



COMMONWEALTH of VIRGINIA

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The Honorable Janet D. Howell
Member, Senate of Virginia
Chair, Virginia State Crime Commission
Patrick Henry Building
1111 East Broad Street, Suite B036
Richmond, Virginia 23219

Dear Senator Howell:

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 inquire whether, to benefit from the exemption from criminal prosecution found in § 46.2-920(B), operators of emergency vehicles must engage both lights and sirens to qualify for the exemption.

Response

It is my opinion that the exemption from criminal prosecution found in § 46.2-920 does not require emergency vehicle operators to activate the vehicle's lights or siren when doing so is not reasonably necessary.

Applicable Law and Discussion

Section 46.2-920 provides that "[t]he driver of any emergency vehicle, when such vehicle is being used in the performance of public services, and when such vehicle is operated under emergency conditions may, without subjecting himself to criminal prosecution" engage in certain specified conduct that would otherwise expose a driver to prosecution, including, for example, disregarding speed limits. The exemption applies

only when the operator of such vehicle displays a flashing, blinking, or alternating emergency light or lights . . . and sounds a siren, exhaust whistle, or air horn design to give automatically intermittent signals, as may be reasonably necessary, and only when there is in force and effect for such vehicle [insurance or a certificate of self-insurance.]^[1]

Statutes should be construed according to their plain language.² First, the statute provides that the exemption from prosecution applies only if the vehicle displays lights "and" a siren, exhaust whistle or air

¹ VA. CODE ANN. § 46.2-920(B) (2010).

² *Signal Corp. v. Keane Federal Sys.*, 265 Va. 38, 46-47, 574 S.E.2d 253, 257 (2003).

horn. Therefore, the first part of subsection B contemplates that the vehicle would activate both lights and siren to benefit from the exemption. The statute, however, does not end there, because it further provides the limiting phrase "as may be reasonably necessary."

The key is whether the phrase "as may be reasonably necessary" modifies both the "lights" and the "siren" clause, or whether it modifies only the "siren" requirement. It is my conclusion that the phrase modifies both clauses. First, the clause "as may be reasonably necessary" is separated from the preceding clause by a comma, signaling that it is not incorporated into and, therefore, does not modify exclusively, the preceding "siren" clause. Second, this interpretation is consistent with the purpose of this statute, which is to shield from criminal prosecution persons who are providing a public service at great risk to themselves. The manifest purpose of the statute is not to second-guess a decision, made in high-stress conditions and in a wide range of circumstances, whether to activate the lights, or siren, or both. For example, an emergency vehicle driver may speed away to respond to an emergency, while speaking on the radio, and later turn on the emergency lights. Or the driver may conclude that emergency signals would be inappropriate because of the late hour and the absence of any traffic. Of course, in most circumstances, prudence dictates that either lights or a siren or both should be activated, but the statute does not make lights or sirens an absolute requirement for the exemption to apply. Rather, it affords discretion to persons responding to emergencies to determine whether sirens and lights are "reasonably necessary."

Conclusion

Accordingly, it is my opinion that the exemption from criminal prosecution found in § 46.2-920 does not require as a condition for its application that emergency vehicle operators have either lights or a siren to be activated when doing so is not reasonably necessary.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General