

01-049

MOTOR VEHICLES: LICENSURE OF DRIVERS.

Person under 18 who has been convicted of committing offense for which demerit points have been assessed or are assessable, or violates safety belt or child restraint laws must attend driver improvement clinic but is prohibited from earning safe driving points. Statute providing that safe driving points shall not be awarded for court-assigned clinic attendance repeals statute authorizing court to determine whether person shall receive safe driving points upon satisfactory completion of driver improvement clinic.

The Honorable Clifford R. Weckstein
Judge, Twenty-Third Judicial Circuit
December 28, 2001

You inquire concerning the safe driving points awarded persons under eighteen years of age.

You relate that you are the circuit court judge member of the local alcohol safety action program policy board. You advise that the Roanoke county and city police departments and the court community corrections program have created a traffic safety program for newly licensed juveniles in an effort to reduce the disproportionately high percentage of traffic crashes involving juveniles. You relate that local law-enforcement officials promote the program as a way for new drivers to learn valuable traffic safety skills and earn five safe driving points upon successful completion of the program. Finally, you advise that the Department of Motor Vehicles perceives § 46.2-334.01(A)(1) of the *Code of Virginia* to prohibit the Commissioner of the Department from awarding safe driving points to any juveniles under any circumstances.

You first inquire whether § 46.2-334.01(A)(1) prohibits the eligibility of licensed drivers under the age of eighteen to earn safe driving points upon completion of a driver improvement clinic as authorized by § 46.2-498(D).

Section 46.2-334.01(A)(1) provides that, "[n]otwithstanding the provisions of § 46.2-498," the Commissioner of the Department of Motor Vehicles "shall direct" any person under the age of eighteen who has been issued a learner's permit or driver's license "to attend a driver improvement clinic"

whenever the driving record of a person less than nineteen years old shows that he has been convicted of committing, when he was less than eighteen years old, (i) an offense for which demerit points have been assessed or are assessable

under [§§ 46.2-489 through 46.2-506]^[1] or (ii) a violation of any provision of [§§ 46.2-1091 through 46.2-1094]^[2] or [§§ 46.2-1095 through 46.2-1100]^[3] No safe driving points shall be awarded for such clinic attendance, nor shall any safe driving points be awarded for voluntary or court-assigned clinic attendance. Such person's parent, guardian, legal custodian, or other person standing in loco parentis may attend such clinic and receive a reduction in demerit points and/or an award of safe driving points pursuant to § 46.2-498.

Section 46.2-498(D) permits "[a]ny resident or nonresident person holding a valid license to drive a motor vehicle in Virginia" to apply "for permission to attend a driver improvement clinic." (Emphasis added.) Furthermore, § 46.2-498(D) provides that "[p]ersons who voluntarily attend and satisfactorily complete a driver improvement clinic shall be eligible (i) to have five demerit points subtracted from their total accumulation of demerit points" or to be awarded safe driving points, "except in those instances where a person has not accumulated five demerit points." In lieu of having five demerit points subtracted, § 46.2-498(D)(ii) permits such person "to receive a reduction in premium charges as set forth under § 38.2-2217."⁴

The use of the word "shall" in § 46.2-334.01(A)(1) generally implies that its terms are intended to be mandatory, rather than permissive or directive.⁵ In addition, § 46.2-334.01(A)(1) begins with the phrase "[n]otwithstanding the provisions of § 46.2-498." This phrase indicates a clear legislative intent to override any potential conflicts that may exist between §§ 46.2-334.01(A)(1) and 46.2-498.⁶ Consequently, even if § 46.2-334.01(A)(1) were read to be conflicting with § 46.2-498, it is axiomatic that, when there is a conflict, § 46.2-498(D) must yield to § 46.2-334.01(A)(1).⁷ When a statute is expressed in plain and unambiguous terms, whether general or limited, the legislature is assumed to mean what it plainly has expressed, and no room is left for construction.⁸ Therefore, when a person under the age of eighteen has been convicted of committing an offense for which demerit points have either been assessed or are assessable, or violates the safety belt or child restraint laws of the Commonwealth, § 46.2-334.01(A)(1) requires that such person attend a driver improvement clinic. Furthermore, § 46.2-334.01(A)(1) does not allow such person to receive any safe driving points for attending a driver improvement clinic, even if such attendance is voluntary. Consequently, I am of the opinion that a person under the age of eighteen is prohibited from earning the safe driving points authorized by § 46.2-498(D).

You next ask whether § 46.2-334.01(A)(1) repeals § 46.2-505 by implication.

Section 46.2-505 provides:

Any circuit or general district court or juvenile court of the Commonwealth, or any federal court, charged with the duty of hearing traffic cases for offenses committed in violation of any law of the Commonwealth, or any valid local ordinance, or any federal law regulating the movement or operation of a motor vehicle, may require any person found guilty, or in the case of a juvenile found not innocent, of a violation of any state law, local ordinance, or federal law, to attend a driver improvement clinic. The attendance requirement may be in lieu of or in addition to the penalties prescribed by § 46.2-113, the ordinance, or federal law. The court shall determine if a person is to receive safe driving points upon satisfactory completion of a driver improvement clinic conducted by the Department [of Motor Vehicles] or by any business, organization, governmental entity or individual certified by the Department to provide driver improvement clinic instruction. In the absence of such notification, no safe driving points shall be awarded by the Department.

