

99-085

CRIMES AND OFFENSES GENERALLY: CRIMES INVOLVING HEALTH AND SAFETY – DRIVING MOTOR VEHICLE, ETC., WHILE INTOXICATED.

MOTOR VEHICLES: LICENSURE OF DRIVERS – UNLICENSED DRIVING PROHIBITED.

Arrest warrant issued for driving after license has been forfeited for driving under influence of alcohol or drugs is not sufficient to impound driver's vehicle.

The Honorable Archer L. Yeatts III
Chief Judge, Henrico County General District Court
March 10, 2000

You ask whether an arrest warrant issued to a driver for violation of § 18.2-272 of the *Code of Virginia* is sufficient under § 46.2-301.1 to impound the driver's vehicle. You relate that § 18.2-271.1(C) provides that, upon conviction of a violation of § 18.2-266, the court shall impose the license revocation authorized under § 18.2-271. You further relate that § 18.2-271.1(E) allows the court to issue a restricted license for certain purposes. You also relate that § 18.2-271.1(E) provides that a person violating any restrictions imposed under § 18.2-271.1 is guilty of a violation of § 18.2-272. Additionally, you relate that § 46.2-301.1 authorizes the impoundment of a motor vehicle being driven by a person whose driver's license has been suspended or revoked for driving under the influence of drugs or intoxicants in violation of § 18.2-266. You, therefore, ask whether the § 46.2-301.1 impoundment process may be used for a violation of § 18.2-272.

Section 18.2-266 pertains to driving under the influence of drugs or alcohol, and § 18.2-271.1(C) provides that such driver's license be revoked. Section 18.2-271.1(C) also authorizes a court to issue an order in accordance with § 18.2-271.1(E) by which an eligible person may receive a restricted permit to operate a motor vehicle. Pursuant to § 18.2-271.1(E), this restricted permit allows the person to drive in limited circumstances, such as to and from his place of employment, to and from school, etc. A violation of § 18.2-271.1(E) gives rise to a violation of § 18.2-272. A person convicted under § 18.2-272 for driving while his license has been forfeited for a conviction under § 18.2-266 is guilty of a Class 1 misdemeanor.

Section 46.2-301.1(A) provides for the administrative impoundment of a motor vehicle for thirty days if such motor vehicle is

being driven by any person (i) whose driver's license ... has been suspended or revoked for a violation of § 18.2-51.4 or driving while under the influence in violation of §§ 18.2-266, 46.2-341.24 or ... (ii) driving after adjudication as an habitual offender, ... or where such person's license has been administratively suspended under the provisions of

§ 46.2-391.2, or (iii) driving after such person's driver's license ... has been suspended or revoked for unreasonable refusal of tests in violation §§ 18.2-268.3, 46.2-341.26:3

Under well-accepted principles of statutory construction, when a statute creates a specific grant of authority, that power exists only to the extent plainly granted by the statute.¹ Additionally, the mention of one thing in a statute implies the exclusion of another.² Section 46.2-301.1(A) specifically notes certain statutes that give rise to the administrative impoundment process expressed in the statute. These statutes are derived from Title 18.2, regarding criminal violations, and from Title 46.2, regarding motor vehicle violations. Had the General Assembly intended that a violation of § 18.2-272 be included among them, it would have so stated.³

Furthermore, with respect to a drunk driving offense, the rationale for license revocation is that public safety is enhanced by removing unsafe drivers from the highways.⁴ The rationale is furthered by the impoundment procedure outlined in § 46.2-301.1. Section 18.2-271.1(E), however, articulates the punishment for violating a restriction contained in a restricted permit authorized by a court to be that prescribed in § 18.2-272 (providing that a person driving after forfeiture of his license is guilty of a Class 1 misdemeanor).

Finally, I must take note of the fact that §§ 18.2-266, 18.2-271.1(E) and 18.2-272 are statutes that impose criminal sanctions. Statutes that impose criminal sanctions must be narrowly construed to encompass only the conduct clearly proscribed.⁵ Therefore, construing these statutes narrowly with § 46.2-301.1, I am of the opinion that § 46.2-301.1 is not applicable to a conviction under § 18.2-272.⁶

Accordingly, it is my opinion that an arrest warrant issued to a driver for a violation of § 18.2-272 is not sufficient under § 46.2-301.1 to impound the driver's vehicle.

¹1996 Op. Va. Att'y Gen. 88, 88.

²See *Turner v. Wexler*, 244 Va. 124, 127, 418 S.E.2d 886, 887 (1992); *Tate v. Ogg*, 170 Va. 95, 103, 195 S.E. 496, 499 (1938); 2A Norman J. Singer, *Sutherland Statutory Construction* § 47.23 (5th ed. 1992 & Supp. 1999) ("Expressio unius est exclusio alterius.").

³*Compare* 1991 Op. Va. Att'y Gen. 91 (concluding that juvenile court judge may not order temporary detention of juveniles in any circumstances except those expressly provided in statute).

⁴See *Commonwealth v. Ellett*, 174 Va. 403, 415, 4 S.E.2d 762, 767 (1939); 1992 Op. Va. Att'y Gen. 88, 92.

⁵See *Graybeal v. Commonwealth*, 228 Va. 736, 324 S.E.2d 698 (1985); *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); 1998 Op. Va. Att'y Gen. 111, 113.

⁶See 1998 Op. Va. Att'y Gen. 138, 139 (statutes relating to same subject should be considered *in pari materia*).