



COMMONWEALTH of VIRGINIA

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The Honorable Joseph D. Morrissey
Member, House of Delegates
Post Office Box 406
Richmond, Virginia 23218

Dear Delegate Morrissey:

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 inquire whether localities can collect and keep monetary penalties for violations of traffic light ordinances pursuant to § 46.2-1308 in light of the provision of the Virginia Constitution that requires fines to be paid to the Literary Fund.

Response

It is my opinion that, because the funds collected by localities in enforcing their traffic light laws do not constitute "fines for offenses against the Commonwealth," the General Assembly constitutionally may permit localities to retain such funds.

Applicable Law and Discussion

Article VIII, Section 8 of the Virginia Constitution provides that all "fines for offenses against the Commonwealth" are to be paid to the Literary Fund. Under the Code, a "traffic infraction" is "a violation of the law punishable as provided in § 46.2-113, which is neither a felony nor a misdemeanor."¹ In turn, § 46.2-113 provides that

It shall be unlawful for any person to violate any of the provisions of this title, or any regulation adopted pursuant to this title, or local ordinances adopted pursuant to the authority granted in § 46.2-1300. Unless otherwise stated, these violations shall constitute traffic infractions punishable by a fine of not more than that provided for a Class 4 misdemeanor under § 18.2-11.

Section 46.2-1300 authorizes local jurisdictions to adopt traffic ordinances not conflicting with state statutes, and § 46.2-1308 directs that any fines generated through enforcement of those ordinances are to be paid into the local treasury.

¹ VA. CODE ANN. § 46.2-100 (2010).

Section 15.2-968.1 imposes a “monetary penalty” on drivers who fail to comply with traffic light signals and further allows local communities to set up photo-monitoring systems to enforce this provision. The system is able to record violations of the traffic light provisions of §§ 46.2-833 (governing stops at traffic lights), 46.2-835 (right turn on red) and 46.2-836 (left turn on red on a one-way highway).² Unless prevented by the Constitution, a locality expressly is authorized to use photo-monitoring to enforce ordinances adopted based on these Code provisions and retain funds paid for violations.

Article VIII, § 8 imposes no bar to this arrangement because of the distinction the Supreme Court of Virginia has drawn between criminal fines and civil penalties. The Court addressed this issue in *Southern Express Co. v. Commonwealth, ex rel. Walker*.³

What “fines” are here intended or comprehended? The answer is found in the language of the Constitution itself. They are “fines collected for offences against the State,” that is fines imposed by law as punishment for a crime. Fines constitute in whole or in part the punishment for many of the smaller offences at common law, and also for many offences created by statute, and those are the “fines” which the constitutional provision was designed to cover. *It comprehends only those fines which are affixed as penalties for crime and are recoverable upon conviction of the offender*, and does not embrace those pecuniary penalties or forfeitures provided by statute, that a popular or *qui tam* action (which is a civil action) may be brought to recover.⁴

Section 15.2-968.1 does not mention fines but imposes only a monetary penalty for a traffic infraction. “Imposition of a penalty pursuant to this section shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom such liability is imposed, nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage.”⁵ Therefore, it does not impose a punishment for a crime.

In light of this distinction, § 46.2-1308 raises no constitutional concerns. It merely permits the localities to enact a certain kind of traffic control ordinance and to receive the fines “imposed for violations of such ordinances.” Because no offenses against the Commonwealth or violations of state laws are involved, Article VIII, § 8 simply does not apply.

Moreover, given that under *Southern Express* the monetary penalties authorized by § 15.2-968.1 are not criminal fines, “the General Assembly has the authority to appropriate [such] penalties elsewhere than to the Literary Fund.”⁶ Thus, authorizing payment of the civil penalties to the local communities would not violate the Constitution of Virginia even where the infraction is based on the failure to comply with a state statute.

² VA. CODE ANN. § 15.2-968.1(E) (Supp. 2010).

³ 92 Va. 59, 22 S.E. 809 (1895), *aff’d* 168 U.S. 705 (1897).

⁴ *Id.* at 62, 22 S.E. at 809 (emphasis added).

⁵ Section 15.2-968.1(F).

⁶ 1977-78 Op. Va. Att’y Gen. 162, 165. *See also* 1986-87 Op. Va. Att’y Gen. 66 (fines required to be paid into the Literary Fund do not include “monetary penalties” assessed by different state boards that regulate professional occupations).

Conclusion

Accordingly, it is my opinion that, because the funds collected by localities in enforcing their traffic light laws do not constitute "fines for offenses against the Commonwealth," the General Assembly constitutionally may permit localities to retain such funds.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink, appearing to read "Ken C II". The signature is stylized, with the first name "Ken" and the last name "C" followed by a Roman numeral "II".

Kenneth T. Cuccinelli, II
Attorney General