

MOTOR VEHICLES: TITLING AND REGISTRATION OF MOTOR VEHICLES - SPECIAL LICENSE PLATES.

Use of drive-away plates on repossessed or foreclosed vehicle is limited to drivers transporting unladen vehicles. Drive-away plates may not be used to test-drive vehicle or demonstrate it to potential buyers prior to purchase.

The Honorable Allen W. Dudley

Member, House of Delegates

May 6, 1998

You ask whether § 46.2-733(D) of the *Code of Virginia* authorizes a financial institution to use "drive-away" license plates on a repossessed vehicle that is being test-driven by or demonstrated to a potential buyer of the vehicle.

You relate that a financial institution has repossessed a vehicle upon the default of the borrower of a loan secured by a lien on the vehicle.¹ You state that in order to facilitate the subsequent sale of the vehicle to interested parties, the institution permits potential buyers to test-drive the vehicle prior to purchase using the license plates issued to it pursuant to § 46.2-733.

Section 46.2-733(A) requires that, upon receiving an application for the issuance of license plates to applicants delivering unladen vehicles, "the Commissioner [of the Department of Motor Vehicles] shall issue appropriately designed license plates to persons engaged in the business of delivering unladen motor vehicles under their own power from points of assembly or distribution." Section 46.2-733(C) states:

It shall be unlawful for any person to use these license plates other than on unladen motor vehicles ... which are being delivered from points of assembly or distribution in the usual course of his delivery business or which are being used as provided in subsection D of this section[.]

Section 46.2-733(D) provides:

License plates issued under this section may be used by any financial institutions specifically excluded from the definition of "motor vehicle dealer" in subdivision 5 of § 46.2-1500^[2] for the purpose of using them in the normal course of business in taking, repossessing , *or otherwise transporting vehicles* for the purpose of preservation, sale, or otherwise in connection with repossession or foreclosure of the vehicle on which there is a security interest securing a loan to a financial institution.
[Emphasis added.]

Section 46.2-733(D) permits a financial institution to use the special license plates ("drive-away plates") for the "taking, repossessing, or otherwise transporting vehicles" for the purposes enumerated therein. When a statute contains a specific grant of authority, such authority exists only to the extent specifically granted.³ It is my opinion that the authority granted the financial institution in § 46.2-733(D) relates to the acts of transporting the vehicle.⁴ To hold that the institution's authority to use the drive-away plates extends beyond the act of transporting such

vehicles as part of the process of the institution's acquisition of the vehicles to the acts associated with the subsequent disposition of the vehicles clearly exceeds the authority specifically granted by the General Assembly.

Furthermore, words and phrases in a statute must be considered in the context used to arrive at a construction consistent with the purpose of the statute.⁵ Reading § 46.2-733 as a whole,⁶ its intent is to define and limit the persons entitled to and the uses of the drive-away plates.⁷ Consistent with this intent, the phrase "in connection with repossession or foreclosure of the vehicle" in § 46.2-733(D) qualifies the purposes immediately preceding that phrase. The phrase should not be construed to permit broader authority to use the drive-away plates.⁸ Accordingly, license plates issued pursuant to § 46.2-733 may be used in transporting a vehicle which is the subject of a repossession or foreclosure. To later use them for a "test drive" or demonstration of the vehicle is not within the purview of this statute.

Additionally, I must be guided by the rule of statutory construction requiring that the interpretation given to a statute by the state agency charged with its administration must be given great weight.⁹ In a 1994 memorandum, the Commissioner of the Department of Motor Vehicles determined that drive-away plates may not be used to demonstrate a vehicle and outlined the limited uses for such plates.¹⁰ The Commissioner's memorandum specifically provides that demonstration vehicles offered for sale must either be properly titled and registered or the plate holder must be a licensed motor vehicle dealer and use dealer license plates.¹¹

Based on the foregoing, it is my opinion that the use of drive-away plates on a repossessed or foreclosed vehicle for "test-driving" by or "demonstration" of the vehicle to potential purchasers of the vehicle violates § 46.2-733(D).

¹ See Tit. 8.9, pts. 1-5, § 8.9-101 *passim* (governing secured transactions under Uniform Commercial Code).

² Section 46.2-1500 defines the term "motor vehicle dealer" and excludes in paragraph 5 of the definition "[a]ny financial institution chartered or authorized to do business under the laws of the Commonwealth or the United States which may have received title to a motor vehicle in the normal course of its business by reason of a foreclosure, other taking, repossession, or voluntary reconveyance to that institution occurring as a result of any loan secured by a lien on the vehicle."

³ See Op. Va. Att'y Gen.: 1996 at 61, 62; 1995 at 123, 125-26.

⁴ Compare § 46.2-715 (governing display of "license plates issued to licensed motor vehicle dealers and to persons licensed as *transporters* of unladen vehicles" (emphasis added)).

⁵ See 1995 Op. Va. Att'y Gen., *supra* note 3, at 127; *id.* at 205, 207.

⁶ See 1995 Op. Va. Att'y Gen. 116, 117 (reading statute as whole influences proper construction).

⁷ See, e.g., § 46.2-733(E) (limiting use of license plates issued to vehicle repair business to "pick-up and delivery" of vehicle).

⁸Compare 1982-1983 Op. Va. Att'y Gen. 350, 351 (concluding that "the permissible, non-commercial use of dealers' license plates by a dealer and his authorized representatives is quite broad").

⁹1995 Op. Va. Att'y Gen. 254, 256.

¹⁰See Memorandum from Richard D. Holcomb, Commissioner, Department of Motor Vehicles, to Holders of Drive-Away License Plates (May 23, 1994).

¹¹See *id.* at 2.