

TAXATION: REVIEW OF LOCAL TAXES.

CIVIL REMEDIES AND PROCEDURE: EXECUTIONS AND OTHER MEANS OF RECOVERY.

MOTOR VEHICLES: TITLING AND REGISTRATION OF MOTOR VEHICLES.

Broad authority to seize property for delinquent taxes does not extend to seizure of persons. Stopping automobile and detaining person at roadblock constitutes seizure of person. Within limitations imposed by Fourth Amendment, law-enforcement officers may set up roadblocks as exercise of their statutory authority to stop vehicles to inspect equipment or verify registration and licenses. No authority to detain person at roadblock to verify payment of personal property taxes or to detain person for being delinquent in payment of personal property taxes.

The Honorable Lee Stoffregen
Sheriff for the City of Manassas
June 8, 1999

You ask whether, in conjunction with vehicle stops conducted by the county police department to check for licensing and equipment violations, you may execute a distress warrant and seize a vehicle if the driver is delinquent in the payment of his local taxes.

You state that, pursuant to §§ 58.1-3919 and 58.1-3941 of the *Code of Virginia*, the Prince William County Treasury Manager issues distress warrants to your office for the collection of delinquent taxes. Your office seizes personal property, usually a vehicle, belonging to the person owing the taxes and sells the property at public auction. The proceeds are forwarded to the Treasury Manager to be applied to the delinquent tax account.

Your question involves your seizure of vehicles for delinquent taxes during periodic vehicle checks conducted by the county police department. You state that persons from your office and from the county's Treasury Management office attend the vehicle checks. The police department sets the criteria for which vehicles will be stopped. The vehicles are checked by police officers for licensing and equipment violations. If a current county decal is not displayed, Treasury Management checks the records to determine if the driver has a delinquent tax account. If the driver's taxes are delinquent, Treasury Management issues a distress seizure warrant, which the deputy sheriff is to execute on the scene. If the taxpayer cannot provide payment, the deputy sheriff seizes the vehicle and later sells it at public auction.

Section 58.1-3919 requires a local treasurer to collect delinquent taxes "by distress or otherwise." Section 58.1-3934(B) authorizes a locality to place local taxes in the hands of the sheriff for collection, with the sheriff having the powers conferred by law upon the treasurer. Additionally, § 58.1-3941 provides that "[a]ny goods or chattels ... in the county, city or town belonging to the person ... assessed with taxes ... collected by the treasurer may be distrained therefor by the treasurer, sheriff, constable or collector," and § 58.1-3942 provides that a security interest in good or chattels does not prevent the property from being distrained and sold for taxes, "no matter in whose possession they may be found."

These statutes clearly authorize a sheriff, as well as a local treasurer, to distrain property and to sell the property to collect delinquent taxes.¹ The procedure requires no judicial hearing. As stated in a 1954 opinion, the treasurer may distrain property for taxes without a warrant based on the tax bill alone, may remove the property from the premises as an essential part of the power to distrain the property, and may sell the property to satisfy the delinquent taxes.²

You question whether, notwithstanding this statutory authority to distrain or seize property for taxes, the procedure that you describe for seizing property in conjunction with a roadblock violates the protection against unreasonable searches and seizures secured by the Fourth Amendment to the Constitution of the United States. The Fourth Amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Supreme Court of the United States has held that "stopping an automobile and detaining its occupants [at a roadblock] constitute a 'seizure'" of the person and will be unreasonable under the Fourth Amendment if not based on an articulable and reasonable suspicion that the laws are being violated.³ The Court has held, however, that fixed checkpoint stops are reasonable under the Fourth Amendment if the procedure is "carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers."⁴ The interference with individual liberty in such instances is balanced against a state's strong interest in promoting safety on its roads by checking to see that licensing, registration, and vehicle inspection requirements are being met.⁵ The Supreme Court of Virginia and the Court of Appeals of Virginia have applied the standards established by the United States Supreme Court in a number of cases challenging stops as violating the Fourth Amendment.⁶

Within the limitations imposed by the Fourth Amendment, law-enforcement officers may set up roadblocks as a means of exercising their statutory authority to stop vehicles to inspect equipment or to verify registration and licenses.⁷ While the practice constitutes a seizure of the person under the Fourth Amendment, the state's interest in promoting safety on the roads justifies the limited interference with individual liberty. During a roadblock conducted in conformity with Fourth Amendment standards, a law-enforcement officer may further detain a person upon a reasonable suspicion based on articulable facts that a crime has been or is being committed.⁸ A law-enforcement officer would have no authority to detain a person at a roadblock to verify the payment of personal property taxes or to detain a person for being delinquent in the payment of personal property taxes.

A treasurer likewise has no such authority. While a treasurer has broad statutory power to seize property for delinquent taxes, no statute grants a treasurer the power to seize *persons* for the failure to pay their taxes. A roadblock constitutes a seizure of the person. It is my opinion that such a seizure of persons is beyond the statutory authority granted treasurers to seize property. It is also my opinion that the seizure would not pass Fourth Amendment scrutiny because there is no connection between the failure of a taxpayer to timely pay taxes on his vehicle and the promotion of safety on the roads.

¹ See Op. Va. Att'y Gen.: 1997 at 203, 204; 1990 at 249, 250. Section 8.01-492 details the procedure for the sale of distressed property.

² See 1953-1954 Op. Va. Att'y Gen. 204 (citing predecessor statutes to §§ 58.1-3919, 58.1-3941).

³ Delaware v. Prouse, 440 U.S. 648, 653 (1979) (holding that random spot checks that place discretion in officers as to which vehicle to stop and where to conduct stop are unconstitutional).

⁴Brown v. Texas, 443 U.S. 47, 51 (1979); see also United States v. Martinez-Fuerte, 428 U.S. 543, 559-62 (1976). In determining the constitutionality of any such seizure, the courts are to weigh "the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty." Brown v. Texas, 443 U.S. at 51.

⁵See Delaware v. Prouse, 440 U.S. at 658; see also Michigan Dept. of State Police v. Sitz, 496 U.S. 444 (1990) (holding that highway sobriety checkpoints are consistent with Fourth Amendment).

⁶See Crandol v. City of Newport News, 238 Va. 697, 386 S.E.2d 113 (1989); Simmons v. Commonwealth, 238 Va. 200, 380 S.E.2d 656 (1989); Lowe v. Commonwealth, 230 Va. 346, 337 S.E.2d 273 (1985); Price v. Com., 24 Va. App. 496, 483 S.E.2d 496 (1997); Sheppard v. Com., 25 Va. App. 527, 489 S.E.2d 714 (1997); Brown v. Com., 20 Va. App. 21, 454 S.E.2d 758 (1995); Hall v. Commonwealth, 12 Va. App. 972, 406 S.E.2d 674 (1991).

⁷See §§ 46.2-103, 46.2-104. If a local ordinance so provides, a law-enforcement officer may issue a citation or summons to a person who fails to display a local license required by ordinance. Section 46.2-752(G). The officer could not, of course, seize the vehicle for the nonpayment of personal property taxes.

⁸See Gilpin v. Com., 26 Va. App. 105, 493 S.E.2d 393 (1997).