Law-enforcement officers may lawfully employ minors as undercover agents in enforcement of prohibition against selling tobacco products to minors.

The Honorable William C. Mims

Member, House of Delegates

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You ask whether it is lawful for law-enforcement officers to employ minors as undercover agents in the enforcement of the prohibition against the selling of tobacco products to minors. You relate that such employment will be with the approval of the parents of the minors.

Section 18.2371.2 of the Code of Virginia generally prohibits any person from selling or distributing to, or purchasing for, minors any tobacco products, or from knowingly permitting minors to purchase such products, including, but not limited to, cigarettes and cigars. In addition, a minor may not lawfully purchase or possess any tobacco product. Violations are punishable by imposition of a civil penalty payable to the state treasury. Section 18.2371.2(B), however, expressly provides that the prohibition against possession of tobacco products by a minor shall not apply to the possession of tobacco products by a minor delivering tobacco products in pursuance of his employment.

It is well-settled that "[i]f the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it." It is unnecessary to resort to any rules of statutory construction when the language of a statute is unambiguous. In those situations, the statute's plain meaning and intent govern. Minors acting in express pursuit of their employment by law-enforcement officers, and with their parents' approval, are clearly within the authorization contained in § 18.2371.2(B). A minor, employed by police officers and authorized to purchase and possess tobacco products for the express purpose of uncovering evidence of illegal distribution and sales to minors, and to which police officers such tobacco products are returned, is not in violation of § 18.2371.2.

It is, therefore, my opinion that it is lawful for law-enforcement officers to employ minors as undercover agents in the enforcement of the prohibition against selling tobacco products to minors.

1The first sentence of § 18.2371.2(A) provides that "[n]o person shall sell to, distribute to, purchase for or knowingly permit the purchase by any person less than eighteen years of age, knowing or having reason to believe that such person is less than eighteen years of age, any tobacco product, including but not limited to cigarettes and cigars."

2The use of undercover agents or feigned accomplices is not new. "As a general rule, ... an undercover police officer, who is engaged in attempts to discover violations of the law is not an accomplice of one charged with such a violation." 23 C.J.S. Criminal Laws § 1001, at 266 (1989). Therefore, "a person who is employed or used by law enforcement officers to obtain evidence of a criminal act by a third person is not an accomplice." Id.
Section 18.2371.2(B) provides: "No person less than eighteen years of age shall purchase or possess any tobacco product including but not limited to cigarettes and cigars. The provisions of this subsection shall not be applicable to the possession of tobacco products by a person less than eighteen years of age making a delivery of tobacco products in pursuance of his employment."

Section 18.2371.2(D) provides: "A violation of subsection A, B, or C by an individual or by a separate retail establishment shall be punishable by a civil penalty not to exceed fifty dollars for a first violation and a civil penalty not to exceed $100 for a second violation. However, a third or subsequent violation of subsection A shall be punishable by a civil penalty not to exceed $250.... Any law-enforcement officer may issue a summons for a violation of subsection A, B, or C."

