



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

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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 Michael F.A. Morehart
State Inspector General
1111 E. Broad Street, 2nd Floor
Richmond, Virginia 23219

Dear Mr. Morehart:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You inquire regarding the classification and treatment of fines generated from violations of local ordinances authorized by § 46.2-1313. Specifically, you ask whether such funds (a) constitute “fines collected for offenses committed against the Commonwealth” within the meaning of Article VIII, Section 8 of the Virginia Constitution; (b) constitute revenue of the locality; and (c) may be appropriated to the Literary Fund by the General Assembly per Article VIII, Section 8 as “such other sums as the General Assembly may appropriate.” You also ask whether fines arising from violations of town ordinances should be considered part of total revenue from fines of the county in which the town is located.

Response

It is my opinion (a) that fines generated from local ordinances pursuant to § 46.2-1313 do not constitute “fines collected for offenses committed against the Commonwealth” within the meaning of Article VIII, Section 8 of the Virginia Constitution; (b) that such sums constitute revenue of the locality; and (c) that the General Assembly may enact legislation to appropriate such funds to the Literary Fund as “such other sums as the General Assembly may appropriate.” It is my further opinion that fines and fees arising from violations of town ordinances should not be considered part of total revenue from fines of the county in which the town is located.

Background

You state that § 3-6.05(C) of the 2012 Special Sessions Acts of the General Assembly, Chapter 3 requires your Office to perform a special review of fines and fees collected by the General District courts. You also relate that Part A of § 3-6.05 mandates the Auditor of Public Accounts to determine those localities in which fine and fee collections exceeded 50 percent of the total collections, and then requires the State Comptroller to recover half of the amount in excess of 50 percent of those total collections.

You describe concerns that enforcement of local ordinances by local law enforcement officers is diverting revenue that would otherwise inure to the Literary Fund under corresponding state law. You relate further that in one case, combining of town revenues from fines and fees with similar revenues of the county in which the town is located caused the county to exceed the threshold set forth in § 3-6.05(A), where neither governmental entity separately would have been subject to withholding.

Applicable Law and Discussion

Article VIII, Section 8 of the Virginia Constitution requires that all “fines for offenses against the Commonwealth” are to be paid to the Literary Fund, along with, *inter alia*, “such other sums as the General Assembly may appropriate.”

Section 46.2-1300 of the *Code of Virginia* empowers local governing bodies to “adopt ordinances not in conflict with [state law] to regulate the operation of vehicles on the highways” within their jurisdiction. Section 46.2-1308 directs that “all fines imposed for violations of such ordinances shall be paid into the county, city or town treasury.” Pursuant to § 46.2-1313, such ordinances may incorporate by reference provisions of Title 46.2, of Article 9 of Chapter 11 of Title 16.1 (§ 16.1-278 et seq.), and of Article 2 of Chapter 7 of Title 18.2 (§ 18.2-266 et seq.).

In a previous opinion, I concluded that certain funds collected by localities pursuant to the authority granted in § 46.2-1308 do not constitute “fines for offenses against the Commonwealth.”¹ Whereas that Opinion addressed the nature of a particular local law, you inquire about an unspecified number of ordinances based upon multiple Titles of the Code; however, the same rationale applies. Because the fines are being imposed for violation of local ordinances and not for violation of a law of the Commonwealth, they are outside the scope of Article VIII, Section 8.² I find no constitutional or other authority to prohibit the General Assembly from statutorily defining which criminal offenses are deemed to be committed against the Commonwealth, and those that rightfully may be deemed to be committed against a political subdivision of the Commonwealth.³

¹ 2011 Op. Va. Att’y Gen. 150, *accord* 1977-78 Op. Att’y Gen. 162, 165. The opinion specifically addressed monetary penalties imposed for violating a traffic light ordinance that did not constitute criminal fines under the Virginia Supreme Court’s decision in *Southern Express Co. v. Commonwealth ex rel. Walker*, 92 Va. 59, 62, 22 S.E. 809 (1895), *aff’d* 168 U.S. 705 (1897).

² *Id.* It is clear from the opinion and the language of § 46.2-1308 that violations of local traffic ordinances are not “offenses against the Commonwealth.” Such an interpretation is supported by the fact that fines for violations of local traffic ordinances were authorized to be paid to the locality as opposed to the Literary Fund prior to the adoption of the current Constitution in 1971. Former § 46.1-182, Chapter 728 of the Acts of Assembly of 1958, directed that “fines imposed for a violation of such ordinances shall be paid into the county, city or town treasury....” Because this was the law when the Constitution of 1971 was adopted, the drafters of, and those ratifying, Article VIII, § 8 are deemed to have acquiesced in an interpretation that allows for same. *See Roanoke v. James W. Michael’s Bakery Corp.*, 180 Va. 132, 143, 21 S.E.2d 788,793 (1942) (“Framers of the Constitution are presumed to have been aware of prior decisions of their own courts and of legislative acts construing words or phrases, and to have used such words or phrases in the light of such construction.”). Indeed, the provisions of § 46.2-1313 (former § 46.1-188) have enabled localities to enact ordinances incorporating misdemeanor traffic offenses since at least 1968. *See* 1968 Va. Acts c. 243. For example, the offense of reckless driving has been contained in the same Title of the *Code of Virginia* as § 46.2-1313, and has been a misdemeanor criminal offense since the General Assembly’s codification of the Code in 1950. *See* 1950 Va. Acts ch. 385.

