

MOTOR VEHICLES: TITLING AND REGISTRATION OF MOTOR VEHICLES - LICENSURE OF DRIVERS.

COURTS NOT OF RECORD: DISTRICT COURTS.

CRIMINAL PROCEDURE: RECOVERY OF FINES AND PENALTIES.

CRIMES AND OFFENSES GENERALLY: IN GENERAL.

General district court clerk must accept fines and costs paid in full by registered vehicle owner convicted of violating ordinance of locality participating in regional compact for cross-jurisdictional enforcement of local motor vehicle licensing requirements, but may not discharge violation until evidence is presented that owner has obtained required license. Suspension of driving privileges of person who has fully paid fines and costs, but has not provided proof of local license purchase, is not penalty court may impose. Law-enforcement officer may issue citation to vehicle owner for operating vehicle on public highway without displaying local license, in violation of ordinance; failure to purchase local license or decal does not, by itself, constitute violation. Each locality participating in regional compact must provide court with copy of ordinance so that court may assess penalties based on provisions of applicable ordinance.

The Honorable Norman deV. Morrison

Judge, Clarke County General District Court

November 20, 1996

You ask several questions regarding the application of § 46.2752 of the *Code of Virginia* to compacts for the regional enforcement of local motor vehicle licensing requirements.¹

You relate that the Counties of Clarke and Frederick, the Towns of Berryville, Boyce, Middletown and Stephens City, and the City of Winchester have entered into a regional compact for cross-jurisdictional enforcement of local motor vehicle licensing requirements pursuant to § 46.2752(K). The ordinances adopted by these localities vary in their application to motor vehicle owners and operators and in the penalties imposed for their violation. For instance, the ordinances of the Town of Berryville and Clarke County do not permit a violation to be discharged by payment of a fine, except upon presentation of satisfactory evidence that the required license has been obtained. You advise that local treasurers will not sell motor vehicle licenses or decals to persons who are delinquent in paying the personal property tax on their motor vehicles.²

You first ask whether a general district court clerk must accept the payment of fines and costs for violations of ordinances adopted pursuant to § 46.2752 ("local license ordinance") without proof from the registered motor vehicle owners that they have purchased the local licenses or decals. You suggest suspending their driving privileges pursuant to § 46.2395 until the clerk accepts both the payment of fines and costs and proof of purchase of the local licenses or decals.³

Pursuant to § 16.169.48(a), fees⁴ collected by the clerk of a general district court are to be "paid promptly to the clerk of the circuit court." Section 16.169.48(b) directs the circuit court clerk to pay monthly into the treasury of a locality the fines collected for

violation of the locality's ordinance. A district court clerk is not authorized to accept a partial or an installment payment unless such payment has been ordered by the court pursuant to § 19.2354.⁵ If a registered vehicle owner convicted of violating a local license ordinance pays in full the court-imposed fines and costs, I am of the opinion that the clerk must accept such payment and comply with § 16.1-69.48. The Berryville/Clarke ordinances provide that a violation may not be "discharged" solely by the payment of a fine; satisfactory evidence that the required license has been obtained must also be provided. In my opinion, presentation of evidence that a local license or decal has been obtained does not constitute a "fine," as that term is defined in § 19.2339,⁶ but is, instead, an additional step required to "discharge" the violation.⁷

It is further my opinion that the court may not suspend the driving privileges of a person who has paid in full the fines and costs, but has failed to provide satisfactory evidence that a local license has been obtained. Under § 46.2395(B), the court may suspend driving privileges if a person fails or refuses to pay "in full" any fine, court costs, forfeitures, restitution or penalty "lawfully assessed against him." The penalty for violation of a local license ordinance may not be in excess of a Class 4 misdemeanor.⁸ The requirement for discharging a violation of the Berryville/Clarke ordinances—proof of purchase of local license—is not part of the payment of any fine, court costs, forfeiture, restitution or other penalty assessed against a person which could lead to suspension of driving privileges under § 46.2395.

You next ask whether, under § 46.2752(G), a registered motor vehicle owner may be charged repeatedly for violations of a local license ordinance until a local license is obtained.

A prior opinion of the Attorney General concludes that "the offense proscribed by an ordinance enacted pursuant to [§ 46.2752(G)] is not the failure to purchase a license decal but the operation of a vehicle on a public highway without obtaining and displaying the appropriate decal on the motor vehicle."⁹ Therefore, I am of the opinion that a law-enforcement officer may issue a citation to a registered vehicle owner for operating a vehicle on a public highway without displaying a valid local license, in violation of a local license ordinance. I am also of the opinion, however, that failure to purchase a local license or decal does not, by itself, constitute a violation.

Your final inquiry is whether a court, in assessing penalties, should require copies of all the ordinances of the localities that entered into the regional compact, or whether the court should impose only the penalties proscribed in the Berryville/Clarke ordinances.

