

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

**CRIMINAL PROCEDURE: CENTRAL CRIMINAL RECORDS EXCHANGE.**

**COUNTIES, CITIES AND TOWNS: GENERAL.**

**County may not require applicant for concealed handgun permit to submit to fingerprinting without adopting ordinance requiring fingerprinting of such permit applicants. When county or city adopts ordinance as condition for issuance of concealed handgun permit, police department may submit applicant's fingerprints through Central Criminal Records Exchange to FBI to obtain state or national criminal history information regarding applicant. Forty-five day period within which court must issue concealed handgun permit begins on date applicant submits application to clerk for processing.**

Ms. Sharon E. Pandak

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January 13, 1998

You ask several questions regarding interpretation of amendments made by the 1997 Session of the General Assembly to § 18.2308(D) of the *Code of Virginia*, relating to the carrying of concealed weapons.<sup>1</sup>

You first note that the following was added to § 18.2308(D) by the 1997 Session:

Notwithstanding § 15.129.15 [currently § 15.2915],<sup>[2]</sup> a county or city may enact an ordinance which requires any applicant for a concealed handgun permit to submit to fingerprinting for the purpose of obtaining the applicant's state or national criminal history record.

You, therefore, ask whether a county may require an applicant to submit to fingerprinting without adopting such an ordinance.

Virginia follows the Dillon rule of strict construction concerning the powers of local governing bodies.<sup>3</sup> Under that rule of construction, local governing bodies have only those powers that are expressly granted, those that are necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable.<sup>4</sup> By its express terms, § 15.2915 prohibits local regulation of "the purchase, possession, transfer, ownership, carrying or transporting of firearms, ammunition, or components or combination thereof." Therefore, in the absence of the 1997 amendment to § 18.2308(D), a county was not authorized to adopt an ordinance regulating the sale, possession and transportation of firearms. Consequently, prior to the 1997 amendment, a county was not authorized to require an applicant for a concealed weapons permit to submit to fingerprinting.

The 1997 amendment begins with the term "notwithstanding." When a statute begins with the term "notwithstanding," it is presumed that the General Assembly intended to override any potential conflicts with the earlier legislation in that instance.<sup>5</sup> The principle of statutory construction to be applied in this matter is "[i]f the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it."<sup>6</sup> It is unnecessary to resort to any rules of statutory construction when the language of a statute is unambiguous.<sup>7</sup> In those situations, the statute's plain meaning and intent govern. The term "may," as used in a statute, should be given its ordinary meaning intended by the General Assembly-"permission, importing discretion."<sup>8</sup> Finally, when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.<sup>9</sup> The mention of one thing in a statute implies the exclusion of another.<sup>10</sup> Consequently, I am of the opinion that § 18.2308(D) requires a county to adopt an ordinance requiring an applicant for a concealed handgun permit to submit to fingerprinting ("permit ordinance") before the county may require such applicant to be fingerprinted.

You next ask whether a permit ordinance may require that the fingerprints be used to obtain only an applicant's state criminal history record from the Department of State Police, or whether the fingerprints must be forwarded to the Federal Bureau of Investigation ("FBI") to obtain the applicant's national criminal history record. In your letter, you advise that it is unclear whether, pursuant to a permit ordinance, the fingerprints must be sent to the FBI or whether the fingerprints may be used locally or through the Department of State Police to obtain a state criminal history records check.

Chapter 23 of Title 19.2, §§ 19.2387 through 19.2392.01, establishes the Central Criminal Records Exchange (the "Exchange") as a division within the Department of State Police and the procedure for reporting criminal offenses to the Exchange. Section 19.2390(A) requires that reports filed with the Exchange "be accompanied by fingerprints of the individual arrested." Section 19.2390(A) also requires that "[f]ingerprint cards prepared by a law-enforcement agency for inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the appropriate bureau." Federal law provides for the acquisition, preservation and exchange of information from the National Crime Information Center:

(a) The Attorney General [of the United States] shall

(1) acquire, collect, classify, and preserve identification, criminal identification, crime and other records;

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(4) exchange such records and information with, and for the official use of, authorized officials of the Federal Government, the States, cities, and penal and other institutions.<sup>[11]</sup>

The National Crime Information Center is a nationwide computerized criminal justice information system maintained by the FBI.<sup>12</sup>

At its 1997 Session, the General Assembly further amended § 18.2308(D) to provide that, should the county or city where an applicant resides adopt a permit ordinance,

[a]s a condition for issuance of a concealed handgun permit, the applicant *shall* submit to fingerprinting if required by local ordinance in the county or city where the applicant resides and provide personal descriptive information to be forwarded with the fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding the applicant, and obtaining fingerprint identification information from federal records pursuant to criminal investigations by state and local law-enforcement agencies. [Emphasis added.]