³ *See generally* VA. CONST. art. VIII, § 8; *and see* *Peacock v. Commonwealth*, 200 Va. 464, 468-69, 106 S.E.2d 659, 662-63 (1959) (wherein the Court implicitly recognized the General Assembly’s broad authority respecting

Accordingly, and in response to your next inquiry, I conclude that the money collected from violations of these ordinances, because they stem from a violation of local law rather than an “offense against the Commonwealth,” constitute revenue of the locality.

The question in part (c) of your inquiry concerns the ability of the General Assembly to appropriate to the Literary Fund revenue generated from fines for violation of ordinances enacted pursuant to § 46.2-1313. As noted above, the General Assembly presently has directed that fines for violation of local traffic ordinances be paid to the respective locality; however, there is no legal prohibition on the General Assembly changing that practice and providing that the funds be deposited into the Literary Fund. Accordingly, it is my opinion that the General Assembly may enact legislation directing that penalties and fines associated with the violation of local ordinances be paid to the Literary Fund per Article VIII, Section 8 as “such other sums as the General Assembly may appropriate.”⁴

Your final inquiry, concerning the possible combining of town and county revenue, raises traditional issues of statutory construction. “When construing a statute, our primary objective is ‘to ascertain and give effect to legislative intent,’ as expressed by the language used in the statute.”⁵ Here, we examine the pertinent text of § 46.2-1308 to determine whether fines and fees arising from violations of town ordinances should be considered part of total revenue from the county in which the town is located. “Under basic rules of statutory construction, we determine the General Assembly’s intent from the words contained in the statute[,]”⁶ and “[w]e ‘assume that the legislature chose, with care, the words it used when it enacted the relevant statute.’”⁷

In discussing disposition of the revenue in question, § 46.2-1308 expressly provides that “all fines imposed for violations of such ordinances shall be paid into the county, city or town treasury.” The legislature explicitly included towns separately. Because “statutes must be construed to give meaning to all of the words enacted by the General Assembly, and thus, interpretations that render statutory language superfluous are to be avoided[,]”⁸ the specific mention of towns evinces its intent that towns retain funds resulting from violations of town ordinances. Had the General Assembly intended anything otherwise, it could have employed language evincing the same. For example, § 46.2-1308 could have required that fines be shared or credited between towns and the counties in which those towns are located.⁹ Because,

criminal offenses, as it discussed the constitutionally-required specificity of language to be used by the General Assembly in any “act creating a statutory offense.”)

⁴ The practical effect this would have on localities deciding to have and enforce such local traffic ordinances is beyond the scope of this opinion.

⁵ *Cuccinelli v. Rector & Visitors of the Univ. of Va.*, 283 Va. 420, 425, 722 S.E.2d 626, 629 (2012) (quoting *Commonwealth v. Amerson*, 281 Va. 414, 418, 706 S.E.2d 879, 882 (2011)) (further citation and internal quotation marks omitted).

⁶ *Williams v. Commonwealth*, 265 Va. 268, 271, 576 S.E.2d 468, 470 (2003) (citing *Vaughn, Inc. v. Beck*, 262 Va. 673, 677, 554 S.E.2d 88, 90 (2001); *Thomas v. Commonwealth*, 256 Va. 38, 41, 501 S.E.2d 391, 393 (1998)).

⁷ *Alger v. Commonwealth*, 267 Va. 255, 261, 590 S.E.2d 563, 556 (2004) (quoting *Barr v. Town & Country Props., Inc.*, 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990)).

⁸ 2012 Op. Va. Att’y Gen. No. 11-127, *available at* <http://www.ag.virginia.gov/Opinions%20and%20Legal%20Resources/Opinions/2012opns/Mar12opndx.html> (citing *Cook v. Commonwealth*, 268 Va. 111, 114, 597 S.E.2d 84, 86 (2004)).

⁹ *See, e.g.*, VA. CODE ANN. § 46.2-752(A) (2010) (setting forth a comprehensive plan for crediting vehicle taxes and license fees for residents of counties and the towns within those counties, with such crediting plan modifying a legislative grant in § 46.2-752(B), similar to that in § 46.2-1308, providing that involved revenue “shall be applied to general county, city or town purposes.”).

however, the General Assembly did not modify its grant of independence to the various localities in this instance, I conclude that fines and fees arising from violations of town ordinances should not be considered part of total revenue from the county in which the town is located.

Conclusion

Accordingly, it is my opinion that (a) fines generated from local ordinances pursuant to § 46.2-1313 do not constitute “fines collected for offenses committed against the Commonwealth” within the meaning of Article VIII, Section 8 of the Virginia Constitution; (b) such sums constitute revenue of the locality; and (c) the General Assembly may enact legislation to appropriate such funds to the Literary Fund as “such other sums as the General Assembly may appropriate.” It is my further opinion that fines and fees arising from violations of town ordinances should not be considered part of total revenue from fines of the county in which the town is located.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General