



COMMONWEALTH of VIRGINIA

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The Honorable George L. Barker
Member, Senate of Virginia
Post Office Box 10527
Alexandria, Virginia 22310

Dear Senator Barker:

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 § 46.2-716(B) of the *Code of Virginia* can be read to prohibit clear license plate coverings, in addition to colored ones, that obstruct a police officer's ability to read a license plate or whether the prohibition is limited to only colored coverings.

Response

It is my opinion that the plain language of § 46.2-716(B) is broad enough to prohibit the placing of a clear plastic covering over a license plate, if the covering in any way obscures information contained on the license plate, but that whether any particular covering would bring rise to a violation of the provision is a determination of fact beyond the scope of this opinion.

Background

You relate a situation in which a constituent of yours was ticketed for having a clear plastic cover over his license plate. You note that your discussions with law enforcement officers indicate that, "while the code only states that 'colored' coverings are considered illegal," any covering that obstructs an officer's ability to read the license plate due to reflection from their spotlight allows for a citation under § 46.2-716.

Applicable Law and Discussion

Section 46.2-716 sets forth the requirements for displaying license plates on automobiles operated in the Commonwealth. The statute also expressly provides that

No colored glass, colored plastic, bracket, holder, mounting, frame, or other type of covering shall be placed, mounted, or installed on, around, or over any license plate if such glass, plastic, bracket, holder, mounting, frame, or other type of covering in any way alters or obscures (i) the alpha-numeric information, (ii) the color of the license plate, (iii)

the name or abbreviated name of the state wherein the vehicle is registered, or (iv) any character or characters, decal, stamp, or other device, indicating the month or year in which the vehicle's registration expires. No insignia, emblems, or trailer hitches or couplings shall be mounted in such a way as to hide or obscure any portion of the license plate or render any portion of the license plate illegible.^[1]

When the language of a statute is unambiguous, that language is binding and it is impermissible to assign a construction that amounts to concluding "that the General Assembly did not mean what it actually has stated."² Further, "[t]he purpose for which a statute is enacted is of primary importance in its interpretation or construction,"³ and unless it will lead to an absurd result, "a statute should be read to give reasonable effect to the words used and to promote the ability of the enactment to remedy the mischief at which it is directed."⁴ Although penal statutes are strictly construed against the Commonwealth and in favor of the liberty of citizens,⁵ a criminal defendant is not entitled to benefit from an "unreasonably restrictive interpretation" of a statute.⁶ Courts will not "construe a penal statute in a manner that requires [them] to disregard the clear and obvious meaning of the statute."⁷

The purpose of § 46.2-716(B) is to ensure that vehicles traveling in the Commonwealth bear license plates whose information is visible at all times. Under the plain language of the statute, any "type of covering" placed over a license plate – even a clear plastic one – is prohibited if it "*in any way*" obscures the view of the information on the license plate.⁸ Although the statute specifies certain types of coverings, including "colored plastic" ones, the provision also prohibits any "other type of covering" that "*in any way*" obscures the information on a license plate. This construction is consistent with the obvious purpose of the statute as expressed by its plain language. Thus, the critical inquiry is not the characteristic of the license plate cover itself, but whether it, in fact, obscured law enforcement's view of the license plate at the time of the traffic stop. Such determination, however, must be made on a case-by-case basis.⁹ Thus, it is my opinion that even clear plastic license plate covers can violate the statute if credible evidence exists to establish that the cover "*in any way* alters or obscures" the license plate.

This conclusion is supported by a 2005 federal district court decision.¹⁰ In ruling on the validity of a traffic stop, the court concluded a violation of § 46.2-716 could be established by the police officer's credible testimony that he could not see the information on the defendant's license plate at the time of the traffic stop.¹¹ In this case, the police officer who stopped the vehicle in question testified that he had been

¹ VA. CODE ANN. § 46.2-716(B) (emphasis added).

² *Williams v. Commonwealth*, 265 Va. 268, 271, 576 S.E.2d 468, 470 (2003).

³ *Norfolk S. Ry. Co. v. Lassiter*, 193, Va. 360, 364, 68 S.E.2d 641, 643 (1952).

⁴ *Walston v. Cnty. of Arlington*, 37 Va. App. 457, 462, 559 S.E.2d 391, 393 (2002) (quoting *Jones v. Conwell*, 227 Va. 176, 181, 314 S.E.2d 61, 64 (1984)) (internal quotation marks omitted).

⁵ *Berry v. City of Chesapeake*, 209 Va. 525, 526, 165 S.E.2d 291, 292 (1969).

⁶ *Holloman v. Commonwealth*, 221 Va. 196, 198, 269 S.E.2d 356, 357 (1980).

⁷ *Walston*, 37 Va. App. at 464, 559 S.E.2d at 395 (quoting *Huddleston v. United States*, 415 U.S. 814, 831 (1974)) (internal quotation marks omitted).

⁸ Section 46.2-716(B)

⁹ The application of various elements of a criminal offense to a specific set of facts rests with the Commonwealth's attorney, the grand jury and the trier of fact. *See, e.g.*, 2010 Op. Va. Att'y Gen. 99, 103.

¹⁰ *United States v. Greenwood*, 405 F. Supp. 2d 673 (E.D.Va. 2005).

¹¹ *Id.* at 674-75, 677-78.

unable to read the vehicle's license plate because it was bent.¹² The court upheld the legitimacy of the stop under § 46.2-716 based on this evidence presented, namely that the officer could not read the license plate based on its condition.¹³

Thus, it is my opinion that § 46.2-716(B) prohibits any kind of covering over a license plate if it, in any way, obscures the license plate, even if the inability to read the license plate results from the covering in combination with other factors, such as light reflecting off of the covering. It is further my opinion that the question of whether an individual has violated § 46.2-716(B) is dependent upon the facts of each case as established by the evidence.

Conclusion

Accordingly, it is my opinion that the plain language of § 46.2-716(B) is broad enough to prohibit the placing of a clear plastic covering over a license plate, provided it in any way obscures information contained on the license plate, but that whether any particular covering would bring rise to a violation of the provision is a determination of fact beyond the scope of this opinion.

With kindest regards, I am

Very truly yours,



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¹² *Id.* at 678.

¹³ *Id.* In *Greenwood*, the Court noted that the officer's testimony was corroborated by photographs showing the condition of the license plate.