Therefore, when a county or city adopts a permit ordinance as a condition for issuance of a concealed handgun permit, the fingerprints must be submitted through the Exchange to the FBI. The use of the word "shall" in a statute generally implies that its terms are intended to be mandatory, rather than permissive or directive.<sup>13</sup>

Statutes may be construed only where there is an ambiguity.<sup>14</sup> Otherwise, the clear and unambiguous words of the statute must be accorded their plain meaning.<sup>15</sup> When a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.<sup>16</sup> The mention of one thing in a statute implies the exclusion of another.<sup>17</sup>

The new language of § 18.2308(D) is clear and unambiguous and, therefore, does not require construction. It is clear that a county or city must adopt a permit ordinance before a police department may submit the applicant's fingerprints to the FBI for the purpose of obtaining any criminal history information-either state or national-regarding the applicant. The criminal history information is to be obtained from the FBI.

Your last question is whether the forty-five day period within which a court must issue a concealed handgun permit begins on the date the applicant submits the application, or on the date the court receives a report following a criminal history records check of the applicant.

"[T]he primary objective of statutory construction is to ascertain and give effect to legislative intent."<sup>18</sup> In giving effect to the intent of the legislature, statutes bearing upon the same subject matter are to be read together.<sup>19</sup> Section 18.2-

308(D) provides that "[t]he court shall issue the permit within forty-five days of receipt of the completed application unless it is determined that the applicant is disqualified." The General Assembly has not defined what is meant by "completed application." In the absence of a contrary definition, the words in a statute are presumed to have their usual and ordinary meaning.<sup>20</sup> Section 18.2-308(D) also requires that "[i]f the applicant is later found by the court to be disqualified, the permit *shall* be revoked." (Emphasis added.) A fundamental rule of statutory construction requires that every part of a statute be presumed to have some effect, and not be treated as meaningless unless absolutely necessary.<sup>21</sup> Clearly, the court must first issue a permit before such may be revoked. The disqualifying criteria for both the denial of an application and the revocation of a permit are enumerated in § 18.2308(E). I note that such criteria are of the nature and type of information typically contained on both the National Crime Information Center and Exchange records. In addition, § 18.2308(D) requires the applicant to complete the application for a concealed handgun permit "under oath before a notary or other person qualified to take oaths" on a form that may require "only that information necessary to determine eligibility for the permit." When an applicant has provided all information necessary to determine eligibility under oath, the applicant clearly has completed all of the information he can provide. Such application, therefore, is complete upon delivery by the applicant to the clerk of court since nothing further may be added by the applicant to complete such application.

In addition, § 18.2308(K) requires the clerk to assess a fee for processing an application at the time the application for the permit is delivered. "The total amount assessed for processing an application for a permit shall not exceed fifty dollars."<sup>22</sup> The assessment, however, is not required until the court accepts the application.<sup>23</sup> To conclude that the forty-five day period begins to run after the court has received the report from the FBI would delay the assessment of such fee until after the criminal records check is performed and returned to the court. In such case, the locality must advance the costs of processing the application for a permit until such time as the permit actually is issued to the applicant.<sup>24</sup> It is a basic principle of statutory construction that absurd results are to be avoided.<sup>25</sup> It is also presumed that the General Assembly does not intend the application of a statute to lead to irrational consequences.<sup>26</sup> It would be absurd and irrational, in my opinion, to construe § 18.2308(K) to require a locality to advance the costs of processing an application for a concealed weapons permit on behalf of an applicant. Likewise, it would not be rational to conclude that a permit could be revoked by the court before it is issued.

Consequently, I must conclude that the forty-five day period within which a court must issue a concealed handgun permit begins on the date the applicant submits the application to the clerk for processing.<sup>27</sup>

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<sup>1</sup>1997 Va. Acts ch. 922 (amending § 18.2308(D)).

