



COMMONWEALTH OF VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071

FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

April 27, 2010

The Honorable Christopher K. Peace
Member, House of Delegates
P.O. Box 819
Mechanicsville, Virginia 23111

Dear Delegate Peace:

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

Issue Presented

You ask whether an e-cigarette falls within the definition of smoke or smoking for purposes of § 15.2-2820.

Response

It is my opinion that using an e-cigarette does not fall within the definition of “smoke” or “smoking” for purposes of § 15.2-2820.

Background

You relate that an electronic cigarette, also known as an e-cigarette or a personal vaporizer, is a battery-powered device that provides inhaled doses of nicotine by way of a vaporized solution. You note that the e-cigarette serves as an alternative to traditionally smoked tobacco products, such as cigarettes, cigars, or pipes. Finally, you observe that the e-cigarette produces no smoke and no combustion is involved in its operation.

Applicable Law and Discussion

Section 15.2-2824(A) prohibits smoking in a variety of locations, including elevators, public school buses, and the interior of public elementary, intermediate and secondary schools. Section 15.2-2825(A) forbids smoking in restaurants. Finally, § 15.2-2820 defines “smoke” or “smoking” as “the carrying or holding of any lighted pipe, cigar, or cigarette of any kind, or any other lighted smoking equipment, or the lighting, inhaling, or exhaling of smoke from a pipe, cigar, or cigarette of any kind.”

First, an e-cigarette does not involve the “inhaling, or exhaling of smoke.” Smoke is defined as “the gaseous products of burning carbonaceous materials made visible by the presence of small particles of carbon.”¹ To be sure, one definition of smoke is “fume or vapor often resulting from the action of heat

¹MERRIAM-WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 2152 (1993).

on moisture.”² That, however, is not the way the term smoke is commonly understood.³ Statutes should be construed under their “ordinary and plain meaning.”⁴ Water vapor containing traces of particulate matter, such as water evaporating from a tea kettle, is not ordinarily understood to be “smoke.” An e-cigarette does not function in manner of a traditional cigarette because it functions electrically⁵ rather than via combustion of a material such as tobacco. Therefore, the vapor emitted by an e-cigarette would not fall within the definition of “smoke” or “smoking” in § 15.2-2820. Second, an e-cigarette is battery powered and is not “lighted” as that term is commonly understood.⁶ No flame is involved in its operation.

Conclusion

Accordingly, it is my opinion that using an e-cigarette does not fall under the definition “smoke” or “smoking” for purposes of § 15.2-2820.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken Cuccinelli, II". The signature is written in a cursive style with a horizontal line underneath the name.

Kenneth T. Cuccinelli, II
Attorney General

1:485; 1:941/10-029

² *Id.*

³ The *Third New International Dictionary* provides, as an illustration of the “fume or vapor” definition of “smoke,” a quote from sixteenth-century English author John Lyly: “steeds ... whose breaths dimmed the sun with [smoke].” *Id.* Referring to exhalation as “smoke” is not a common use of the term “smoke.”

⁴ See, e.g., *Winborne v. Va. Lottery*, 278 Va. 142, 148, 677 S.E.2d 304, 306 (2009).

⁵ See, e.g., <http://www.ecigaretteschoice.com/pages/How-it-Works.html> (last visited Apr. 19, 2010) (explaining how e-cigarette works).

⁶ See MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 671 (10th ed. 2001) (defining “light” to mean “to ignite something (as a cigarette)” or “to set fire to”).