



COMMONWEALTH of VIRGINIA

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October 15, 2007

The Honorable Leo C. Wardrup, Jr.
Member, House of Delegates
P.O. Box 5266
Virginia Beach, Virginia 23471

Dear Delegate Wardrup:

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 a member of the General Assembly who also is an officer of a firm holding ABC licenses and who has participated in the hearing on alleged violations of the *Code of Virginia* related to such licenses is entitled as a matter of right under § 30-5 to a continuance of an administrative appeal hearing.

Response

It is my opinion that a member of the General Assembly who is an officer of a corporation holding an ABC license that is the subject of a hearing before an administrative board is a party under § 30-5.

Applicable Law and Discussion

Section 30-5 provides that:

Any party to an action or proceeding in any court ... or other tribunal having judicial or quasi-judicial powers or jurisdiction, who is an officer, employee or member of the General Assembly, ... shall be entitled to a continuance as a matter of right (i) during the period beginning thirty days prior to the commencement of the [General Assembly] session and ending thirty days after the adjournment thereof[.]

Hearings before the Virginia Alcoholic Beverage Control Board¹ ("ABC Board") on license matters are subject to § 30-5 because they are tribunals having judicial or quasi-judicial powers or jurisdiction.²

¹ See VA. CODE ANN. § 4.1-102 (1999) (establishing membership of ABC Board).

² See § 4.1-103(11), (14) (1999) (including among powers of ABC Board authority to hold and conduct hearings and to grant, suspend, and revoke licenses for sale of alcoholic beverages); *but cf.* 1971-1972 Op. Va. Att'y Gen. 212, 212-13 (concluding that General Assembly member was not entitled to automatic continuance before District Committees of Virginia State Bar because such Committees merely perform investigative functions; Committees did not have power to determine rights or privileges of attorneys).

However, the central question is whether a member of the General Assembly who is an officer of the firm appearing before the ABC Board is a “party to an action” under § 30-5. The Supreme Court of Virginia and the Attorney General have construed § 30-5 liberally.³

The Alcoholic Beverage Control regulations⁴ (“ABC Regulations”) define interested parties:

As used in [Chapter 10], ‘*interested parties*’ shall mean the following persons:

1. The applicant;
2. The licensee;
3. Persons who would be aggrieved by a decision of the board; and
4. For purposes of appeal pursuant to 3 VAC 5-10-240, interested parties shall be only those persons who appeared at and asserted an interest in the hearing before a hearing officer.⁵

Under the facts you provide, the member of the General Assembly is an officer of the corporation and has provided evidence at an ABC Board hearing before the hearing officer. He would meet the definition of an “interested party” under 3 VAC § 5-10-120(4) and could testify before the Board on appeal.

Section 30-5 does not necessarily refer to an interested party as provided in the ABC Regulations.⁶ Rather, § 30-5 refers to a “party” without further definition. Generally, a “party” is “[o]ne by or against whom a lawsuit is brought” or “a person who has been named as a party and has a right to control the lawsuit.”⁷ In the situation you present, the General Assembly member is not just a witness at the ABC hearing, but is also an officer in the corporation holding the ABC license.

Additionally, § 30-5 does not apply only to litigation within the court system. Rather, it has application to hearings before boards and commissions with quasi-judicial powers.⁸ By implication, “parties” in these types of proceedings may involve a broader definition than that applied to court proceedings.⁹ Given the liberal interpretation of § 30-5 and the definition of an “interested party” in the ABC Regulations,¹⁰ it appears that a member of the General Assembly who testifies at an ABC Board

³ See 1991 Op. Va. Att’y Gen. 179, 180 and cases and opinions cited therein.

⁴ 3 VA. ADMIN. CODE §§ 5-10-10 to 5-70-200 (1996 & Supp. 2007).

⁵ See 3 VA. ADMIN. CODE § 5-10-120 (1996).

⁶ *Id.*

⁷ BLACK’S LAW DICTIONARY 1154 (8th ed. 2004).

⁸ See *Howell v. Catterall*, 212 Va. 525, 527, 186 S.E.2d 28, 30 (1972).

⁹ General rules of statutory construction require that any determination of the intent of the General Assembly be based on the words contained in the statute, unless a literal construction would create an absurd result. See 2006 Op. Va. Att’y Gen. 71, 73, 75 n.2. Since the General Assembly made § 30-5 applicable to proceedings with parties other than the typical plaintiff/defendant designations in a court hearing, it would not appear that the definition of “party” would be so limited.

¹⁰ See 3 VA. ADMIN. CODE § 5-10-120.

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hearing may be entitled to a continuance of an appeal “as a matter of right” pursuant to § 30-5 provided the hearing is scheduled during the statutory period and other conditions of the statute are satisfied.¹¹ In this instance, the member’s status as an officer of the corporation subject to the ABC proceeding is sufficient for him to be considered a party under § 30-5.

Conclusion

Accordingly, it is my opinion that a member of the General Assembly who is an officer of a corporation holding an ABC license that is the subject of a hearing before an administrative board is a party under § 30-5.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in cursive script that reads "Robert F. McDonnell".

Robert F. McDonnell

6:231; 1:941/07-034

¹¹VA. CODE ANN. § 30-5 (2001).