



COMMONWEALTH OF VIRGINIA

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April 20, 2010

The Honorable Joseph P. Johnson, Jr.
Member, House of Delegates
164 East Valley Street
Abingdon, Virginia 24210

Dear Delegate Johnson:

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 the Department of Motor Vehicles (“Department”) has the authority to impose an ignition interlock system upon an individual seeking reinstatement of his driver’s license after the three-year license revocation period resulting from a conviction of second offense driving under the influence (“DUI”). You note that the convicting court did not impose such a requirement.¹

Response

It is my opinion that the Commissioner of the Department of Motor Vehicles is both authorized and mandated to impose an ignition interlock system upon an individual seeking reinstatement of a driver’s license after the three-year license revocation period resulting from a conviction for driving under the influence, second or subsequent offense, when the convicting court fails to order the installation of such system.

Applicable Law and Discussion

The responsibility for ordering ignition interlock systems initially falls to the court. Article 2, Chapter 7 of Title 18.2, §§ 18.2-266 through 18.2-273 (codified in scattered sections), contains the penalties, sanctions, and requirements related to driving a motor vehicle while under the influence of alcohol. Section 18.2-270.1(B) provides, in part, that a court:

¹You provide a set of factual circumstances specific to a particular person. To the extent that the issue of whether the Department acted appropriately in this particular situation is a question of fact, this Office does not investigate the facts behind opinion requests and does not issue opinions regarding questions of fact. *See* 2006 Op. Va. Att’y Gen. 141, 141. Further, Attorneys General defer to the interpretations of the agency charged with administering the law unless such interpretation clearly is wrong. *See, e.g.*, 2007 Op. Va. Att’y Gen. 30, 34. I have, therefore, limited my analysis to a general review of the statutes related to the imposition of ignition interlock system requirements and the general authority of the Department related to such imposition.

shall, for a second or subsequent offense [under § 18.2-266²] ... as a condition of a restricted license or as a condition of license restoration under subsection C of § 18.2-271.1 or 46.2-391, prohibit an offender from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system for any period of time not to exceed the period of license suspension and restriction, not less than six consecutive months without alcohol-related violations of the interlock requirements, and shall require that such a system be installed on each motor vehicle, as defined in § 46.2-100, owned by or registered to the offender, in whole or in part, for such period of time. Such condition shall be in addition to any purposes for which a restricted license may be issued pursuant to § 18.2-271.1.

Section 18.2-270.1(B) specifically refers to § 18.2-271.1(C), which provides, in pertinent part, that:

Upon conviction of a violation of § 18.2-266 or any ordinance of a county, city or town similar to the provisions thereof, or subsection A of § 46.2-341.24, the court shall impose the sentence authorized by § 18.2-270 or § 46.2-341.28^[3] and the license revocation as authorized by § 18.2-271. In addition, if the conviction was for a second offense committed within less than ten years after a first such offense, the court shall order that restoration of the person's license to drive be conditioned upon the installation of an ignition interlock system on each motor vehicle, as defined in § 46.2-100, owned by or registered to the person, in whole or in part, for a period of six months beginning at the end of the three year license revocation, unless such a system has already been installed for six months prior to that time pursuant to a restricted license order under subsection E of this section.

Finally, as a backstop to these provisions, § 46.2-391.01 provides that:

If the court, as a condition of license restoration or as a condition of a restricted license under subsection C of § 18.2-271.1 or § 46.2-391, fails to prohibit an offender from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system upon the offender's conviction of a second or subsequent offense under § 18.2-51.4 or § 18.2-266 or a substantially similar ordinance of any county, city or town, the Commissioner [of DMV] shall enforce the requirements relating to installation of such systems in accordance with the provisions of § 18.2-270.1.^[4]

²Section 18.2-266 generally prohibits persons from driving or operating motor vehicles while under the influence of alcohol or drugs.

³Section 46.2-341.28 is related to the operation of commercial vehicles while under the influence of alcohol.

⁴Section 18.2-270.1 provides, in pertinent part, other requirements that:

“[B.]The offender shall be enrolled in and supervised by an alcohol safety action program pursuant to § 18.2-271.1 and to conditions established by regulation under § 18.2-270.2 by the Commission [on VASAP] during the period for which the court has ordered installation of the ignition interlock system....

