

01-090

MOTOR VEHICLES: REGULATION OF TRAFFIC.

CRIMES AND OFFENSES GENERALLY: CRIMES AGAINST PROPERTY – LARCENY AND RECEIVING STOLEN GOODS.

**Individual who presses 'pay inside' button at self-service gasoline pump to activate pump to dispense fuel into his motor vehicle and drives away without paying is guilty of gasoline theft and is subject to criminal prosecution under petit larceny laws.**

The Honorable R. Steven Landes  
Member, House of Delegates  
December 27, 2001

You ask whether an individual who fails to pay for fuel dispensed by pressing a "pay inside" button at a self-service gasoline pump is, in addition to violating § 46.2-819.2 of the *Code of Virginia*, subject to prosecution for a criminal offense.

You relate that the method of pumping fuel into a motor vehicle through the use of self-service gasoline pumps at a retail service station permits an individual to select one of two payment modes: (1) the "pay outside" button on the pump by which the individual inserts a credit card with subsequent activation of the pump to dispense fuel and payment for such fuel recorded on the credit card; or (2) the "pay inside" button on the pump which activates the pump to dispense fuel with subsequent payment made to a cashier. You also relate that, with regard to the latter mode, an individual who presses the "pay inside" button to activate the pump to dispense fuel into the individual's motor vehicle and subsequently drives away without paying for the fuel is in violation of § 46.2-819.2.<sup>1</sup>

Title 18.2 contains the crimes and offenses for which criminal prosecution is authorized in the Commonwealth.<sup>2</sup> Specifically, § 18.2-96 defines the crime of "petit larceny," and provides generally that any person who "[c]ommits simple larceny not from the person of another of goods and chattels of the value of less than \$200 ... shall be deemed guilty of petit larceny, which shall be punishable as a Class 1 misdemeanor."<sup>3</sup> Additionally, § 18.2-103 provides:

Whoever, without authority, with the intention of converting goods or merchandise to his own or another's use without having paid the full purchase price thereof, or of defrauding the owner of the value of the goods or merchandise ... of any store or other mercantile

establishment, ... when the value of the goods or merchandise involved in the offense is less than \$200, shall be guilty of petit larceny ....

"[L]arceny is the taking and carrying away of the goods and chattels of another with intent to deprive the owner of the possession thereof permanently."<sup>4</sup> Pursuant to §§ 18.2-96 and 18.2-103, such actions amount to petit larceny when the value of the goods is less than \$200. In a case decided by the Court of Appeals of Virginia, an individual used a gas credit card issued to him by his employer for purchases of gasoline when using the employer's motor vehicle for employment purposes.<sup>5</sup> The individual used the card, however, for his personal vehicle on several occasions and was prosecuted and convicted under § 18.2-192 for credit card theft.<sup>6</sup> The Court of Appeals reversed the trial court's decision and held that the facts show that he stole gasoline rather than a credit card, and that "theft of gasoline ... is petit larceny."<sup>7</sup>

Although the facts you present are different from the case decided by the Virginia Court of Appeals, the holding that the theft of gasoline is petit larceny is relevant. Under the facts presented, the actions of an individual who presses the "pay inside" button at a self-service gasoline pump to activate the pump to dispense fuel into his motor vehicle and drives away without paying for such fuel are tantamount to theft of the gasoline. Accordingly, I must conclude that such individual is subject to criminal prosecution under Virginia's petit larceny laws.

<sup>1</sup>Section 46.2-819.2 provides:

"A. No person shall drive a motor vehicle off the premises of an establishment at which motor fuel offered for retail sale was dispensed into the fuel tank of such motor vehicle unless payment for such fuel has been made.

"B. Any person who violates this section shall be liable for a civil penalty not to exceed \$100.

"C. The driver's license of any person found to have violated this section (i) may be suspended, for the first offense, for a period of up to 30 days and (ii) shall be suspended for a period of 30 days for the second and subsequent offenses."

<sup>2</sup>See, e.g., Va. Code Ann. § 18.2-7 (Michie Repl. Vol. 1996) (providing that "[t]he commission of a crime shall not stay or merge any civil remedy"); § 18.2-8 (Michie Repl. Vol. 1996) (classifying offenses as either felonies or misdemeanors and stating that "[t]raffic infractions are violations of public order as defined in § 46.2-100 and not deemed to be criminal in nature").

<sup>3</sup>Va. Code Ann. § 18.2-96(2) (Michie Repl. Vol. 1996).

<sup>4</sup>Lund v. Commonwealth, 217 Va. 688, 691, 232 S.E.2d 745, 748 (1977).

<sup>5</sup>See *Sykes v. Com.*, 27 Va. App. 77, 79, 497 S.E.2d 511, 512 (1998).

<sup>6</sup>*Id.*

<sup>7</sup>*Id.* at 81, 497 S.E.2d at 513.

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