



COMMONWEALTH of VIRGINIA

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W. Clarke Whitfield, Jr., Esquire
Danville City Attorney
Post Office Box 3300
Danville, Virginia 24543

Dear Mr. Whitfield:

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 whether a memorial or marker erected to recognize the historical significance of a building is subject to the protections of § 15.2-1812 of the *Code of Virginia*.

Applicable Law and Discussion

Beginning in 1904, the General Assembly has enacted laws authorizing local monuments and memorials (collectively, simply “monuments”) to wars and veterans.¹ Section 15.2-1812, as enacted in 1998, permits localities to erect monuments for “any war or conflict.” In relevant part, it states:

A locality may . . . authorize and permit the erection of monuments or memorials for any war or conflict, or for any engagement of such war or conflict If such are erected, it shall be unlawful for the authorities of the locality, or any other person or persons, to disturb or interfere with any monuments or memorials so erected, or to prevent its citizens from taking proper measures and exercising proper means for the protection, preservation and care of same. For purposes of this section, “disturb or interfere with” includes removal of, [or] damaging or defacing monuments or memorials^[2]

Simply put, the statute empowers a locality to authorize and permit a monument commemorating various wars or conflicts,³ including veterans of those wars,⁴ and thereafter to maintain it. It also bars

¹ See, e.g., 1904 Va. Acts ch. 29.

² VA. CODE ANN. § 15.2-1812 (2012). A “locality” means “a county, city, or town as the context may require.” VA. CODE ANN. § 1-221 (2014).

³ Virginia Code § 15.2-1822 identifies 15 wars or conflicts from the Algonquin (1622) to Operation Iraqi Freedom (2003-).

⁴ A related statute, § 15.2-1812.1, authorizes suits for civil damages for violating § 15.2-1812. In doing so, it characterizes § 15.2-1812 as applying to monuments for “war veterans.” A second related statute, § 18.2-137, also characterizes § 15.2-1812 as applying to monuments or memorials for “war veterans” by referring to “any monument or memorial for war veterans described in § 15.2-1812” (emphasis added). Thus, in short, while

“authorities of the locality” from disturbing or interfering with the monument, to include removing it. Further, it bars the locality’s “authorities” from preventing maintenance of the monument by citizens. Violation of the statute is a criminal offense that may range from a Class 3 misdemeanor to a Class 6 felony, depending on the nature of the conduct.⁵

The terms “war,” “conflict,” and “war veterans” are not statutorily defined. “When the legislature leaves a term undefined, courts must give [it] its ordinary meaning, taking into account the context in which it is used.”⁶

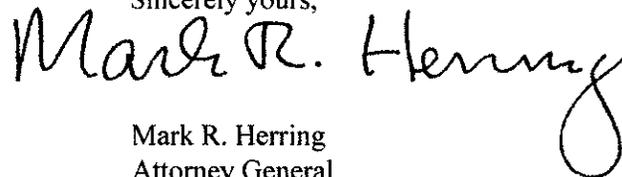
The importance of honoring all of our veterans, especially those who have given their lives and paid the ultimate sacrifice for us, our country and our freedoms, cannot be overstated. These brave men and women deserve our full support, and the General Assembly has chosen to extend certain protections to monuments honoring their service. The General Assembly has not chosen, however, to extend that same level of protection to memorials erected to recognize the historical significance of buildings. Here, the statutes do not address protecting monuments commemorating the historical significance of buildings. The plain language of §§ 18.2-137, 15.2-1812 and 15.2-1812.1 is limited to monuments for any war or conflict and for veterans of those wars and conflicts. Accordingly, it is my view that § 15.2-1812 applies to monuments commemorating certain wars and veterans of those wars, but not to monuments commemorating buildings.

Conclusion

For the reasons stated, it is my view that § 15.2-1812 of the *Code of Virginia* applies to monuments for any war or conflict, including an engagement in such war or conflict, or for war veterans, but not to memorials or markers erected to recognize the historical significance of buildings.

With kind regards, I am

Sincerely yours,



Mark R. Herring
Attorney General

§ 15.2-1812 refers only to monuments to wars or conflicts, two closely related statutes characterize it as referring to monuments for war *veterans*. It is well accepted that statutes may be considered *in pari materia* when they relate to the same person or things, the same class of persons or things, or to the same subject or to closely connected subjects or objects. *Prillaman v. Commonwealth*, 199 Va. 401, 405 (1957). For that reason, it is my view that § 15.2-1812 applies to monuments to war veterans, even though the text of the statute refers only to wars/conflicts, but not to war veterans.

⁵ A violation involving unlawful damage, defacing, or removal of a monument without intent to steal, et cetera, is a Class 3 misdemeanor, punishable by a fine of not more than \$500. A violation with intent to cause injury where the damage is less than \$1,000 is a Class 1 misdemeanor, punishable by up to twelve months in jail and/or a fine of up to \$2,500. A violation with intent to cause injury where the damage is \$1,000 or more is a Class 6 felony, punishable by imprisonment of not less than one nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both. *See* VA. CODE ANN. §§ 18.2-137(a) (2014); 18.2-10(f) (2014); and 18.2-11(a), (c) (2014).

⁶ *Am. Tradition Inst. v. Rector & Visitors of the Univ. of Va.*, 287 Va. 330, 341 (2014) (internal quotation marks and punctuation marks omitted).