



COMMONWEALTH of VIRGINIA

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Honorable Kenneth C. Alexander
Member, Senate of Virginia
120 West Berkley Avenue
Norfolk, Virginia 23523

Dear Senator Alexander:

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 the operator of the toll facilities at the Midtown and Downtown Tunnels crossing the Elizabeth River may impose processing and administrative fees on drivers to recover general revenue.

Applicable Law and Discussion

The toll facilities at the Midtown and Downtown Tunnels in Hampton Roads are operated by Elizabeth River Crossings, a private corporation that holds a concession to operate and maintain the tunnels for a period of 58 years. These facilities are “electronic-only,” meaning they lack traditional toll booths where a driver can stop to make manual payment and instead provide a “drive-through” system that automatically debits a driver’s account after detecting an EZ-Pass transponder mounted inside his vehicle. If a driver proceeds through one of the facilities without a transponder, or without having made other payment arrangements,¹ the toll is unpaid.²

In order to collect the unpaid toll, the toll facility operator must identify and locate the vehicle’s registered owner using license plate information captured by the facility’s video monitoring system. The operator then mails an invoice to the individual. By law, the invoice must contain the following information: (i) the name and address of the registered owner; (ii) the registration number of the vehicle or information obtained from an automatic vehicle identification system; (iii) the location of the violation; (iv) the date and time of the violation; (v) the amount of the toll not paid; (vi) the amount of the

¹ Specifically, an alternate payment system is available that allows drivers without an EZ-Pass to create a prepaid account that is electronically debited each time they proceed through one of the toll facilities. *See* ELIZABETH RIVER CROSSINGS, *Pay by Plate*, <https://www.driveert.com/pay-by-plate/> (last visited May 7, 2015) (describing the service).

² Virginia law establishes that “it shall be unlawful for the driver of a motor vehicle to use a toll facility without payment of the specified toll.” VA. CODE ANN. § 46.2-819 (2014).

administrative fee; (vii) the date by which the toll and administrative fee must be paid; (viii) available statutory defenses; (ix) a warning describing the penalties for nonpayment; and (x) a form for the driver to contest liability.³

Pursuant to legislation passed by the General Assembly in 2010 and codified at § 46.2-819.3:1, the operator of an electronic-only tolling facility equipped with a video-monitoring system may include processing fees in an invoice.⁴ Specifically, the statute provides that the operator “may levy charges for the direct cost of use of and processing for a video-monitoring system and to cover the cost of the invoice, which are in addition to the toll and may not exceed double the amount of the base toll”⁵ As the plain language of the statute indicates, the processing fee, which may not exceed double the base toll, is levied to cover the direct costs of using the video-monitoring system and preparing the invoice.⁶ Thus, the legislature has effectively excluded other purposes, including general revenue recovery, as permissible bases for the fee.⁷

If a driver does not pay the invoice within 30 days, he incurs a toll violation.⁸ At this point, § 46.2-819.3:1 authorizes the toll facility operator to charge the driver an administrative fee.⁹ If the driver pays the invoice within 30 days after incurring the toll violation, the amount of the administrative fee shall not exceed \$25 per violation.¹⁰ Otherwise, the amount of the fee shall not exceed \$100 per violation.¹¹ Any administrative fee charged is in addition to the amount of the base toll and processing fee. Thus, to summarize, a driver will owe (i) the amount of the base toll plus processing fee if paying within 30 days after receiving an invoice, (ii) the amount of the base toll, processing fee, and an administrative fee of up to \$25 if paying within 31 to 61 days after receiving an invoice; and (iii) the amount of the base toll, processing fee, and an administrative fee of up to \$100 if paying more than 61 days after receiving an invoice.¹²

The General Assembly has specifically stated that the purpose of the administrative fee is “to recover the expenses of collecting the unpaid toll” and that the amount of the fee must “be reasonably

³ Section 46.2-819.6 (2014).

⁴ 2010 Va. Acts ch. 839.

⁵ Section 46.2-819.3:1(B) (2014). The toll facility operator must post conspicuous signs informing drivers that the toll could be tripled for any vehicle that does not have an automatic toll collection device while the driver still has the opportunity to take an alternate route. *Id.*

⁶ “A principal rule of statutory interpretation is that courts will give statutory language its plain meaning.” *Davenport v. Little-Bowser*, 269 Va. 546, 555 (2005) (citing *Jackson v. Fidelity & Deposit Co.*, 269 Va. 303, 313 (2005)).

⁷ As previous Opinions of this Office have explained, “when a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute.” *See, e.g.*, 2010 Op. Va. Att’y Gen. 10, 11 (citing 2A NORMAN J. SINGER & J.D. SHAMBIE SINGER, *SUTHERLAND STATUTORY CONSTRUCTION* § 47:23 (7th ed. 2007); *see also* *Turner v. Wexler*, 244 Va. 124, 127 (1992) (“[M]ention of a specific item in a statute implies that omitted items were not intended to be included within the scope of the statute.”)).

⁸ Section 46.2-819.3:1(B).

⁹ Alternative provisions apply if, for example, the toll facility is comprised of high-occupancy toll lanes (HOT lanes), *see* VA. CODE ANN. § 33.2-503 (2014), or uses a photo-monitoring system, *see* § 46.2-819.1 (2014). *See also* § 46.2-819.3 (2014).

¹⁰ *Id.*

¹¹ *Id.*

¹² The driver could be further subject to civil penalties and court costs if the matter is referred to court. *See* § 46.2-819.3:1.

related to the actual cost of collecting the unpaid toll.”¹³ By providing that the administrative fee—like the processing fee—may be levied only for recovery of certain expenses incurred by the toll facility operator, the legislature has effectively excluded other purposes for imposition of the fee, including general revenue recovery.¹⁴

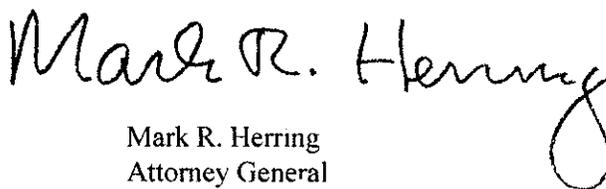
Conclusion

Accordingly, it is my opinion that the operator of the toll facilities at the Midtown and Downtown Elizabeth River Tunnels may not impose processing and administrative fees on drivers for the purpose of general revenue recovery. The operator may, however, impose processing fees to recover the direct costs of use of a video-monitoring system and the cost of the invoice, and under the conditions set forth in § 46.2-819.3:1, may impose administrative fees to recover the expenses of collecting the unpaid toll.

This Opinion does not address the legitimacy of any particular fees billed to any individual, nor does it opine on whether the current amounts of processing and administrative fees charged by the operator are reasonably related to expenses incurred.¹⁵ Furthermore, I offer no comment as to the wisdom of the policy embodied in current law. It is within authority of the General Assembly to set the procedure governing the collection of processing and administrative fees as it has done in § 46.2-819.3:1.

With kindest regards, I am

Very truly yours,



Mark R. Herring
Attorney General

¹³ Section 46.2-819.3:1(B).

¹⁴ See *supra* note 7.

¹⁵ Attorneys General consistently have declined to render official opinions on specific factual matters. 2009 Op. Va. Att’y Gen. 80, 81, and n.17.