

00-022

CRIMES AND OFFENSES GENERALLY: CRIMES INVOLVING HEALTH AND SAFETY – OTHER ILLEGAL WEAPONS.

Person with valid concealed weapons permit who carries gun to school and leaves it unattended, and not on his or her person, is in violation of statute prohibiting weapons possession on school property except when engaged in any of activities specifically exempted. Such person is not entitled to carry gun onto school property or school bus.

The Honorable Robert G. Marshall
Member, House of Delegates
November 9, 2000

You first ask whether any Virginia laws are violated if a person with a valid concealed weapons permit carries a gun to a school and leaves it unattended, and not on his or her person.

With respect to your first inquiry, § 18.2-308.1 of the *Code of Virginia* sets forth a general prohibition against possessing weapons on school property. Section 18.2-308.1(B) excepts from this prohibition

(i) persons who possess such weapon or weapons as a part of the school's curriculum or activities, ... [or] (iii) persons who possess such weapon or weapons as a part of any program sponsored or facilitated by either the school or any organization authorized by the school to conduct its programs either on or off the school premises

It is clear that a person engaged in any of the activities specifically exempted in § 18.2-308.1(B) is not in violation of the section.¹ The result is different, however, if a person possessing a weapon is not engaged in any of the specifically exempted activities.

Your inquiry arises from the fact that the gun is unattended, and not on his or her person. This fact is not automatically tantamount to the conclusion that the person is not in possession of the weapon. This is due to the Commonwealth's well-settled doctrine of constructive possession, providing that where evidence of acts, statements, or conduct or other facts or circumstances tends to show that the person has dominion and control over the weapon, then such person is in possession of the weapon.² Thus, the act of leaving the gun unattended does not terminate dominion and control over the weapon. Accordingly, unless the person is engaged in any of the activities specifically exempted in § 18.2-308.1(B), he or she

would be in violation of the section, even though the gun is not on his or her person.³

You next ask whether a person who has been issued a valid concealed weapons permit may carry a gun onto school property or a school bus and keep the weapon on or about his or her person at all times.⁴

Section 18.2-308(O) provides:

The granting of a concealed handgun permit shall not thereby authorize the possession of any handgun or other weapon on property or in places where such possession is otherwise prohibited by law[.]

Section 18.2-308(O) clearly states that the granting of a concealed weapons permit does not authorize the possession of such weapon(s) on property or in places where such possession is otherwise prohibited by law. The clear intent of the General Assembly is to allow concealed handgun permit holders to carry handguns only in areas where it has not specifically prohibited the carrying of handguns.⁵ Section 18.2-308.1 specifically prohibits persons from possessing firearms on school property or school buses, except the persons specifically exempted from the activities described in § 18.2-308.1(B)(i)-(vi).⁶ Accordingly, unless the person falls within any such exceptions, he or she would be in violation of § 18.2-308.1. Thus, the relevant statutes are clear that a person who has been issued a valid concealed weapons permit is not entitled to carry a gun onto school property or a school bus.

¹See 1999 Op. Va. Att'y Gen. 164, 165 (where language of statute is clear and unambiguous, effect must be given to its plain and ordinary meaning).

²See *Powers v. Commonwealth*, 227 Va. 474, 476, 316 S.E.2d 739, 740 (1984) (holding that defendant had constructive possession of substance where defendant was aware of both presence and character of controlled substance and it was subject to his dominion and control); *Blake v. Commonwealth*, 15 Va. App. 706, 427 S.E.2d 219 (1993) (applying principles of constructive possession of controlled substances to prove firearms offense).

³Additionally, should any other actions occur with the gun, the person may be charged with other statutory violations.

⁴I assume that the gun is loaded and that the provisions in § 18.2-308.1(B) regarding unloaded firearms are not applicable.

⁵1995 Op. Va. Att'y Gen. 118, 119.

⁶It is my opinion that the language in § 18.2-308.1(B), providing that "[t]he exemptions set out in § 18.2-308 shall apply, mutatis mutandis, to the provisions

of [§ 18.2-308.1]," refers to the specific exemptions set forth in § 18.2-308(B) and (C), and is not intended to override § 18.2-308(O).