



COMMONWEALTH of VIRGINIA

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The Honorable V. Thomas Forehand, Jr.
Chief Judge, First Judicial Circuit of Virginia
307 Albemarle Drive, Suite 400A
Chesapeake, Virginia 23322-5580

Dear Judge Forehand:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

When a juvenile is transferred to circuit court by a Juvenile and Domestic Relations District Court ("juvenile court") pursuant to § 16.1-269.1(A) and the decision is not appealed, you inquire whether the circuit court must enter an enabling order pursuant to § 16.1-269.6(B)(ii). If so, you ask concerning the jurisdictional consequence of an indictment absent an enabling order.

Response

It is my opinion that a circuit court is not required to enter an enabling order where the transfer decision of the juvenile court has not been appealed. It further is my opinion that a Commonwealth's attorney may seek an indictment after the period for an appeal has expired, provided no appeal has been noted.

Applicable Law and Discussion

Section 16.1-269.6(B) provides, in part, that:

The circuit court, when practicable, shall, within 45 days after receipt of the case from the juvenile court pursuant to subsection A of § 16.1-269.1, (i) if either the juvenile or the attorney for the Commonwealth has appealed the transfer decision, examine all such papers, reports and orders and conduct a hearing to take further evidence on the issue of transfer, to determine if there has been substantial compliance with subsection A of § 16.1-269.1, but without redetermining whether the juvenile court had sufficient evidence to find probable cause; and (ii) enter an order either remanding the case to the juvenile court or advising the attorney for the Commonwealth that he may seek an indictment.

In interpreting a statute, the principle objective is to give effect to the legislative intent.¹ Where a statute is not ambiguous, the rules of statutory construction are not necessary, and the statute is given effect in accordance with its plain meaning.² ““The manifest intention of the legislature, clearly disclosed by its language, must be applied.””³

When the General Assembly amends a statutory provision, a presumption arises that the legislature intended to change existing law.⁴ A related presumption is that the amendment to a law is intended to have some meaning and is not intended to be unnecessary or vain.⁵

The 1996 Session of the General Assembly amended § 16.1-269.6(B) (the “1996 Amendment”).⁶ Prior to the 1996 Amendment, § 16.1-296.6(B) provided that:

The circuit court shall, within a reasonable time after receipt of the case from the juvenile court, (i) examine all such papers, reports and orders; (ii) if either the juvenile or the attorney for the Commonwealth has appealed the transfer decision, conduct a hearing to take further evidence on the issue of transfer, to determine if there has been substantial compliance with § 16.1-269.1, but without redetermining whether the juvenile court had sufficient evidence to find probable cause; and (iii) and enter an order either remanding the case to the juvenile court or advising the attorney for the Commonwealth that he may seek an indictment.^[7]

The Supreme Court of Virginia has interpreted the prior version of § 16.1-269.6(B) to require that a circuit court examine the papers, hold a hearing if an appeal of the transfer decision was noted, and enter an order either remanding the case or directing the attorney for the Commonwealth to seek an indictment.⁸ The Court found that entry of an enabling order was necessary before indictment because the statute required an examination of the papers in every case, whether the transfer decision had been appealed or not.⁹ However, the Court noted that the 1996 Amendment effected a substantive change: “[t]he statute presently in effect does not require the review if the transfer decision is not appealed.”¹⁰

¹ See 2009 Op. Va. Att’y Gen. No. 08-108, *2, available at <http://www.vaag.com/OPINIONS/2009opns/08-108-Greer.pdf>.

² *Id.*

³ See *Barr v. Town & Country Props., Inc.*, 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990) (quoting *Anderson v. Commonwealth*, 182 Va. 560, 566, 29 S.E.2d 838, 841 (1944)), quoted in 2009 Op. Va. Att’y Gen. No. 08-096, *2-3, available at <http://www.vaag.com/OPINIONS/2009opns/08-096-Curcio.pdf>.

⁴ See *Wisniewski v. Johnson*, 223 Va. 141, 144, 286 S.E.2d 223, 224-25 (1982); 2003 Op. Va. Att’y Gen. 52, 54.

⁵ See 2003 Op. Va. Att’y Gen., *supra* note 4, at 54 (citing *Cape Henry Towers, Inc. v. Nat’l Gypsum Co.*, 229 Va. 596, 600, 331 S.E.2d 476, 479 (1985)).

⁶ See 1996 Va. Acts ch. 755, at 1315, 1338-39.

⁷ See VA. CODE ANN. § 16.1-296.6(B) (Supp. 1995).

⁸ See *Jackson v. Commonwealth*, 255 Va. 625, 642, 499 S.E.2d 538, 549 (1998).

⁹ *Id.*

¹⁰ *Id.* at 642 n.4, 499 S.E.2d at 549 n.4 (citing 1996 Va. Acts ch. 755, at 1338).

Likewise, in interpreting § 16.1-269.6(B) in its current form, the Court of Appeals of Virginia noted that “[b]y its own terms, this provision only applies when either party appeals a *transfer* decision.”¹¹

Thus, prior to the 1996 Amendment, § 16.1-269.6(B) clearly provided that a circuit court must examine the papers in every case in which jurisdiction was transferred from the juvenile court.¹² Further, the court had to enter an order either remanding the case to the juvenile court or directing the Commonwealth’s attorney to seek an indictment.¹³ However, subsequent to the 1996 Amendment, a circuit court must examine the papers and enter the enabling order only when the transfer decision is appealed by one of the parties.¹⁴

Statutes should not be interpreted to produce absurd results or irrational consequences.¹⁵ If an indictment could only be obtained after entry of an enabling order, and an enabling order could only be required after considering a transfer decision on appeal, the result would be that no indictment could be obtained or jurisdiction acquired by the circuit court unless the transfer decision was appealed. In my opinion, the General Assembly did not intend such a result.

Conclusion

Accordingly, it is my opinion that a circuit court is not required to enter an enabling order where the transfer decision of the juvenile court has not been appealed. It further is my opinion that a Commonwealth’s attorney may seek an indictment after the period for an appeal has expired, provided no appeal has been noted.

Thank you for letting me be of service to you.

Sincerely,



William C. Mims

¹¹Lampkins v. Commonwealth, 44 Va. App. 709, 718, 607 S.E.2d 722, 727 (2005) (emphasis in original).

¹²See *supra* notes 7 and 9 and accompanying text.

¹³*Id.*

¹⁴See § 16.1-269.6(B) (Supp. 2008); *Jackson*, 255 Va. at 642 n.4, 499 S.E.2d at 549 n.4; *Lampkins*, 44 Va. App. at 718, 607 S.E.2d at 727.

¹⁵See *McFadden v. McNorton*, 193 Va. 455, 461, 69 S.E.2d 445, 449 (1952); 2005 Op. Va. Att’y Gen. 121, 124 n.5.