



COMMONWEALTH of VIRGINIA

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The Honorable R. Steven Landes
Member, House of Delegates
Post Office Box 12
Verona, Virginia 24482

Dear Delegate Landes:

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 inquire regarding the interpretation of § 15.2-905 of the *Code of Virginia*. Specifically, you ask whether § 15.2-905 authorizes Albemarle County to enact an ordinance that would ban, in a residential zoning district, the keeping of one or more inoperable vehicles outside of fully enclosed buildings.

Response

It is my opinion that, for specified zoning classifications, § 15.2-905(A) authorizes Albemarle County to ban the keeping of inoperable vehicles unless the inoperable vehicle is “within a fully enclosed building or structure or otherwise shielded or screened from view”¹

Background

You indicate that Albemarle County is in the process of developing “an ordinance to limit the number of inoperable vehicles ‘outside of a fully enclosed building’ to zero on residential properties of less than five acres.” You further relate that a question has arisen as to whether Albemarle County can ban the keeping of all inoperable vehicles or whether § 15.2-905 requires that Albemarle County permit at least one inoperable vehicle to be kept outside of an enclosed building on such properties.

Applicable Law and Discussion

The question of whether a locality may enact a particular ordinance turns on whether the General Assembly has authorized the locality to do so. As the Virginia Supreme Court has noted,

[i]n Virginia the powers of boards of supervisors are fixed by statute and are limited to those conferred expressly or by necessary implication. This rule is a corollary to Dillon’s

¹ VA. CODE ANN. § 15.2-905(A) (Supp. 2013).

Rule that municipal corporations have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable.^[2]

In determining whether the statutes enacted by the General Assembly grant the locality authority to adopt a particular ordinance, normal rules of statutory construction apply. Thus, in making such determinations, “courts will give statutory language its plain meaning.”³ Nevertheless, “[i]f there is any reasonable doubt whether legislative power exists, that doubt must be resolved against the local governing body.”⁴

Section 15.2-905(A) is clearly a grant of authority to local governing bodies. In regards to your inquiry, it provides that the governing body of the County

of Albemarle . . . may by ordinance prohibit any person from keeping, except within a fully enclosed building or structure or otherwise shielded or screened from view,^[5] on any property zoned or used for residential purposes, or on any property zoned for commercial or agricultural purposes, any motor vehicle, trailer or semitrailer, as such are defined in § 46.2-100, which is inoperable.^[6]

Thus, § 15.2-905(A) expressly grants Albemarle County the power to enact an ordinance prohibiting inoperable vehicles from the listed zoning classifications unless the vehicles are kept “within a fully enclosed building or structure or otherwise shielded or screened from view.”

Giving the word “prohibit” its ordinary meaning,⁷ Albemarle County may ban inoperable vehicles, as defined by § 15.2-905, from a residential zoning district. Accordingly, Albemarle County is authorized to enact the ordinance you describe so long as this ban contains an exception for any inoperable vehicles that are “otherwise shielded or screened from view” or are stored in a “fully enclosed building or structure.”

The confusion that necessitated your request appears to stem from the second paragraph of § 15.2-905(A). After providing the specified localities with the power to prohibit inoperable vehicles, the second paragraph of § 15.2-905(A) provides that those localities “*in addition* may by ordinance limit the number of inoperable motor vehicles that any person may keep outside of a fully enclosed building or structure.”⁸

² Bd. of Supvrs. v. Horne, 216 Va. 113, 117, 215 S.E.2d 453, 455 (1975) (citations omitted); accord Bd. of Supvrs. v. Countryside Inv. Co., 258 Va. 497, 503, 522 S.E.2d 610, 613 (1999).

³ Davenport v. Little-Bowser, 269 Va. 546, 555, 611 S.E.2d 366, 371 (2005) (citing Jackson v. Fidelity & Deposit Co., 269 Va. 303, 313, 608 S.E.2d 901, 904 (2005)).

⁴ Richmond v. Confre Club of Richmond, Inc., 239 Va. 77, 79, 387 S.E.2d 471, 473 (1990).

⁵ Section 15.2-905(A) defines “shielded or screened from view” as “not visible by someone standing at ground level from outside of the property on which the subject vehicle is located.”

⁶ Section 15.2-905(A), in relevant part, defines “inoperable motor vehicle” as “any motor vehicle, trailer or semitrailer which is not in operating condition; or does not display valid license plates; or does not display an inspection decal that is valid or does display an inspection decal that has been expired for more than 60 days.”

⁷ “Prohibit” generally is defined to mean “to forbid by authority” or “to prevent from doing something.” See e.g., MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 929 (10th ed. 2001).

⁸ Emphasis added.

This portion of § 15.2-905(A) does not serve to limit the powers of the named localities. By using the phrase “in addition,” the General Assembly made clear that this provision of the statute was granting *more* powers to the localities than the powers described in the first paragraph of § 15.2-905(A).

Thus, § 15.2-905(A) grants the specified localities multiple options regarding the regulation of inoperable vehicles within their jurisdiction. First, a locality may enact a total ban on such vehicles in the relevant zoning classifications, provided that the ban does not apply to inoperable vehicles kept within a fully enclosed building or structure or otherwise shielded or screened from view. Alternatively, the locality, in its discretion, may choose instead to limit the number of inoperable vehicles that may be kept outside of a fully enclosed building or structure.⁹

Conclusion

Accordingly, it is my opinion that, for specified zoning classifications, § 15.2-905 authorizes Albemarle County to enact an ordinance that bans the keeping of inoperable vehicles unless the inoperable vehicle is “within a fully enclosed building or structure or otherwise shielded or screened from view”¹⁰

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken C II". The signature is stylized and written in a cursive-like font.

Kenneth T. Cuccinelli, II
Attorney General

⁹ Without the second provision of § 15.2-905(A), an argument could be made that the localities either had to ban the keeping of inoperable vehicles outright or allow them to be kept without any limitation as to their number. The provisions read together make clear that the localities may enact an outright ban or choose to enact a numeric limitation.

¹⁰ Section 15.2-905(A).