



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Robert F. McDonnell
Attorney General

November 2, 2006

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

The Honorable John R. Doyle, III
Commonwealth's Attorney for the City of Norfolk
800 E. City Hall Avenue, Suite 600
Norfolk, Virginia 23510-2719

Dear Mr. Doyle:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether § 46.2-1021 requires that the vacant sign authorized for a taxicab be a white light or whether a green-tinted sign may be used.

Response

It is my opinion that a green-tinted vacant light on a taxicab would not specifically violate § 46.2-1021. However, it further is my opinion that the Department of State Police has the authority to regulate the use of such lights, and its interpretation is entitled to due deference.

Applicable Law and Discussion

You inquire about the use of green-tinted lights as "vacancy lights" on taxicabs. You relate that such use has been an established practice in the city of Norfolk for some time. You advise that the City Code of Norfolk requires the use of "vacancy lights"¹ You report that the phrase "illuminated vacant or destination signs" in § 46.2-1021(i) has been interpreted to authorize the "vacancy lights" mandated by the Norfolk City Code.² You also report that a trooper with the Department of State Police recently has directed Norfolk police officers to remove taxicabs with green-tinted vacancy lights from the city streets.³

¹NORFOLK, VA., CODE § 34.1-22 (1999), available at <http://www.municode.com/resources/gateway.asp?pid=10121&sid=46>. ("Whenever any taxicab is engaged, there shall be conspicuously displayed an identification light connected to the taximeter, which shall show light when the taximeter is in operation. Such light shall be so located and shall be in such form, color and size as shall be prescribed by the chief of police. Such identification light shall be operated on a mechanical taximeter or on an electronic taximeter by use of an electronic metering device."). For purposes of this opinion, the terms "vacancy light" and "identification light" refer to an "illuminated vacant or destination sign" in § 46.2-1021(i).

²See *id.* It does not appear from your inquiry that the applicability of § 46.2-1021 to such "vacancy lights" is in question. Accordingly, I assume that the use of some form of vacancy light is authorized by the section. The analysis is limited to the narrow issue you raise, i.e., the use of green-tinted lights for such purpose.

³You relate that the trooper issued the directive in accordance with provisions in the State Police Inspection Manual. It is unclear from your inquiry, however, whether this is the official position of the Superintendent of State Police.

It is your opinion⁴ that the two subparts of § 46.2-1021, identified as “i” and “ii” of the first paragraph, address two separate subjects, and that the second subpart does not limit the exception created by the first. You further note, as discussed below, that no other applicable provision of the *Code of Virginia* prohibits the use of green-tinted lights. You, therefore, conclude that such green-tinted vacancy lights comply with the *Code of Virginia*.⁵

As a general rule, motor vehicles may only be operated with the lighting devices required or permitted by state or federal law.⁶ Section 46.2-1021.1 prohibits signs containing primarily green, red, or blue colors on “[p]rivately owned passenger cars used for home delivery of commercially prepared food.” You note that § 46.2-1021.1 is the only statute specifically prohibiting green lighting. Since this section applies to certain privately owned passenger cars and does not apply to “taxicabs,” it is not relevant to your inquiry.

An additional consideration is legislation enacted in 2003, which provides for the permissive use of green lights.⁷ This legislation authorizes green lights for “command centers” for certain first responders.⁸ The same limited authorization for green lights is reflected in regulations promulgated by the Department of State Police⁹ and in the Safety Inspection Manual of the Virginia State Police.¹⁰ It, therefore, appears that the Department has concluded that the express authorization regarding “command centers” reflects a legislative intent that such authorization for the use of green lights is exclusive.¹¹

⁴ Any request by a Commonwealth’s attorney for an opinion from the Attorney General “shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney’s legal conclusions.” VA. CODE ANN. § 2.2-505(b) (2005).

⁵ You state that, if both the dome and vacancy lights were white, the vacancy light would not be conspicuous as required by the Norfolk City Code. When a request requires interpretation of a local ordinance, the Attorney General has declined to respond in order to avoid becoming involved in matters solely of local concern and over which the local governing body has control. *See, e.g.*, Op. Va. Att’y Gen.: 2002 at 85, 86; *id.* at 96, 97; 1976-1977 at 17, 17. Therefore, I decline to respond concerning the effect the conclusions contained herein interpreting state law will have on provisions of the Norfolk City Code. In reference to the term “dome light,” however, I find no statutory or regulatory definition. The Safety Inspection Manual of the Virginia State Police reflects a blanket approval by the Superintendent of State Police, pursuant to § 46.2-1005, of “[a]ny identification lamp emitting a diffused light of such intensity so as not to project a glaring or dazzling light. Such lamps to be installed on the roof or rear of a motor vehicle and to bear the identification – Taxi, News Channel 10 News, or similar wording, for the purpose of identifying the vehicle on which the lamp is installed.” VA. STATE POLICE, SAFETY INSPECTION MANUAL, “Approved Equipment Section, Identification Lamps,” at 14-1 (Jan. 1, 2005) [hereinafter “INSPECTION MANUAL”]. For purposes of this opinion, I assume that the term “dome light” refers to such an “identification lamp.”

