

MOTOR VEHICLES: MOTOR VEHICLE AND EQUIPMENT SAFETY.

Wearing by vehicle driver of earphones that reduce certain background noises by generating antinoise sound waves is unlawful.

The Honorable Samuel A. Nixon Jr.

Member, House of Delegates

January 25, 1996

You ask whether the wearing by a vehicle driver of headset earphones that reduce certain background noises by generating antinoise sound waves, but do not interfere with the driver's ability to hear desired traffic sounds, would violate the provisions of § 46.21078 of the *Code of Virginia*.¹

You indicate that a company currently is manufacturing and marketing a nonprosthetic, closed-ear electronic noise cancellation hearing device, labeled the "NoiseBuster." The device consists of an open back headset that covers both ears and is designed to reduce a variety of low-frequency background noises without interfering with conversation, radio or emergency signals. You indicate that the device consists of microphones in both headphone ear cups designed to listen to incoming offensive noise and to feed that information to an electronic controller, where it is analyzed and an antinoise sound wave is generated. You represent that the device enhances the hearing of emergency signals, such as horns and sirens.

In § 46.21078, the General Assembly has made it "unlawful for any person to operate a motor vehicle ... on the highways in the Commonwealth while wearing earphones." The General Assembly has defined the term "earphones" to mean "any device worn on or in both ears which converts electrical energy to sound waves or which impairs or hinders the person's ability to hear."² The only exclusion from the definition applicable to drivers of automobiles is any prosthetic device to aid the hard of hearing.

It is a fundamental rule of statutory construction that the primary object in interpreting a statute is to ascertain and give effect to the intention of the legislature.³ In addition, where the language of a statute is plain and unambiguous, the legislature should be assumed to have intended to mean what it plainly has expressed, and statutory construction is unnecessary.⁴

The device you describe clearly converts electrical energy to sound waves. Therefore, I am of the opinion that the wearing by a vehicle driver of earphones that reduce certain background noises by generating antinoise sound waves is violative of § 46.21078.

¹Section 46.21078 provides:

"It shall be unlawful for any person to operate a motor vehicle, moped, or bicycle on the highways in the Commonwealth while using earphones on or in both ears.

"For the purpose of this section, 'earphones' shall mean any device worn on or in both ears which converts electrical energy to sound waves or which impairs or hinders the person's ability to hear, but shall not include (i) any prosthetic device which aids the hard of hearing or (ii) earphones installed in helmets worn by motorcycle operators and riders

and used as part of a communications system. The provisions of this section shall not apply to the driver of any emergency vehicle as defined in § 46.2920."

Section 46.2920 grants exemptions to emergency vehicles driven "in the performance of public services" and "under emergency conditions," and is not applicable to your request.

²Section 46.21078 (emphasis added).

³See *Vollin v. Arlington Co. Electoral Bd.*, 216 Va. 674, 222 S.E.2d 793 (1976).

⁴*Town of South Hill v. Allen*, 177 Va. 154, 12 S.E.2d 770 (1941).



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