MOTOR VEHICLES: POWERS OF LOCAL GOVERNMENTS.

CRIMES AND OFFENSES GENERALLY: IN GENERAL – CLASSIFICATION OF CRIMINAL OFFENSES AND PUNISHMENT THEREOF.

Statutory authority allowing local governing body to incorporate certain statute(s) by reference in ordinance is limited to statute(s) so designated. Local governing body has no authority to adopt ordinance incorporating by reference crimes classified as misdemeanors.

Mr. Joseph B. Benedetti
Director, Department of Criminal Justice Services
December 17, 1999

You ask whether § 46.2-1313 of the Code of Virginia, or any other statute or common law, permits localities to adopt ordinances which incorporate by reference the provisions of Title 18.2, relating to crimes classified as misdemeanors pursuant to Article 3, Chapter 1 of that title.¹

Chapter 13 of Title 46.2, §§ 46.2-1300 through 46.2-1314, sets forth the powers of local governments regarding the operation of motor vehicles. Section 46.2-1313 provides that local ordinances "may incorporate appropriate provisions … of Article 2 (§ 18.2-66 et seq.) of Chapter 7 of Title 18.2 into such ordinances by reference." Article 2, Chapter 7 of Title 18.2 relates to the offense of driving a motor vehicle while under the influence of drugs or alcohol. The provisions of other chapters of Title 18.2 to which you refer relate to various other misdemeanor offenses.

The long-followed Dillon Rule requires a narrow construction of all powers conferred on and exercised by local governments in Virginia, because such powers are delegated powers.² Thus, localities "‘have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable.’³ A 1982 opinion of the Attorney General concludes that the Virginia Code specifically allows adoption of certain statutes by reference and cites as an example the predecessor statute to § 46.2-1313.⁴ Accordingly, § 46.2-1313 enables local governments to incorporate the provisions of Article 2, Chapter 7 of Title 18.2 into ordinances by reference.⁵

The authority of a local governing body expressed in a statute to adopt an ordinance incorporating another statute by reference, however, is limited to the statute so designated. The Supreme Court of Virginia has held that "[w]hen one statute adopts another by specific reference, only those particular parts of the statute referred to are incorporated."⁶ This principle is especially significant regarding penal ordinances because "[p]enal ordinances are to be strictly construed, and are not to be extended by implication."⁷

Section 46.2-1313 authorizes a local governing body to adopt an ordinance incorporating by reference Article 2, Chapter 7 of Title 18.2. Based on the above, it is my opinion that neither this statute, nor any other statute of which I am aware nor common law authorizes a local governing body to adopt an ordinance incorporating by reference the statutory provisions about which you inquire.

¹Specifically, you cite §§ 18.2-8, 18.2-11 to 18.2-13.


7 Id. at 26, 215 S.E.2d at 638.