

CRIMES AND OFFENSES GENERALLY: CRIMES INVOLVING HEALTH AND SAFETY.

Cellular telephone is not portable communications device similar to beeper, possession of which is prohibited on public or private school grounds.

The Honorable William C. Mims

Member, House of Delegates

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You ask whether a cellular telephone is a "portable communications device" similar to a beeper, the possession of which is prohibited on public or private school grounds by § 18.2322.1 of the *Code of Virginia*.¹

By the clear language of § 18.2322.1, the prohibition has application only to portable communications devices "similar" to beepers. A cellular phone is clearly a "portable communications device," but is not "similar" to a beeper within the meaning of the statute.² A cellular telephone, unlike a beeper, provides for two-way voice communications and a record of calls. The structure and design of a beeper also is more easily adapted to furtive purposes.³

A penal statute is strictly construed against the Commonwealth "and in favor of the citizen's liberty."⁴ Had the General Assembly intended to include cellular telephones within the meaning of "similar portable communications device" in § 18.2322.1, it could easily have done so. It appears, however, that the General Assembly intended only to prohibit devices that operate in a manner like a beeper. The primary goal of statutory interpretation is to ascertain and give effect to the intent of the legislature.⁵ Analysis of legislative intent includes appraisal of the subject matter and purpose of the statute, in addition to its express terms.⁶ The purpose underlying a statute's enactment is particularly significant in construing it.⁷

I am, therefore, of the opinion that the requirement of strict construction of the statute compels the result that a cellular telephone is not a "similar portable communications device" within the prohibition of § 18.2322.1(A).⁸

¹Section 18.2322.1(A) provides: "It shall be unlawful for any person in possession or control of a beeper or *similar portable communications device* to be upon the grounds of any public or private elementary, middle or secondary school. Any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor." (Emphasis added.)

Section 18.2322.1(D) provides, however, that § 18.2322.1 "shall not apply to any school official, teacher, security officer, support employee, rescue squad or volunteer fire department member, law-enforcement officer or any other person who may use or possess such devices in the performance of his duties in a legal volunteer activity, trade, or business or for medical necessity."

²*Martin v. Commonwealth*, 224 Va. 298, 295 S.E.2d 890 (1982) (specific things followed by general descriptive words in statute limit meaning of general words to sense analogous to specific things).

³An apparent intent in adopting § 18.2322.1 is to deter the use of beepers in facilitating the purchase and sale of illegal drugs on school grounds. Beepers are a known tool of such drug trades. *See, e.g., U.S. v. Curry*, 79 F.3d 1489, 1499 (7th Cir. 1996).

⁴*Martin*, 224 Va. at 300, 295 S.E.2d at 892.

⁵*See Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

⁶*Vollin v. Arlington Co. Electoral Bd.*, 216 Va. 674, 222 S.E.2d 793 (1976).

⁷*VEPCO v. Prince William Co.*, 226 Va. 382, 388, 309 S.E.2d 308, 311 (1983).

⁸This opinion has no application to existing authority of public school officials to regulate the use of cellular phones during school functions, and relates solely to whether criminal conduct arises under § 18.2322.1(A) in the possession of a cellular telephone on school grounds.