

01-050

AGRICULTURE, HORTICULTURE AND FOOD: RIGHT TO FARM ACT.

COUNTIES, CITIES AND TOWNS: PLANNING, SUBDIVISION OF LAND AND ZONING.

Response to question whether Right to Farm Act supersedes local zoning ordinance and permits use of aircraft in surveillance of crops, livestock and property and to pick up repair parts and supplies is inconclusive.

The Honorable R. Steven Landes
Member, House of Delegates
June 29, 2001

You ask whether the Right to Farm Act, §§ 3.1-22.28 and 3.1-22.29 of the *Code of Virginia*, permits a constituent to use an airstrip on his farm for what he labels "agricultural activities."

You advise that a constituent desires to operate on his farm property an airstrip, which he considers to be a part of his farming operation. You are advised that the agricultural activities for which the airstrip is operated are the takeoff and landing of aircraft used in the surveillance of crops, livestock and property, and in the pickup of repair parts and supplies. Furthermore, you relate that the Federal Aviation Administration has approved the use of the airstrip, and that none of the constituent's neighbors object to the operation of the private airstrip on the farm. Because no further facts are provided, I assume that the zoning ordinance of the locality within which the farm property is located does not include operation of a private airstrip as a permitted use within an agriculturally zoned district. Consequently, it appears from your request that the constituent requires a special use permit from the locality to operate his private airstrip.

Section 3.1-22.28, as amended in 1994,¹ prohibits a county from adopting any ordinance that requires a "special exception or special use permit" for agriculture production "in an area that is zoned as an agricultural district." Section 3.1-22.28 specifically defines "production agriculture" to mean "the bona fide production or harvesting of agricultural ... products." At its 1994 Session, the General Assembly also amended § 15.2-2288, pertaining to agricultural activities that may be regulated in a local zoning ordinance, by adding a paragraph containing essentially the same limitation found in § 3.1-22.28.² Both §§ 3.1-22.28 and 15.2-2288 permit a county to adopt "setback requirements, minimum area requirements and other requirements" relating to land on which the agricultural activity is occurring. Section 3.1-22.28 also provides that no county shall enact zoning ordinances restricting or regulating farm structures or farming practices in an agricultural district "unless such restrictions bear a relationship to the health, safety and general welfare of its citizens." Sections 3.1-22.28 and 15.2-2288 clearly prohibit a locality from requiring a special use permit or exception for agricultural production in agricultural zones or districts.

The stated purpose of § 3.1-22.28 is "to limit the circumstances under which agricultural operations may be deemed to be a nuisance." Section 3.1-22.29(A) provides that "[n]o agricultural operation ... shall be or become a nuisance, if such operations are conducted in accordance with existing best management practices and comply with existing laws and regulations of the Commonwealth." A county is empowered to cause any nuisance to be abated.³ Based upon the limited facts provided, it cannot be determined whether the use of an aircraft is a farming operation "conducted in accordance with existing best

management practices"⁴ within the Commonwealth. In addition, the facts do not suggest that the county where the airstrip is located has concluded that operation of the airstrip constitutes a nuisance.

The primary goal of statutory construction "is to ascertain and give effect to legislative intent."⁵ "The manifest intention of the legislature, clearly disclosed by its language, must be applied."⁶ The facts do not conclusively establish that the use of aircraft in the surveillance of crops, livestock and property, and in the pickup of repair parts and supplies so contributes to or is such a part of the bona fide production or harvesting of agricultural products that the Right to Farm Act should supersede the relevant local ordinance in this case. Consequently, I am unable to conclude that the General Assembly intends for the Right to Farm Act to permit the operation of an airstrip on farm property for the takeoff and landing of aircraft used in the surveillance of crops, livestock and property, and in the pickup of repair parts and supplies.

¹See 1994 Va. Acts ch. 779, at 1202, 1202.

²See 1994 Va. Acts ch. 802, at 1246, 1248 (enacting language in § 15.1-491, now recodified at § 15.2-2288).

³See, e.g., Va. Code Ann. § 15.2-900 (Michie Repl. Vol. 1997); 1983-1984 Op. Va. Att'y Gen. 90, 90; *id.* at 86, 89 n.2. Depending on the circumstances, the question of what constitutes a public nuisance may be determined by the legislature or by the courts. See 1993 Op. Va. Att'y Gen. 79, 81-82.

⁴Va. Code Ann. § 3.1-22.29(A) (Michie Repl. Vol. 1994).

⁵Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); *see also* 1993 Op. Va. Att'y Gen. 237, 239.

⁶Barr v. Town & Country Properties, 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)).

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