



COMMONWEALTH OF VIRGINIA

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The Honorable Thomas A. "Tag" Greason
Member, House of Delegates
P.O. Box 651293
Potomac Falls, Virginia 20165

Dear Delegate Greason:

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 a private entity that has leased property from a local government for the purpose of hosting an event may lawfully prohibit persons from carrying a firearm on such property and for such event.

Response

It is my opinion that a private entity leasing government property for an event generally may regulate or prohibit the carrying or possession of firearms on that property for such event.

Background

You note that the American Red Cross hosts an annual "waterfront festival" in the City of Alexandria. You state, however, that the 2010 event has been cancelled. The festival occurs on public land that the Red Cross leases from the City. At this festival, the Red Cross has adopted a policy banning persons from carrying firearms. Therefore, you inquire regarding the authority of the Red Cross to initiate such a ban.

Applicable Law and Discussion

"Virginia follows the Dillon Rule of strict construction," which provides that "local governing bodies have only those powers that are expressly granted, those that are necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable."¹ The General Assembly has provided broad powers to local governments to lease local government property.² Virginia law imposes no restraints on localities with respect to lease terms and firearms.

¹ *Tabler v. Bd. of Supvrs.*, 221 Va. 200, 202, 269 S.E.2d 358, 359 (1980).

² *See* VA. CODE ANN § 15.2-1800(B) (2008).

The right to bear arms is protected by the Constitutions of Virginia³ and of the United States.⁴ St. George Tucker, a Virginian who authored the first commentary on the Constitution in 1803, described the right to bear arms as “the true palladium of liberty.”⁵ Nevertheless, “[l]ike most rights, the right secured by the *Second Amendment* is not unlimited.”⁶ The right is “not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”⁷

As a general proposition, the Constitution acts as a restraint on government, not private actors.⁸ It is well established that private actors may do certain things on government property that the government itself could not do. For example, if the government agrees to make facilities available to private parties for the purpose of teaching morals and character development to children, it cannot exclude one group that happens to engage in prayer and reading Bible stories.⁹ In contrast to the government, a private group may exclude from a meeting persons who disagree with the private entity’s viewpoint. For example, if a church leases an auditorium from a high school for its church services, the church could exclude from the church service persons whose religious views are not in accord with those of the church leasing the space. If a local Republican committee held a meeting in a room of the local library, it could exclude Democrats from the meeting.¹⁰ A public library, acting on its own, could not similarly exclude members of one party from a particular public meeting because it disagreed with their viewpoint.¹¹ The key is whether the actions are taken by a private party or by the government.

In the context of lawsuits seeking to recover money damages for events that occurred on land leased from the government, courts have concluded that the actions of private parties that leased government property generally were not attributable to the state.¹² Similarly here, the actions to exclude

³ “[T]he right of the people to keep and bear arms shall not be infringed[.]” VA. CONST. art. I, § 13.

⁴ “[T]he right of the people to keep and bear Arms, shall not be infringed.” U.S. CONST. amend. II. For purposes of this opinion, I assume that the Second Amendment applies to the states, an issue the Supreme Court of the United States has not yet decided.

⁵ *District of Columbia v. Heller*, 128 S. Ct. 2783, 2805 (2008) (quoting 1 BLACKSTONE’S COMMENTARIES, app. 300, Note D, “View of the Constitution of the United States” (1803)).

⁶ *See id.* at 2816.

⁷ *Id.*

⁸ *See, e.g., Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 156 (1978).

⁹ *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 109-10 (2001).

¹⁰ *See Kay v. N.H. Democratic Party*, 821 F.2d 31 (1st Cir. 1987) (holding that there is no constitutional violation when speaker is denied opportunity to address political party’s gathering because there was no government action).

¹¹ *Good News Club*, 533 U.S. at 106 (holding that state may establish limited public forum reserved “for certain groups or for the discussion of certain topics,” but it “must not discriminate against speech on the basis of viewpoint” (citations omitted)).

¹² *See Gallagher v. Neil Young Freedom Concert*, 49 F.3d 1442 (10th Cir. 1995) (holding that actions of private security company in patting down concertgoers for area owned by state university and leased by concert promoter were not actions of Utah government); *Lansing v. Memphis*, 202 F.3d 821, 832 (6th Cir. 2000) (“We have been consistent in holding that a lease for public land or facilities from the government is insufficient evidence of a nexus between the state and the activities that take place on the land.”); *Green v. Racing Ass’n of Cent. Iowa*, 713 N.W.2d 234, 240 (Iowa 2006) (“Generally, a lease between a government entity and a private corporation ‘is insufficient, standing alone, to show state action.’” (citation omitted)).

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firearms from a street festival were taken by a private group, not the government. The fact that the property was leased from the government by a private entity does not transform the action into one taken by the government.¹³

Having determined that a private entity leasing property from a local government may regulate the conduct of citizens pursuant to considerations of the status of invitee or a licensee, it must be stated that a locality cannot circumvent the constitutional rights of citizens through the expedient of leasing government land to private entities who effectively act as agents for the local government. That scenario, however, does not appear to present in the event that you describe.

Conclusion

Accordingly, it is my opinion that a private entity leasing government property for an event generally may regulate or prohibit the carrying or possession of firearms on that property for such event.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken Cuccinelli, II". The signature is written in a cursive style with a large initial "K" and "C".

Kenneth T. Cuccinelli, II
Attorney General

1:485; 1:941/10-009

¹³*Id.*