⁶ VA. CODE ANN. § 46.2-1020 (Supp. 2006) (providing exception for lights that are not permitted, provided they are covered and unlit).

⁷ *See* 2003 Va. Acts ch. 93, at 118, 119 (amending and reenacting § 46.2-1025 by adding subsection D authorizing use of “green warning lights” on “[v]ehicles used by police, fire-fighting, or rescue personnel as command centers”).

⁸ *See* § 46.2-1025 (2005).

⁹ *See* 19 VA. ADMIN. CODE §§ 30-70-160(H)(5); 30-70-530(J)(5) (Supp. 2006) (Motor Vehicle Safety Inspection Rules and Regulations).

¹⁰ INSPECTION MANUAL, *supra* note 5, pt. III, “Inspection Requirements For Passenger Vehicles and Vehicles Up To 10,000 Pounds,” ¶ H(5), at 160-3 (Jan. 1, 2005).

¹¹ I note that § 46.2-1025(D) and 19 VAC §§ 30-70-160(H)(5) and 30-70-530(J)(5) prohibit activation of the “green warning lights” when a vehicle is operated on a highway.

The Superintendent of State Police is charged with the administration of vehicle safety inspections in the Commonwealth.¹² The Superintendent specifically is charged with the responsibility to approve the lighting devices to be used on vehicles operated on the highways of the Commonwealth.¹³

An agency's interpretation of legal requirements is entitled to deference by the courts when it is within the experience and specialized competence of the agency.¹⁴ The rationale for such a statutory scheme is that the agency "shall apply expert discretion to the matters coming within its cognizance, and judicial interference is permissible only for relief against the arbitrary or capricious action that constitutes a clear abuse of the delegated discretion."¹⁵

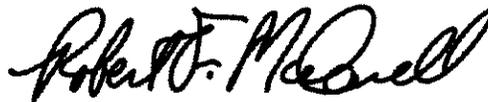
I cannot say that the interpretation of the Department of State Police regarding the lighting requirements applicable to motor vehicles is either arbitrary or capricious, or "a clear abuse of the delegated discretion."¹⁶ Therefore, I must defer to the Department's interpretation.¹⁷

Conclusion

Accordingly, it is my opinion that a green-tinted vacant light on a taxicab would not specifically violate § 46.2-1021. However, it further is my opinion that the Department of State Police has the authority to regulate the use of such lights, and its interpretation is entitled to due deference.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

3:336; 1:941/06-056

¹²See § 46.2-1163 (Supp. 2006).

¹³See, e.g., § 46.2-1011 (2005) (requiring Superintendent to approve headlights); § 46.2-1014 (2005) (requiring Superintendent to approve brake lights); § 46.2-1025 (2005) (requiring Superintendent to approve warning lights for certain vehicles).

¹⁴*Johnston-Willis, Ltd. v. Kenley*, 6 Va. App. 231, 243-44, 369 S.E.2d 1, 8 (1988), quoted in *7-Eleven, Inc. v. Dep't of Env'tl. Quality*, 39 Va. App. 377, 387, 573 S.E.2d 289, 294 (2002), *rev'd on other grounds*, 42 Va. App. 65, 590 S.E.2d 84 (2003).

¹⁵*Bd. of Zoning Appeals v. Fowler*, 201 Va. 942, 948, 114 S.E.2d 753, 758 (1960) (quoting Yokely, *Zoning Law and Practice*, § 187); see also *Va. Alcoholic Beverage Comm'n v. York Street Inn, Inc.*, 220 Va. 310, 315, 257 S.E.2d 851, 855 (1979) (quoting *Schmidt v. Bd. of Adjustment*, 9 N.J. 405, 423, 88 A.2d 607, 615-16 (1952)). The standard for review of an agency action is defined by statute. "[T]he function of the court shall be to determine only whether the result reached by the agency could reasonably be said, on all such proofs, to be within the scope of the legal authority of the agency." Section 2.2-4027 (2005).

¹⁶*Fowler*, 201 Va. at 948, 114 S.E.2d at 758

¹⁷Attorneys General defer to the interpretations of the law by an agency charged with administering the law, unless the agency interpretation clearly is wrong. See 2002 Op. Va. Att'y Gen. 186, 187 and opinions cited therein.