Persons required by the court to attend a driver improvement clinic shall notify the court if the driver improvement clinic has or has not been attended and satisfactorily completed, in compliance with the court order. Failure of the person to attend and satisfactorily complete a driver improvement clinic, in compliance with the court order, may be punished as contempt of such court.

Statutes related to the same subject must be considered *in pari materia*.⁹ Section 46.2-334.01(A)(1) provides that "[n]o safe driving points shall be awarded ... for ... court-assigned clinic attendance." Section 46.2-505 provides that "[t]he court shall determine if a person is to receive safe driving points upon satisfactory completion of a driver improvement clinic." These two provisions clearly are in conflict. A cardinal rule of statutory construction is that conflicts between laws are to be avoided whenever possible, with general and special laws viewed in harmony so as to give effect to all acts of the legislature.¹⁰ It is not possible to give effect to these two statutes since each conflicts directly with the other.

Another rule of statutory construction requires the presumption that, in enacting statutes, the General Assembly has full knowledge of existing

law and interpretations thereof.¹¹ The 1995 amendment of § 46.2-505 is in direct conflict with the 1998 enactment of § 46.2-334.01(A)(1).¹² Although the repeal of statutes by implication is not favored, if two statutes are *in pari materia*, then to the extent that their provisions are irreconcilably inconsistent and repugnant, the later enactment repeals or amends the earlier enacted statute.¹³

Accordingly, I must conclude that the prohibition against awarding safe driving points in § 46.2-334.01(A)(1) is in direct conflict with the authority provided in § 46.2-505 for a court to determine whether a person shall receive safe driving points upon satisfactory completion of a driver improvement clinic. The authority for the court provided in § 46.2-505, being the older of the two conflicting provisions, is, therefore, repealed by implication by § 46.2-334.01(A)(1).

¹Va. Code Ann. tit. 46.2, ch. 3, art. 19 ("Driver Improvement Program") (Michie Repl. Vol. 1998 & Supp. 2001).

²*Id.* tit. 46.2, ch. 10, art. 12 ("Safety Belts") (Michie Repl. Vol. 1998).

³*Id.* tit. 46.2, ch. 10, art. 13 ("Child Restraints") (Michie Repl. Vol. 1998 & Supp. 2001).

⁴Section 38.2-2217 allows a rate reduction in motor vehicle insurance premiums for certain persons who attend driver improvement clinics.

⁵See *Andrews v. Shepherd*, 201 Va. 412, 414-15, 111 S.E.2d 279, 281-82 (1959); see also *Schmidt v. City of Richmond*, 206 Va. 211, 218, 142 S.E.2d 573, 578 (1965); Op. Va. Att'y Gen.: 1998 at 56, 58; 1996 at 178, 178; 1991 at 238, 240; 1989 at 250, 251-52; 1985-1986 at 133, 134.

⁶See Op. Va. Att'y Gen.: 1998 at 19, 21; 1996 at 197, 198; 1987-1988 at 1, 2.

⁷See Op. Va. Att'y Gen.: 1987-1988, *supra*, at 2; 1985-1986 at 246, 246 (noting that earlier enacted statute must yield to subsequently enacted statute).

⁸See *Town of South Hill v. Allen*, 177 Va. 154, 165, 12 S.E.2d 770, 774 (1941).

⁹See 1996 Op. Va. Att'y Gen. 134, 135. *In pari materia* is Latin, meaning "[o]n the same subject; relating to the same matter." Black's Law Dictionary 794 (7th ed. 1999).

¹⁰See Op. Va. Att'y Gen.: 1993 at 135, 137 (stating principle that statutes dealing with same subject must be read together to give effect to all provisions if possible applies when one of state statutes is local charter); 1986-1987 at 40, 41 (stating principle that general statute and charter provisions should be construed to avoid apparent conflicts); 1983-1984 at 140, 142 (stating principle that general act and special act on same subject and applying in same locality at same time should be construed, if reasonably possible, to give force and effect to each).

¹¹ See *Richmond v. Sutherland*, 114 Va. 688, 693, 77 S.E. 470, 472 (1913); *Op. Va. Att'y Gen.*: 1996 at 51, 52, (noting that General Assembly, in repealing one statute and enacting another, had full knowledge of existing law and construction placed upon it by Attorney General, and intended to change law); 1995 at 130, 131 (noting that General Assembly, in amending statute, had full knowledge of existing law and construction placed upon it by courts, and intended to change then existing law).

¹² Compare 1995 Va. Acts ch. 672, at 1083, 1087-88 (amending § 46.2-505), and 1998 Va. Acts chs. 124, 792, at 214, 214-15, 1908, 1909, respectively (enacting § 46.2-334.01).

¹³ See *Standard Drug v. General Electric*, 202 Va. 367, 378-79, 117 S.E.2d 289, 297 (1960) (later enacted Fair Trade Act prevails over Anti-monopoly Act in case of conflict); *accord* *South Norfolk v. Norfolk*, 190 Va. 591, 58 S.E.2d 32 (1950); *American Cyanamid Co. v. Com.*, 187 Va. 831, 48 S.E.2d 279 (1948).

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