

99-072

CRIMES AND OFFENSES GENERALLY: CRIMES AGAINST THE PERSON – ASSAULTS AND BODILY WOUNDINGS.

Prosecution of unlawful hazing is not limited to activities that occur only on campuses at Virginia schools, colleges or universities.

The Honorable Charles D. Griffith Jr.
Commonwealth's Attorney for the City of Norfolk
September 10, 1999

You ask whether § 18.2-56 of the *Code of Virginia* limits prosecution of unlawful hazing activities to those activities that occur only on the campus of schools, colleges or universities.

You relate that an individual received injuries during a hazing incident at a private residence in the City of Virginia Beach. The individuals involved in the incident were students at Norfolk State University. You note that § 18.2-56 makes it "unlawful to haze, or otherwise mistreat so as to cause bodily injury, any student at any school, college, or university." You conclude that § 18.2-56 limits the class of students who may be the victims of hazing solely to those "at any school, college, or university."¹ Without such a limitation, students at settings other than a school would be entitled to claim they were victims of hazing.² You ask whether § 18.2-56 restricts prosecutions of hazing to those that occur to students on the campus of schools, colleges, or universities.

Section 18.2-56 provides:

It shall be unlawful to haze, or otherwise mistreat so as to cause bodily injury, any student at any school, college, or university.

Any person found guilty thereof shall be guilty of a Class 1 misdemeanor, unless the injury would be such as to constitute a felony, and in that event the punishment shall be inflicted as is otherwise provided by law for the punishment of such felony.

Any person receiving bodily injury by hazing or mistreatment shall have a right to sue, civilly, the person or persons guilty thereof, whether adults or infants.

The president, or other presiding official of any school, college or university, receiving appropriations from the state treasury shall, upon satisfactory proof of the guilt of any student found guilty of hazing or mistreating another student so as to cause bodily injury, expel such student so found guilty, and shall make report thereof to the attorney for the Commonwealth of the county or city in which such school, college or university is, who shall present the same to the grand jury of such city or county convened next after such report is made to him.

"The ascertainment of legislative intention involves appraisal of the subject matter, purposes, objects and effects of the statute, in addition to its express terms."³ Words used in a statute are to be given their common meanings unless a contrary legislative intent is manifest.⁴ The General Assembly has not defined the term "haze" as used in § 18.2-56. Consequently, the words used in

the statute must be given their ordinary meaning within the statutory context.⁵ The term "haze" generally means "to intimidate by physical punishment"; "to harass ... by exacting unnecessary, disagreeable, or difficult work"; "to harass or try to embarrass or disconcert by banter, ridicule, or criticism"; "to subject ... to treatment intended to put in ridiculous or disconcerting positions."⁶

One must look to the entire statute to ascertain the intent of the General Assembly.⁷ The last paragraph of § 18.2-56 requires "[t]he president, or other presiding official of any school, college or university [in the Commonwealth], receiving appropriations from the state treasury" to expel "any student found guilty of hazing or mistreating another student so as to cause bodily injury" upon receipt of satisfactory proof of guilt. Furthermore, such official is also required to report such expelling to the Commonwealth's attorney for "the county or city in which such school, college or university is."⁸ The General Assembly does not use restrictive language in directing such official to expel a student who is guilty of hazing or mistreating another student and to report the matter to the Commonwealth's attorney for the locality in which the institution is located. Under well-accepted principles of statutory construction, when a statute contains a specific grant of authority, the authority exists only to the extent specifically granted in the statute.⁹

Section 18.2-56 is clearly a penal statute. "[A] penal statute is to be strictly construed against the state and in favor of the liberty of a citizen."¹⁰ "Such statutes cannot be extended by implication or construction, or be made to embrace cases which are not within their letter and spirit."¹¹ Penal statutes are not to be so strictly construed, however, as to defeat the obvious intention of the General Assembly.¹² The clear intent of the General Assembly is to declare unlawful the hazing of students attending schools, colleges or universities "so as to cause bodily injury."¹³ The common meanings of the words used in § 18.2-56 reflect an intent by the General Assembly to prevent the intimidation by physical injury of any student attending schools, colleges and universities in the Commonwealth. It is clear, therefore, that the phrase "at any school, college, or university" modifies the term "student," and not the location where such activity takes place.¹⁴

Consequently, I must conclude that § 18.2-56 does not limit prosecution of unlawful hazing activities to those activities that occur only on the campus at schools, colleges or universities in Virginia.

¹Section 2.1-118 requires that any request by a Commonwealth's attorney for an opinion from the Attorney General "shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions."

²*E.g.*, homebound students, correspondence students, and students at job training programs.

³*Vollin v. Arlington Co. Electoral Bd.*, 216 Va. 674, 679, 222 S.E.2d 793, 797 (1976); 1995 Op. Va. Att'y Gen. 118, 120.

⁴See Op. Va. Att'y Gen.: 1998 at 91, 93; 1990 at 233, 234; 1989 at 155, 155.

⁵See *Grant v. Commonwealth*, 223 Va. 680, 684, 292 S.E.2d 348, 350 (1982); *Loyola Fed. Savings v. Herndon*, 218 Va. 803, 805, 241 S.E.2d 752, 753 (1978).

⁶*Webster's Third New International Dictionary of the English Language* 1041 (1993).

⁷See *Commonwealth v. Jones*, 194 Va. 727, 731, 74 S.E.2d 817, 820 (1953) (to derive true purpose of act, statute should be construed to give effect to its component parts).

⁸Section 18.2-56.

⁹See *Tate v. Ogg*, 170 Va. 95, 195 S.E. 496 (1938); 2A Norman J. Singer, *Sutherland Statutory Construction*, § 47.23 (5th ed. 1992 & Supp. 1999).

¹⁰*Cox v. Commonwealth*, 220 Va. 22, 25, 255 S.E.2d 462, 464 (1979).

¹¹*Berry v. City of Chesapeake*, 209 Va. 525, 526, 165 S.E.2d 291, 292 (1969); see also *Price v. Commonwealth*, 209 Va. 383, 385, 164 S.E.2d 676, 678 (1968) (quoting *Gates & Son Co. v. Richmond*, 103 Va. 702, 704, 49 S.E. 965, 965 (1905)).

¹²*Tiller v. Commonwealth*, 193 Va. 418, 423, 69 S.E.2d 441, 444 (1952). See generally 17 M.J. *Statutes* § 67, at 449 (1994).

¹³Section 18.2-56.

¹⁴*Id.*