<sup>2</sup>The 1997 Session of the General Assembly repealed Title 15.1 and added a title numbered 15.2, effective December 1, 1997. The comparable section to repealed § 15.129.15 is § 15.2915, relating to control of firearms. Section 15.2-915 generally prohibits local regulation of firearms sales, but excepts local ordinances adopted before January 1, 1987, from that general prohibition.

<sup>3</sup>See *Commonwealth v. Arlington County Bd.*, 217 Va. 558, 232 S.E.2d 30 (1977); *City of Richmond v. County Board*, 199 Va. 679, 684, 101 S.E.2d 641, 64445 (1958).

<sup>4</sup>See *Bd. of Supervisors v. Horne*, 216 Va. 113, 117, 215 S.E.2d 453, 455 (1975); 19871988 Op. Va. Att'y Gen. 146, 146.

<sup>5</sup>Op. Va. Att'y Gen.: 1996 at 197, 198; 19871988 at 1, 2.

<sup>6</sup>*Temple v. City of Petersburg*, 182 Va. 418, 423, 29 S.E.2d 357, 358 (1944); see also 1993 Op. Va. Att'y Gen. 256, 257.

<sup>7</sup>See *Ambrogi v. Koontz*, 224 Va. 381, 386, 297 S.E.2d 660, 662 (1982); 1993 Op. Va. Att'y Gen. 99, 100.

<sup>8</sup>*Masters v. Hart*, 189 Va. 969, 979, 55 S.E.2d 205, 210 (1949).

<sup>9</sup>See 2A NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 47.23 (5<sup>th</sup> ed. 1992 & Supp. 1997); 1992 Op. Va. Att'y Gen. 145, 146, and opinions cited therein.

<sup>10</sup>See *id.*; see also BLACK'S LAW DICTIONARY 581 (1990) (meaning of "*expressio unius est exclusio alterius*").

<sup>11</sup>28 U.S.C.A. § 534 (West 1993).

<sup>12</sup>*Id.* §§ 534(e)(3), 531 note (West Supp. 1997).

<sup>13</sup>See *Andrews v. Shepherd*, 201 Va. 412, 111 S.E.2d 279 (1959); see also *Schmidt v. City of Richmond*, 206 Va. 211, 218, 142 S.E.2d 573, 578 (1965); Op. Va. Att'y Gen.: 1996 at 178, 178; 1991 at 238, 240; 1989 at 250, 25152; 19851986 at 133, 134.

<sup>14</sup>See *Ambrogi v. Koontz*, 224 Va. at 386, 297 S.E.2d at 66263.

<sup>15</sup>*Diggs v. Commonwealth*, 6 Va. App. 300, 302, 369 S.E.2d 199, 200 (1988).

<sup>16</sup>See 2A SINGER, *supra* note 9, § 47.23; 1992 Op. Va. Att'y Gen., *supra* note 9, at 146, and opinions cited therein.

<sup>17</sup> See *id.*; see also BLACK'S LAW DICTIONARY, *supra* note 10, at 581.

<sup>18</sup> Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); see also 1991 Op. Va. Att'y Gen. 58, 60.

<sup>19</sup> See Prillaman v. Commonwealth, 199 Va. 401, 40506, 100 S.E.2d 4, 78 (1957); 1992 Op. Va. Att'y Gen. 97, 99.

<sup>20</sup> See, e.g., Anderson v. Commonwealth, 182 Va. 560, 565, 29 S.E.2d 838, 840 (1944).

<sup>21</sup> Raven Coal Corp. v. Absher, 153 Va. 332, 149 S.E. 541 (1929).

<sup>22</sup> Section 18.2308(K).

<sup>23</sup> "No payment shall be required until the application is accepted by the court as a complete application." *Id.*

<sup>24</sup> It is unlikely that the applicant would reimburse the locality for the costs of processing the application, in the event the permit is not issued.

<sup>25</sup> McFadden v. McNorton, 193 Va. 455, 461, 69 S.E.2d 445, 449 (1952); 1991 Op. Va. Att'y Gen. 5, 7.

<sup>26</sup> VEPCO v. Citizens, 222 Va. 866, 284 S.E.2d 613 (1981).

<sup>27</sup> The \$50 fee is, therefore, to be assessed at the time the application is submitted to the clerk. In addition, I note that should the criminal records check reveal the existence of one of the disqualifying criteria contained in § 18.2308(E), the court is required to revoke any permit issued prior to receipt of the results of such records check.