



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

May 13, 2011

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

The Honorable Neil S. Vener
Commonwealth Attorney for Campbell County
Post Office Box 236
Rustburg, Virginia 24588

Dear Mr. Vener:

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 ask whether § 46.2-1308 prohibits a prosecutor from amending a misdemeanor charge to the equivalent municipal ordinance when the arrest or summons was made by an officer of the Department of State Police for offenses found in titles other than Title 46.2 of the *Code of Virginia*.

Response

It is my opinion that § 46.2-1308 does not prohibit a prosecutor from amending a misdemeanor charge alleging a violation of state law to the equivalent municipal ordinance in the situation where the arrest or summons was issued by an officer of the Department of State Police for offenses found in titles other than Title 46.2.

Applicable Law and Discussion

Title 46.2 of the *Code of Virginia* addresses laws pertaining to motor vehicles. Section 46.2-1308 provides:

In counties, cities, and towns whose governing bodies adopt the ordinances authorized by §§ 46.2-1300 and 46.2-1304, all fines imposed for violations of such ordinances shall be paid into the county, city or town treasury. Fees shall be disposed of according to law.

In all cases, however, in which the arrest is made or the summons is issued by an officer of the Department of State Police or of any other division of the state government, for violation of the motor vehicle laws of the Commonwealth, the person arrested or summoned shall be charged with and tried for a violation of some provision of this title and all fines and forfeitures collected upon convictions or upon forfeitures of bail of any person so arrested or summoned shall be credited to the Literary Fund.

Willful failure, refusal or neglect to comply with this provision shall constitute a Class 4 misdemeanor and may be grounds for removal of the guilty person from office. Charges for dereliction of the duties here imposed shall be tried by the circuit court of the jurisdiction served by the officer charged with the violation.

The second paragraph of § 46.2-1308 indicates that when officers of the Department of State Police arrest a person or issue a summons for violating the “motor vehicle laws of the Commonwealth,” the offender “shall be charged with and tried for a violation under *this title... and all fines and forfeitures collected upon convictions or upon forfeitures of bail of any person so arrested or summoned shall be credited to the Literary Fund.*” (Emphasis added.) “[T]his title” refers to Title 46.2 of the *Code of Virginia*. Section 46.2-1308 thus quite expressly creates a limited exception to the discretion prosecutors otherwise would have to amend a charge and bring it under the provisions of a local ordinance. That exception exists in the situation where the arrest or summons (1) was brought under Title 46.2, and (2) the arrest or summons was “issued by an officer of the Department of State police or any other division of the state government.”

Under generally accepted principles of statutory construction, the mention of one thing in a statute implies the exclusion of another.¹ “The plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction.”² The second paragraph of § 46.2-1308 does not refer to violations contained in other titles of the *Code*, rather it specifies only that violations of the motor vehicle laws, as enforced by an officer with the Virginia Department of State police, cannot be amended to a code section outside of Title 46.2. Therefore, the exclusion of all other titles is presumed to be intentional.³ As such, I find no prohibition against amending violations contained in other titles of the Code, such as driving under the influence in violation of § 18.2-266, to a violation under local ordinances.

Conclusion

Accordingly, it is my opinion that § 46.2-1308 does not prohibit a prosecutor from amending a misdemeanor charge alleging a violation of state law to the equivalent municipal ordinance in the situation where the arrest or summons was issued by an officer of the Department of State Police for offenses found in titles other than Title 46.2.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink that reads "Ken C II". The signature is stylized and includes a double underline under the "II".

Kenneth T. Cuccinelli, II
Attorney General

¹ See *Smith Mountain Lake Yacht Club, Inc. v. Ramaker*, 261 Va. 240, 246, 542 S.E.2d 392, 395 (2001). See also NORMAN J. SINGER AND J.D. SHAMBLE SINGER, 2A SUTHERLAND STATUTORY CONSTRUCTION § 47.23 (7th ed. 2007); 17 MICHIE’S JURISPRUDENCE, Statutes § 45 (2006).

² *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983) (citing *Tiller v. Commonwealth*, 193 Va. 418, 420, 69 S.E.2d 441, 445 (1952)).

³ The maxim of statutory construction *expressio unius est exclusio alterius* is applicable here. Where a statute speaks in specific terms, an implication arises that omitted terms were not intended to be included within the scope of the statute. See, e.g., *Turner v. Wexler*, 244 Va. 124, 127, 418 S.E.2d 886, 887 (1992).