

**COUNTIES, CITIES AND TOWNS: BUILDINGS, MONUMENTS AND LANDS GENERALLY - PARKS, RECREATION FACILITIES AND PLAYGROUNDS.**

**MOTOR VEHICLES: POWERS OF LOCAL GOVERNMENTS.**

**Prohibiting operation of motor vehicles on trails established by locality on land it owns, leases, or receives permission to use for hiking, biking and horseback riding is consistent with statutory purpose of protecting property interests of persons who have permitted locality to use their property. Grant of authority to localities to regulate its system of trails encompasses barring of motor vehicles on such trails. Offenses related to operation of motor vehicle on highways in Commonwealth may not be enforced on greenways. Other driving-related offenses occurring on greenways must be reviewed and prosecuted in light of their governing statutes.**

The Honorable A. Victor Thomas

Member, House of Delegates

February 22, 1999

You ask whether a locality may prohibit the operation of motor vehicles<sup>1</sup> on greenways<sup>2</sup> and bicycle paths. You also ask whether statutes related to driving offenses may be enforced on such greenways or paths.

You relate that a county, city and town have entered into a joint agreement to develop a linked system of greenways for pedestrian, bicycle and equestrian use. Some of the greenways will be on publicly owned and maintained lands, such as parks, while others will be on privately owned property. The greenways on private property will be open to the public, may be privately or publicly maintained, and may contain easements.

Section 15.2-1806(A) of the *Code of Virginia* provides that "[a] locality may establish parks, recreation facilities and playgrounds." Additionally, § 15.2-1806(B) states:

A locality may also establish, conduct and *regulate* a system of hiking, biking, and horseback riding trails and may set apart for such use any land or buildings owned or leased by it and may obtain licenses or permits for such use on land not owned or leased by it. [Emphasis added.]

In furtherance of the purposes of this subsection, a locality may provide for the protection of persons whose property interests, or personal liability, may be related to or affected by the use of such trails.

It is well-settled that when the language of a statute is clear and unambiguous, it is unnecessary to resort to rules of statutory construction.<sup>3</sup> Section 15.2-1806(B) clearly contemplates the system of pathways about which you inquire. This statute authorizes a locality to use land it owns, leases, acquires<sup>4</sup> or receives permission for the use thereof to establish a system of pathways for the purposes set forth therein, and it authorizes a locality to "conduct" and "regulate" this system.

Regarding whether a locality may prohibit the operation of motor vehicles on such pathways, the Dillon Rule of strict construction provides that local governments have only those powers that the General Assembly has expressly granted, those fairly and necessarily implied from the expressly

granted powers, and those powers that are indispensable and essential.<sup>5</sup> Section 15.2-1806(B) expressly grants localities the power to regulate the system of trails. The power to so regulate encompasses the barring of motor vehicles on such paths.<sup>6</sup> Furthermore, § 15.2-1806(B) also specifically authorizes a locality to consider the protection of the persons whose property interests are related to or affected by the use of the paths. Inasmuch as the statute allows for the permitted use of private property in the system of trails, prohibiting the operation of motor vehicles on them is consistent with the legislative intent of this statute to protect the property interests of those persons who have consented to the locality's use of their property.<sup>7</sup>

With respect to the enforcement of driving-related offenses occurring on these paths, the respective statutes governing such offenses are too numerous to address here. To the extent an offense falls within the purview of the traffic regulation statutes in Title 46.2, however, such offense relates to the operation of the vehicle on a "highway."<sup>8</sup> The term "highway" is defined in § 46.2-100 as "the entire width between the boundary lines of every way or place open to the use of the public *for purposes of vehicular travel* in the Commonwealth." (Emphasis added.)

A fundamental principle of statutory construction is that the clear and unambiguous words of a statute must be accorded their plain meaning.<sup>9</sup> Clearly, a pathway on which the operation of motor vehicles is prohibited is not a way or place open to the public for the purposes of vehicular traffic. Thus, such pathways do not meet the § 46.2-100 definition of "highway." Accordingly, the offenses set forth in Title 46.2, which relate to the operation of a motor vehicle on a highway, could not be enforced on the proposed greenway system because, by definition, it is not a highway.<sup>10</sup> For example, two of the offenses about which you specifically inquire, reckless driving<sup>11</sup> and driving while a habitual offender revocation is in effect,<sup>12</sup> relate only to operation of a vehicle on a highway, and, therefore, could not be enforced.

On the other hand, another statute about which you specifically inquire, driving while under the influence,<sup>13</sup> does not require that operation of the motor vehicle occur on a public highway.<sup>14</sup> Therefore, depending on the facts and evidence available, an individual could be prosecuted for a violation of § 18.2-266 for operating a motor vehicle on a greenway while such individual was under the influence of alcohol. Other potential charges must similarly be reviewed in light of their governing statutes.

<sup>1</sup>You note that such prohibition would except emergency vehicles.

<sup>2</sup>I presume that your use of the term "greenway" refers to "a corridor of undeveloped land in or near a city that is designed for recreational use." Merriam Webster's Collegiate Dictionary 512 (10<sup>th</sup> ed. 1996). *Compare* Va. Code Ann. § 33.1-152.1 (referring to "greenway corridors" as areas "for resource protection and biodiversity enhancement, with or without public ingress and egress").

<sup>3</sup>See *Ambrogio v. Koontz*, 224 Va. 381, 297 S.E.2d 660 (1982).

<sup>4</sup>See § 15.2-1806(A).

<sup>5</sup>See *City of Chesapeake v. Gardner Enterprises*, 253 Va. 243, 246, 482 S.E.2d 812, 814 (1997).

<sup>6</sup>*Compare* 1997 Op. Va. Att'y Gen. 94, 95 (noting that general grant of police powers to counties is construed broadly when dealing with local ordinances regulating traditional aspects of public safety and morals).

<sup>7</sup>See 1996 Op. Va. Att'y Gen. 42, 42 (stating that overriding goal of statutory interpretation is to discern and give effect to intent of legislature).

<sup>8</sup>See, e.g., § 46.2-1300.

<sup>9</sup>See *Diggs v. Commonwealth*, 6 Va. App. 300, 302, 369 S.E.2d 199, 200 (1988).

<sup>10</sup>Compare § 46.2-1307 (providing specific statutory authority for governing body to designate private roads in certain residential developments as highways for law-enforcement purposes). See also 1987-1988 Op. Va. Att'y Gen. 448, 450 (concluding that whether arrest may be made under implied consent provisions of § 18.2-268 for driving while intoxicated on private parking lot is dependent on whether private parking lot meets definition of "public highway").

<sup>11</sup>See §§ 46.2-852 to 46.2-868.

<sup>12</sup>See § 46.2-357.

<sup>13</sup>See § 18.2-266.

<sup>14</sup>See *Gray v. Com.*, 23 Va. App. 351, 477 S.E.2d 301 (1996); see also *Mitchell v. Com.*, 26 Va. App. 27, 492 S.E.2d 839 (1997).