

OP. NO. 04-017

**CRIMES AND OFFENSES GENERALLY: CRIMES AGAINST
PEACE AND ORDER – PLACES OF AMUSEMENT AND DANCE
HALLS.**

Exemption from regulation as public dance hall only applies to restaurants in cities; no exemption for restaurants located in counties or towns regardless of size of dance floor. Restaurant that provides musical entertainment and meaningfully enforces prohibition against dancing is not subject to regulation as public dance hall. Attorney General declines to render opinion regarding local dance floor ordinance.

Mr. J. Thompson Shrader
County Attorney for Amherst County
May 6, 2004

Issue Presented

You seek guidance concerning the regulation of public dance halls. Specifically, you ask whether § 18.2-433 prohibits Amherst County from regulating a restaurant having a dance floor with an area not exceeding ten percent of its total floor area. You further inquire whether, under your local ordinance, dancing that occurs outside an area designated as a dance floor and exceeding ten percent of the total floor space subjects a restaurant to regulation. Finally, you ask whether a restaurant providing musical entertainment, but no dancing, remains subject to regulation.

Response

It is my opinion that a county may regulate, as a public dance hall, a restaurant located in the county, or in a town within the county, having a dance floor of any size. The exception to regulation in § 18.2-433 is applicable only to restaurants in cities and not to those in counties or towns. Attorneys General long have followed a policy of declining to interpret matters of local concern, and therefore, I decline to render an opinion regarding your local dance floor ordinance. Finally, it is my opinion that a restaurant that provides musical entertainment and meaningfully enforces prohibition against dancing is not subject to regulation as a public dance hall.

Background

You relate that an applicant for a dance hall permit withdrew the application because the applicant believes the dance floor is less than ten percent of the total floor area of the restaurant. You further relate that the applicant states this area is the only area in which patrons may dance. Additionally, you note that the applicant limits the dance floor area by designating the area with masking tape.

You state that Amherst County has adopted an ordinance excluding from the definition of "public dance hall," a restaurant located in the county that is licensed under § 4.1-210 to serve food and beverages and has a dance floor not exceeding ten percent of the total floor area.¹ Finally, you state that the county has concern that establishments, such as the one described, should be regulated as public dance halls, and the county has proposed to change its ordinance to eliminate the ten percent exception.²

Applicable Law and Discussion

Section 18.2-433 states that "[t]he governing body of any county, city or town may, by ordinance, regulate public dance halls ... and prescribe punishment for violation of such ordinance not to exceed that prescribed for a Class 3 misdemeanor." Section 18.2-433 defines "public dance hall" as "any place open to the general public where dancing is permitted." Section 18.2-433, however, also states that "a restaurant located in any city licensed under § 4.1-210 to serve food and beverages having a dance floor with an area not exceeding ten per centum of the total floor area of the establishment shall not be considered a public dance hall."

You ask whether § 18.2-433 prohibits Amherst County from regulating as a public dance hall an establishment with a dance floor that does not exceed ten percent of its total floor area. Section 18.2-433 expressly limits the dance floor exception to "a restaurant located in any *city*." (Emphasis added.) The General Assembly could also have included towns and counties within the exception's coverage, but did not do so.³ The legislature's use of the narrower term "city" "must be interpreted in the context of the exemption provision in which it appears."⁴ "When the General Assembly uses two different terms in the same act, it is presumed to mean two different things."⁵ Thus, § 18.2-433 does not prohibit Amherst County from regulating such a restaurant, regardless of the size of its dance floor.⁶

You further ask whether the restaurant is subject to regulation and prosecution, when dancing occurs outside an area designated as a dance floor, which exceeds ten percent of the total area. As noted previously, because § 18.2-433 applies the "ten per centum" exception only to cities, a public restaurant that permits dancing and is located in a town or county qualifies as a public dance hall. Thus, such an establishment may be subject to regulation regardless of the size of its dance floor.