Section 46.2752(K) provides that the governing body of each jurisdiction participating in the compact may by ordinance require registered motor vehicle owners or operators to display on their vehicles a valid local license issued by another locality that is a party to the compact, provided such owners or operators are required by their taxing jurisdiction to obtain and display such license. Section 46.2752(K) further specifies the penalty that such an ordinance may apply to such violation and the manner in which any such violation may be discharged. A principle of statutory construction requires that where the language of a statute is clear and unambiguous, effect must be given to its plain and ordinary meaning.¹⁰ The plain language of the statute permits the localities that entered into the regional compact to adopt ordinances that may contain certain penalty provisions. Such penalties are discretionary, as indicated by the word "may."¹¹ Without a copy of the subject ordinance, a court would be without the knowledge required to

impose a specific penalty for violation of that ordinance. It would be inappropriate to assume that the Berryville/Clarke ordinances are representative of the other localities that are parties to the regional compact. Therefore, because the court must assess penalties based on the provisions of the applicable ordinance, I am of the opinion that the court must be provided with a copy of the ordinance of each member jurisdiction to the regional compact.

¹Section 46.2752 provides:

"G. Any county, city, or town may by ordinance provide that it shall be unlawful for any owner or operator of a motor vehicle ... to fail to obtain and display the local license required by any ordinance of the county, city or town in which the vehicle is registered or to display upon a motor vehicle ... any such local license after its expiration date. The ordinance may provide that a violation shall constitute a misdemeanor the penalty for which shall not exceed that of a Class 4 misdemeanor and may, in the case of a motor vehicle registered to a resident of the locality where such vehicle is registered, authorize the issuance by local law-enforcement officers of citations, summonses, parking tickets, or uniform traffic summonses for violations. Any such ordinance may also provide that a violation of the ordinance by the registered owner of the vehicle may not be discharged by payment of a fine except upon presentation of satisfactory evidence that the required license has been obtained.

"K. The governing bodies of any two or more counties, cities, or towns may enter into compacts for the regional enforcement of local motor vehicle license requirements. The governing body of each participating jurisdiction may by ordinance require the owner or operator of any motor vehicle ... to display on his vehicle a valid local license issued by another county, city, or town that is a party to the regional compact, provided that the owner or operator is required by the jurisdiction of situs, as provided in § 58.13511, to obtain and display such license. The ordinance may provide that a violation shall constitute a misdemeanor the penalty for which shall not exceed that of a Class 4 misdemeanor. Any such ordinance may also provide that a violation of the ordinance by the owner of the vehicle may not be discharged by payment of a fine except upon presentation of satisfactory evidence that the required license has been obtained."

²The first sentence of § 46.2752(C) provides that "[a] county, city, or town may require that no motor vehicle ... shall be locally licensed until the applicant has produced satisfactory evidence that all personal property taxes on the motor vehicle ... to be licensed have been paid and satisfactory evidence that any delinquent motor vehicle ... personal property taxes owing have been paid which have been properly assessed or are assessable against the applicant by the county, city, or town."

³Section 46.2395(B) allows the court, in addition to any penalty allowed by law, to suspend the driving privileges of any person who has been convicted of "any violation ... of any valid local ordinance and fails or refuses to provide for immediate payment in full of any fine, costs, forfeitures, restitution, or penalty lawfully assessed against him, or

fails to make deferred payments or installment payments as ordered by the court."

⁴"`[F]ees' as used in [§ 16.169.48] shall include all moneys from every source." Section 16.169.48(c). The term "fees," however, would not include personal property taxes owed to a locality on a motor vehicle, because taxes are imposed and collected by the locality and not by the court.

⁵District courts have authority to allow a defendant convicted of a traffic infraction or a violation of any criminal law of the Commonwealth or a political subdivision to pay fines and costs of the sentence in installments. See § 19.2354(A); see also 1984-1985 Op. Va. Att'y. Gen. 214, 215 n.1.

⁶Section 19.2339 defines the term "fine," as used in Chapter 21 of Title 19.2, "to refer solely to the pecuniary penalty imposed by a court or jury upon a defendant who has been found guilty of a crime."

⁷Since I conclude that a clerk may not refuse to accept full payment of fines and costs by a defendant, I find it unnecessary to answer your additional question regarding the inclusion of additional language on a particular form requiring presentation of the local license or decal before the payment of a fine and costs may be accepted by the clerk's office.

⁸The authorized punishment for a Class 4 misdemeanor conviction is "a fine of not more than \$250." Section 18.211(d).

⁹1987-1988 Op. Va. Att'y. Gen. 431, 432 (citing predecessor § 46.1-65(e)).

¹⁰*Ambrogio v. Koontz*, 224 Va. 381, 297 S.E.2d 660 (1982).

¹¹See 1992 Op. Va. Att'y Gen. 133, 135, and opinions cited therein (statutes using word "may" grant permissive, not mandatory, authority).