“[C.]The Department [of Motor Vehicles] shall issue to the offender for the installation period required by the court, a restricted license which shall appropriately set forth the restrictions required by the court under this subsection and any other restrictions imposed upon the offender's driving privilege, and shall also set forth any exception granted by the court under subsection F.

I note that each of the three statutes uses the word “shall” in relation to prohibition, imposition, or enforcement of the ignition interlock system requirements. The use of the word “shall” in a statute generally indicates that the procedures are intended to be mandatory.⁵ Therefore, it is my opinion that the term “shall” as used in §§ 18.2-270.1, 18.2-271.1(C), and 46.2-391.01 plainly and unambiguously mandates that an ignition interlock system be installed in the situations described in the *Code*.

Furthermore, it is well established that statutes should not be read in isolation.⁶ Statutes relating to the same subject should be considered *in pari materia*.⁷ Moreover, statutes dealing with the same subject matter should be construed together to achieve a harmonious result, resolving conflicts to give effect to legislative intent.⁸ Therefore, it is my opinion that the General Assembly intended that the ignition interlock requirements be imposed in every case involving a conviction for DUI, second or subsequent offense. The requirement may be imposed at the end of the three-year revocation period required for a second or subsequent offense conviction or as a condition of a restricted license authorized during the three-year license revocation period. It is clear that in enacting § 46.2-391.01, the General Assembly intended to require the DMV Commissioner to impose the ignition interlock system requirements mandated by §§ 18.2-270.1 and 18.2-271.1 when a court fails to order the system. When a court has not imposed the ignition interlock system requirements, the General Assembly not only has authorized the Commissioner to impose such requirements on an individual convicted for DUI, second or subsequent offense, it has mandated that the Commissioner do so.⁹

Conclusion

Accordingly, it is my opinion that the Commissioner of the Department of Motor Vehicles is both authorized and mandated to impose an ignition interlock system upon an individual seeking reinstatement of a driver’s license after the three-year license revocation period resulting from a conviction for driving

“D. The offender shall be ordered to provide the appropriate ASAP program, within 30 days of the effective date of the order of court, proof of the installation of the ignition interlock system. The Program shall require the offender to have the system monitored and calibrated for proper operation at least every 30 days by an entity approved by the Commission under the provisions of § 18.2-270.2 and to demonstrate proof thereof. The offender shall pay the cost of leasing or buying and monitoring and maintaining the ignition interlock system. Absent good cause shown, the court may revoke the offender’s driving privilege for failing to (i) timely install such system or (ii) have the system property monitored and calibrated.”

⁵See *Andrews v. Shepherd*, 201 Va. 412, 414, 111 S.E.2d 279, 281-82 (1959); see also 1994 Op. Va. Att’y Gen. 64, 68.

⁶2B NORMAN J. SINGER & J.D. SHAMBIE SINGER, *SUTHERLAND STATUTORY CONSTRUCTION* § 51:2 (West 7th ed. 2008); Op. Va. Att’y Gen.: 1999 at 22, 22; 1998 at 123, 124; *id.* at 19, 21; 1996 at 197, 198; 1995 at 146, 147; 1993 at 160, 162; *id.* at 135, 137; 1992 at 108, 112.

⁷See *Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7-8 (1957); 1996 Op. Va. Att’y Gen. 134, 135. “*In pari materia*” is the Latin phrase meaning “[o]n the same subject; relating to the same matter.” BLACK’S LAW DICTIONARY 862 (9th ed. 2009).

⁸See 2A SINGER & SINGER, *supra* note 6, at § 46:5 (West 7th ed. 2008); 2000 Op. Va. Att’y Gen. 182, 185.

⁹See VA. CODE ANN. § 46.2-391.01 (2005) (providing that Commissioner “shall enforce” requirements relating to ignition interlock systems); see also *supra* note 5 and accompanying text.

The Honorable Joseph P. Johnson, Jr.
April 20, 2010
Page 4

under the influence, second or subsequent offense, when the convicting court fails to order the installation of such system.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken Cuccinelli, II". The signature is written in a cursive style with a large, sweeping "K" and "C".

Kenneth T. Cuccinelli, II
Attorney General