You indicate that the Amherst County ordinance exempts a restaurant from regulation when an establishment's dance floor does not exceed ten percent of its total floor area.⁷ This Office historically has followed a policy of responding to official opinion requests only when such requests concern an interpretation of federal or state law, rule or regulation.⁸ In instances when a request requires an interpretation of a local ordinance, the Attorney General has declined to respond in order to avoid becoming involved in matters solely of local concern and over which the local governing body has control.⁹ Any ambiguity that exists in a local ordinance is a problem to be rectified by the local governing body rather than by an interpretation by this Office.¹⁰ In addition, a 1987 opinion of the Attorney General concludes that the Attorney General has declined to render official opinions when the request involves, among others, a matter of purely local concern or procedure.¹¹ Accordingly, I have limited my comments to the scope of authority to regulate a public dance hall pursuant to § 18.2-433.

You also inquire whether a restaurant that provides musical entertainment and excludes dancing would be subject to regulation as a public dance hall. Section 18.2-433 defines a "public dance hall" as a "place open to the general public *where dancing is permitted*." (Emphasis added.) Thus, a facility that prohibits dancing and meaningfully enforces such a prohibition is not subject to regulation as a public dance hall.

Conclusion

It is my opinion that a county may regulate, as a public dance hall, a restaurant located in the county, or in a town within the county, having a dance floor of any size. The exception to regulation in § 18.2-433 is applicable only to restaurants in cities and not to those in counties or towns. Attorneys General long have followed a policy of declining to interpret matters of local concern, and therefore, I decline to render an opinion regarding your local dance floor ordinance. Finally, it is my opinion that a restaurant that provides musical entertainment and meaningfully enforces

prohibition against dancing is not subject to regulation as a public dance hall.

¹Amherst County Bd. of Supvrs. Mins. (July 15, 2003), (adopting proposed amendments to § 7-245 of Amherst County Code).

²See Amherst County Bd. of Supvrs. Agenda (Feb. 3, 2004) (proposing to delete ten percent exception from § 7-245 of Amherst County Code), *available at* http://www.countyofamherst.com/Web/AmherstWeb.nsf/Section-County_Agenda-Winter?OpenForm.

³*Cf.* 1971-1972 Op. Va. Att'y Gen. 273 (concluding that statute permitting ambulances to exceed speed limits outside corporate limits of cities and towns applies only in counties). When the General Assembly intends words in a statute to have a specific meaning, it clearly and unambiguously expresses its intention. See *Brown v. Lukhard*, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985); *Adkins v. Commonwealth*, 27 Va. App. 166, 169, 497 S.E.2d 896, 897 (1998); *Birdsong Peanut Co. v. Cowling*, 8 Va. App. 274, 277, 381 S.E.2d 24, 26 (1989). Moreover, when the legislature intends to include a broader term, it so states by the use of that term. See *Klarfeld v. Salsbury*, 233 Va. 277, 284-85, 355 S.E.2d 319, 323 (1987).

⁴*Forst v. Rockingham Poultry Mktg. Coop.*, 222 Va. 270, 278, 279 S.E.2d 400, 404 (1981).

⁵*Id.*

⁶*Cf.* *Stork Diaper Serv., Inc. v. City of Richmond*, 210 Va. 705, 707-08, 173 S.E.2d 859, 861 (1970) (noting that statutory exception expressly limited to businesses with offices in city and other localities cannot be said to include company with facilities in city alone). The court "cannot supply a provision that was not enacted by the General Assembly." *Id.* at 708.

⁷Pursuant to § 18.2-433, a county may regulate a public dance hall.

⁸See, e.g., 2001 Op. Va. Att'y Gen. 65, 66, and opinions cited therein.

⁹See *id.*

¹⁰See Op. Va. Att'y Gen.: 2001, *supra* note 8, at 66; *id.* at 137, 138; 1986-1987 at 347, 348; 1976-1977 at 17, 17.

¹¹1987-1988 Op. Va. Att'y Gen. 69, 72; see *also* Op. Va. Att'y Gen.: 1999 at 90, 93; 1997 at 105, 107; 1977-1978 at 31, 33.

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