



# COMMONWEALTH of VIRGINIA

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The Honorable Thomas K. Norment, Jr.  
Member, Senate of Virginia  
Post Office Box 6205  
Williamsburg, Virginia 23188

Dear Senator Norment:

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 the phrase “agricultural products”, as stated in § 15.2-2288, is defined by the definitions set forth in § 3.2-6400?

## Response

It is my opinion that the phrase “agricultural products”, as stated in § 15.2-2288, is not defined by the definitions set forth in § 3.2-6400.

## Applicable Law and Discussion

Section 15.2-2288 provides that a local zoning ordinance shall not require a special exception or special use permit for any production agriculture or silviculture activity in an area zoned as an agricultural district or classification.<sup>1</sup> The section further explains that this activity is “the bona fide production or harvesting of agricultural or silviculture products.” The Code does not provide a definition for “agricultural products” as the phrase is used in § 15.2-2288 is not defined by statute. In the absence of a statutory definition, the plain and ordinary meaning of a term is controlling, given the context in which it is used.<sup>2</sup>

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<sup>1</sup> VA. CODE ANN. § 15.2-2288 (2008).

<sup>2</sup> See *Sansom v. Bd. of Supvrs.*, 257 Va. 589, 594-95, 514 S.E.2d 345, 349 (1999); *Hubbard v. Henrico Ltd. P’ship*, 255 Va. 335, 340, 497 S.E.2d 335, 338 (1998); *Commonwealth v. Orange-Madison Coop. Farm Serv.*, 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980). See also 1987-88 Op. Va. Att’y Gen. 423, 426-27 (referring to Black’s Law Dictionary’s definition of “agricultural product” in construing “nonagricultural and nonforestry product” for purposes of a statute requiring certain truck loads to be covered because the phrase was not otherwise defined by statute in order to give it “its usual, commonly understood meaning, with the primary objective being to give effect to the legislative intent behind its enactment.”).

The General Assembly has set forth elsewhere in the Code several statutory definitions of the phrase “agricultural products” but has confined the applicability of each such definition to the specific subject matter of the chapter or article involved. For example, § 3.2-6400 expressly provides that the definitions set forth therein are “[a]s used in this chapter, unless the context requires a different meaning.”<sup>3</sup> When statutory language is clear and unambiguous, the plain meaning of the language used should determine the legislative intent, unless such a literal construction would lead to a manifest absurdity.<sup>4</sup> Therefore, the definition of “agricultural products” found in § 3.2-6400 only applies to the use of that phrase in Chapter 64, relating to agritourism activity liability, of Title 3.2.

For comparison, “agricultural product” is defined differently in § 3.2-4300,<sup>5</sup> for use of that phrase in Article 1 of Chapter 43, relating to grades, marks and brands, of Title 3.2, than it is defined in § 3.2-6400.<sup>6</sup> Yet another definition of “agricultural products” is found in the Agricultural Cooperative Association Act in Title 13.1.<sup>7</sup> Likewise, yet another definition for the term “agricultural products” is set forth in Title 15.2 for use in the Agricultural and Forestal Districts Act.<sup>8</sup> Given the various definitions of “agricultural products” and the express limitations on their application established in the Code, I conclude that the General Assembly did not intend the definition of “agricultural products” provided by § 3.2-6400 to serve as the definition of the phrase as used in § 15.2-2288.<sup>9</sup>

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<sup>3</sup> See VA. CODE ANN. § 3.2-6400 (2008).

<sup>4</sup> See *HCA Health Svcs. of Va., Inc. v. Levin*, 260 Va. 215, 220, 530 S.E.2d 417, 419-20 (2000). See also *Wright v. Commonwealth*, 278 Va. 754, 759, 685 S.E.2d 655, 657 (2009).

<sup>5</sup> The term “agricultural product” is defined in § 3.2-4300 (2008) to mean “any horticultural, viticulture, dairy, livestock, poultry, bee, or other farm or garden product.”

<sup>6</sup> The term “agricultural products” is defined in § 3.2-6400 to mean “any livestock, aquaculture, poultry, horticultural, floricultural, viticulture, silvicultural, or other farm crops.”

<sup>7</sup> Agricultural Cooperative Association Act, §§ 13.1-312 through 13.1-345 (2011). As used in this act, the term “agricultural products” is defined in § 13.1-313 to include “livestock and livestock products, dairy products, poultry and poultry products, wine and viticultural products, seeds, nuts, ground stock, horticultural, floricultural, forestry, bee and any and all kinds of farm products.”

<sup>8</sup> Agricultural and Forestal Districts Act, §§ 15.2-4300 through 15.2-4314 (2008). As used in this act, the term “agricultural products” is defined in 15.2-4302 to mean “crops, livestock and livestock products, including but not limited to: field crops, fruits, vegetables, horticultural specialties, cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs.” This same definition also is set forth in § 15.2-4402 (2008) for use in the Local Agricultural and Forestal Districts Act, §§ 15.2-4400 through 15.2-4407 (2008 & Supp. 2011).

<sup>9</sup> Nonetheless, the statutory definitions of “agricultural products” found elsewhere in the Code, while not defining what the phrase means in § 15.2-2288, may be looked to as interpretative guides for determining the plain and ordinary meaning of the phrase as it is used in § 15.2-2288. See *First Nat'l Bank of Richmond v. Holland*, 99 Va. 495, 504, 39 S.E. 126, 129-30 (1901) (examining various sections of Code and history of legislation to determine whether terms “goods or chattels” were intended to embrace “choses in action” and stating that the “Code is one act, prepared and adopted as such, and therefore in construing section 2414 we are not confined to the language of that section, but can look to other sections of the Code where the same terms are employed.”). See also 1975-76 Op. Va. Att’y Gen. 3, 4-5 (the statutory definition of law-enforcement officer, while limited for use in Chapter 16, Title 9 of the Code, “does provide assistance in defining the term ‘law-enforcement officer’ in other sections of the Code”).

**Conclusion**

Accordingly, it is my opinion that the phrase "agricultural products", as stated in § 15.2-2288, is not defined by the definitions set forth in § 3.2-6400.

With kindest regards, I am

Very truly yours,

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

Kenneth T. Cuccinelli, II  
Attorney General