 2013 N.C. Sess. Laws 360, § 7.16(2)(2) (defining “unmanned aircraft system” as “an unmanned aircraft and associated elements, including communication links and components that control the unmanned aircraft that are required for the pilot in command to operate safely and efficiently in the national airspace system.”). See also N.D. CENT. CODE § 54-60-2 (2013) (establishing an “unmanned aircraft systems program fund”); TEX. GOV’T CODE ANN. § 423.002 (2014) (permitting

Although the General Assembly did not expressly define “unmanned aircraft system” in its final, enacted legislation, it is my opinion - based on the accepted principles of statutory interpretation discussed above - that the General Assembly used this term in accordance with its accepted industry definition, that definition having been utilized consistently by the federal government, federal agencies, and other jurisdictions. Indeed, to conclude otherwise would undermine the clear legislative intent to impose a temporary moratorium on the use of unmanned aerial vehicles by law enforcement to gather evidence in criminal cases.

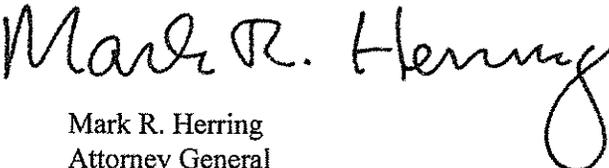
It is my opinion, therefore, that an “unmanned aircraft system” is the unmanned aircraft itself, combined with the equipment and other components that permit that aircraft to be remotely operated. Even employing the definition of “system,” used in isolation, that you provide comports with this interpretation. An unmanned aircraft, coupled with its supporting equipment, is a “regularly interacting or independent group of items forming a unified whole” and “a group of devices or artificial objects . . . forming a network especially distributing something or serving a common purpose.”¹⁶ The equipment you describe - an unmanned quad copter that is remotely controlled by a device in the hands of a human operator - falls within the ambit of an “unmanned aircraft system.” The aircraft itself is the “unmanned aircraft,” and, when that device is coupled with the requisite equipment and controls to permit its remote operation, it is properly considered an “unmanned aircraft system.” When set up for remote use by a human operator, even a single quad copter will, therefore, be deemed an “unmanned aircraft system.”¹⁷

Conclusion

Accordingly, it is my opinion that the term “unmanned aircraft system,” in conformity with its accepted industry definition, encompasses a single unmanned aerial vehicle that has corresponding equipment and controls permitting its remote use by a human operator. It therefore is my further opinion that Chapter 755, which is effective until July 1, 2015, temporarily prohibits law enforcement from using a remotely controlled quad copter to gather evidence pursuant to a warrant.¹⁸ Nevertheless, Chapter 755 does not prohibit the use of unmanned aircraft systems for specified humanitarian purposes.

With kindest regards, I am

Very truly yours,



Mark R. Herring
Attorney General

the use of “unmanned aircraft” by law enforcement officers under certain circumstances); *cf.* FLA. STAT. ANN. § 934.50 (2013) (defining “drone”); 725 ILL. COMP. STAT. 167/5 (2014) (same); 720 ILL. COMP. STAT. 5/48-3(b)(10) (2014) (same); OR. REV. STAT. § 837.300(1) (2013) (same); TENN. CODE ANN. § 39-13-609(b)(1) (2014) (same).

¹⁶ <http://www.merriam-webster.com/dictionary/system> (last visited Sept. 9, 2014).

¹⁷ *Cf.* 49 C.F.R. § 830.2 (defining “unmanned aircraft accident” as an incident “that takes place between the time that the system is activated with the purpose of flight and the time that the system is deactivated at the conclusion of its mission,” thereby implying that an “unmanned aircraft system” is a single item, rather than multiple aircraft vehicles).

¹⁸ Because the issue you present is one of statutory interpretation, I do not address other questions outside the scope of this request, such as whether the warrantless use of an unmanned aircraft system might violate certain expectations of privacy, or whether the Virginia legislation might be preempted by federal aviation law.