99-043

CRIMES AND OFFENSES GENERALLY: CRIMES AGAINST THE ADMINISTRATION OF JUSTICE.

Requirement that employees, other than criminal defendants, not suffer any adverse employment action resulting from their compliance with summons or subpoena to serve on jury or appear in court of law includes cases heard in juvenile, state/federal, and out-of-state courts.

The Honorable Andrew R. McRoberts
County Attorney for Culpeper County
August 9, 1999

You ask whether § 18.2-465.1 of the *Code of Virginia*, which prohibits an employer from discharging or taking any adverse personnel action against an employee who is serving on jury duty or who is summoned or subpoenaed to appear in a "court of law," applies to proceedings in juvenile and domestic relations district courts, other state courts, federal courts, and out-of-state courts.

Section 18.2-465.1 provides:

> Any person who is summoned to serve on jury duty or any person, except a defendant in a criminal case, who is summoned or subpoenaed to appear in a court of law when a case is to be heard shall neither be discharged from employment, nor have any adverse personnel action taken against him, nor shall he be required to use sick leave or vacation time, as a result of his absence from employment due to such jury duty or court appearance, upon giving reasonable notice to his employer of such court appearance or summons. Any employer violating the provisions of this section shall be guilty of a Class 4 misdemeanor.

When originally enacted in 1981, § 18.2-465.1 prohibited the discharge from employment of a person who was summoned to serve on jury duty or a requirement that he use sick leave or vacation time for jury duty, provided that he gave reasonable notice to his employer of his summons.[1] Subsequently, this statute was amended to expand the prohibition to include "any adverse personnel action"[2] and to include employees "summoned or subpoenaed to appear in a court of law when a case is to be heard."[3]

The primary object of statutory construction is to ascertain and give effect to the intent of the General Assembly.[4] The 1988 amendment to § 18.2-465.1 expanding the coverage of the statute from employees serving on jury duty to include employees, other than criminal defendants, who are summoned or subpoenaed to appear in a court of law, operates to enlarge the number of employees potentially protected by the statute.[5] Although § 18.2-465.1 is a penal statute and must be strictly construed,[6] the construction of it as it relates to employees must be interpreted in light of the intent of the statute[7] to offer them greater protection.

"In determining legislative intent from the statutory language, words should be given their ordinary meaning."[8] Indeed, words in a statute are to be given their common meaning unless a contrary legislative intent is manifest.[9] Given its common and ordinary meaning, the phrase "court of law" refers to "a court that hears cases and decides them on the basis of statutes or the common law."[10] The inclusion of juvenile and domestic relations district courts, other state courts, federal courts, and out-of-state courts within such definition is consistent with the intent of § 18.2-465.1 to ensure that employees (other than criminal defendants) who are summoned and subpoenaed for a court appearance will not be discharged or have any other adverse personnel action taken against them as a result of their compliance with such summons or subpoena.

Accordingly, it is my opinion that § 18.2-465.1 is applicable to juvenile and domestic relations district courts, other state courts, federal courts, and out-of-state courts.

[1]1981 Va. Acts ch. 609, at 1281.

[2]1985 Va. Acts ch. 436, at 605.

[3]1988 Va. Acts ch. 415, at 513.

[4]*See* Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); 1991 Op. Va. Att'y Gen. 58, 60.

[5]1989 Op. Va. Att'y Gen. 160, 161.

[6]*See* 1981-1982 Op. Va. Att'y Gen. 136, 136.

[7]*See* 1997 Op. Va. Att'y Gen. 138, 138 (stating that overriding purpose of statutory analysis is to determine and give effect to legislative intent).

[8]Albemarle County v. Marshall, Clerk, 215 Va. 756, 761, 214 S.E.2d 146, 150 (1975).

[9]1997 Op. Va. Att'y Gen. 84, 86.

[10]Merriam Webster's Collegiate Dictionary 267 (10th ed. 1996).