

**MOTOR VEHICLES: ABANDONED, IMMOBILIZED, UNATTENDED AND TRESPASSING VEHICLES; PARKING.**

**POLICE (STATE): DEPARTMENT OF STATE POLICE.**

**Department of State Police, and not Attorney General, is appropriate agency to determine whether unattended vehicle parked on paved shoulder of roadway constitutes hazard. Whether such vehicle constitutes hazard is question of fact, to be determined on case-by-case basis, considering factors historically encountered by State Police officers.**

The Honorable C. Richard Cranwell

Member, House of Delegates

February 8, 1999

You ask whether the Department of State Police may, by internal policy, deem an unattended vehicle a hazard, simply because it is parked on a portion of the roadway that is paved, i.e., a paved shoulder.

You relate that a constituent recently experienced car trouble on Interstate 581 and pulled his vehicle off the road. He pulled the vehicle all the way off the traveled portion of the highway, to the right of the fog line against the guardrail. You relate further that the shoulder, at that point of the interstate, is paved all the way to the guardrail. You advise that the constituent left his vehicle for approximately one hour and ten minutes to get another vehicle, and, upon returning, found that his vehicle had been towed.

You also relate that the constituent paid \$50 to retrieve his towed vehicle. When the constituent questioned the State Police concerning the reason for the towing, he was told that, according to internal policy, a vehicle on a paved portion of any roadway is deemed by State Police to be a hazard. You relate that § 46.2-1209 of the *Code of Virginia*<sup>1</sup> allows vehicles that are not a hazard to remain on roadways for up to twenty-four hours. You advise that if the constituent's car had been on a grassy or gravel shoulder, it would not automatically have been deemed a hazard.

For many years, Attorneys General have concluded that § 2.1-118, the authorizing statute for official opinions of the Attorney General, does not contemplate that such opinions be rendered on matters requiring factual determinations, rather than matters interpreting questions of law.<sup>2</sup> In addition, a 1987 opinion of the Attorney General concludes that, in rendering official opinions pursuant to § 2.1-118, the Attorney General has declined to render such opinions when the request (1) does not involve a question of law, (2) requires the interpretation of a matter reserved to another entity, (3) involves a matter currently in litigation, and (4) involves a matter of purely local concern or procedure.<sup>3</sup> Prior opinions also conclude that a request for an official opinion made pursuant to § 2.1-118 concerning the propriety of the actions of another entity interpreting matters reserved solely to it is not subject to review by the Attorney General and must be treated as the binding determination with regard to the matter.<sup>4</sup> The General Assembly mandates that "the promotion of highway safety ... shall be in the Department of State Police."<sup>5</sup> This is mandatory language.<sup>6</sup> Consequently, I must respectfully decline to render an opinion on the appropriateness of any internal policy of the Department of State Police which allows an officer to deem as a hazard an unattended vehicle left on or adjacent to any roadway. I am of the opinion that the Department of State Police is the appropriate agency to make such determinations.<sup>7</sup>

Moreover, the question whether a vehicle parked on a paved portion of a roadway, i.e., a paved shoulder, constitutes a hazard ultimately is a question of fact, to be determined on a case-by-case basis, considering factors historically encountered by State Police officers. The Office of the

Attorney General historically has declined to render official opinions when the request involves a question of fact rather than one of law.<sup>8</sup>

<sup>1</sup>Section 46.2-1209 provides, in part: "No person shall leave any motor vehicle ... unattended on or adjacent to any roadway if it constitutes a hazard in the use of the highway. No person shall leave any unattended motor vehicle ... longer than twenty-four hours on or adjacent to any roadway outside the corporate limits of any city or town, or on an interstate highway or limited access highway, expressway, or parkway inside the corporate limits of any city or town. Any law-enforcement officer may remove it or have it removed to a storage area for safekeeping and shall report the removal to the Department [of Motor Vehicles] and to the owner of the motor vehicle ... as promptly as possible. Before obtaining possession of the motor vehicle, ... its owner shall pay to the parties entitled thereto all costs incidental to its removal or storage."

<sup>2</sup>See, e.g., Op. Va. Att'y Gen.: 1991 at 122, 124; 1986-1987 at 1, 6.

<sup>3</sup>1987-1988 Op. Va. Att'y Gen. 69, 72, and opinions cited therein.

<sup>4</sup>Op. Va. Att'y Gen.: 1997 at 10, 12; *id.* at 133, 134; 1987-1988 140, 141; *id.* at 352, 352.

<sup>5</sup>Section 52-4.

<sup>6</sup>See 1986-1987 Op. Va. Att'y Gen. 300, 300, and opinions cited therein (use of word "shall" in statute indicates "procedures are intended to be mandatory").

<sup>7</sup>I also note that it is an elementary rule of statutory interpretation that the construction given to a statute by public officials charged with its enforcement is entitled to great weight and, in doubtful cases, will be regarded as decisive. See *Bed Company v. Corporation Commission*, 205 Va. 272, 275, 136 S.E.2d 900, 902 (1964) (citing *Commonwealth v. Appalach. El. Power Co.*, 193 Va. 37, 45, 68 S.E.2d 122, 127 (1951)).

<sup>8</sup>See Op. Va. Att'y Gen.: 1991, *supra* note 2, at 124; 1986-1987, *supra* note 2, at 6.