

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

DISTRICT BUILDING

WASHINGTON, D. C. 20004



IN REPLY REFER TO:

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March 3, 1983

OPINION OF THE CORPORATION COUNSEL

SUBJECT: Authority of Department of
Transportation Enforcement Personnel
to Issue Tickets for Non-Moving Violations

Thomas M. Downs, Director
Department of Transportation
415 12th Street, Northwest
Washington, D. C. 20004

Dear Mr. Downs:

This is in reply to your request dated September 14, 1982, for an opinion regarding the authority of Department of Transportation (DOT) enforcement personnel to issue tickets for non-moving violations under the District of Columbia Traffic Adjudication Act of 1978. Among the violations to which you referred are: excessive idling; motor running unattended; and failure to secure D.C. tags. In my opinion, Department of Transportation enforcement personnel may issue citations for such violations.

The Council of the District of Columbia adopted the District of Columbia Traffic Adjudication Act of 1978, D.C. Law 2-104, effective September 12, 1978, D.C. Code, secs. 40-601 et. seq. (1981), to decriminalize certain violations of the Motor Vehicle Regulations and "to provide for the civilian enforcement of parking infractions." Sec. 101, D.C. Code, sec. 40-601. In adopting this act, the Council did not explicitly define "parking infractions." However, the scheme of the act implicitly defines the term.

Title II of the Traffic Adjudication Act, "Moving Infractions", applies to "all violations of statutes, regulations, executive orders or rules relating to the operating of any vehicle in the District, except those violations covered by Title III" and certain enumerated violations. Sec. 201, D.C. Code, sec. 40-611. Notices of infraction ^{1/} for violations of Title II are to be issued by police officers. Sec. 206(c), D.C. Code, sec. 40-616(c). Title III, "Parking, Standing, Stopping and Pedestrian Infractions", applies to "all violations of statutes, regulations, executive orders or rules relating to parking, standing, stopping or pedestrian offenses." Sec. 301, D.C. Code, sec. 40-621. Notices of infraction for such violations are to be issued by police officers or Department of Transportation employees. Sec. 305(e) and 306(c), D.C. Code, secs. 40-625(e) and 40-626(c). Accord, Report of the Council Committee on the Judiciary on Bill 2-195, May 24, 1978, pp. 12 and 19.

The interpretation of the agency primarily concerned with implementing a statute is relevant to proper construction of the statute. See L'Enfant Plaza Properties, Inc. v. D.C. Redevelopment Land Agency 564 F.2d 515 (D.C. Cir. 1977). When the Director of the Department of Transportation proposed rules to implement the Traffic Adjudication Act, those rules provided that police officers could issue tickets for moving and parking violations, but the Department of Transportation personnel could issue tickets "only for parking violations." 25 D.C.R. 4917 (November 24, 1978) sec. 2.07. 18 D.C.M.R. secs. 3002 and 3003. The proposed rules assessed civil fines by listing all traffic violations (and the relevant fines) under a single heading: "Violations." 25 D.C.R. 4923, sec. 3.03.(b). The rules defined a moving violation as "a violation of any law, rule or regulation which regulates the movement of vehicles"; and a parking violation as "a violation of any law, rule or regulation providing for or regulating the parking, stopping or standing of a vehicle." 25 D.C.R. 4912-4913, secs. 1.12 and 1.16, 18 D.C.M.R. sec. 9901. These definitions were, on their face, consistent with the scheme of the Traffic Adjudication Act.

The Director of the Department of Motor Vehicles later adopted final rules which repeat the proposed rules with only one relevant change: the rules impose fines by listing traffic violations in sections separating moving infractions (18 D.C.M.R. sec. 2600) from parking and other non-moving infractions (18 D.C.M.R. sec. 2601).

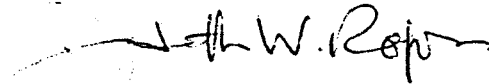
"Excessive idling" and "Motor running unattended" are both classified as non-moving violations in sec. 2601.1. This classification is consistent with the regulations creating each infraction, which explicitly "regulate the parking, stopping or standing of a vehicle." 18 D.C.M.R. secs. 2415.1 and 2415.3.

^{1/} "Notice of infraction" is defined by regulations as synonymous with "ticket". 18 D.C.M.R. sec. 9901.

"Failure to secure D.C. tags" is classified as a moving violation in sec. 2600. However, this infraction also satisfies the Director's definition of a parking violation, since the regulation creating this infraction explicitly requires the display of current D.C. tags on motor vehicles "left standing upon any public highway." 18 D.C.M.R. sec. 424.1. However, it is important to note that the authority of DOT enforcement personnel to issue tickets for this infraction extends only to vehicles left standing on a public highway. Thus, DOT enforcement personnel have clear authority to issue such tickets only if a vehicle is: (1) on a public highway, (2) stationary, and (3) unoccupied. The Traffic Adjudication Act specifically does not decriminalize the offense of operating a vehicle without current D.C. tags. See sec. 202(g); 50 Stat. 682, ch. 690, sec. 4 (1937). It has been held that a vehicle is being operated within the meaning of this provision if someone is seated behind the steering wheel with the ignition switch on and the motor running -- even if the vehicle is standing at the curb. United States v. Weston, 466 F.2d 435 (D.C. Cir. 1972).

In conclusion, it is my opinion that Department of Transportation enforcement personnel to have authority under the Traffic Adjudication Act to issue tickets for any violations which meet the definition of a "parking infraction" contained in 18 D.C.M.R. sec. 9901, namely: "a violation of any law, rule or regulation providing for or regulating the parking, stopping or standing of a vehicle."

Sincerely,



Judith W. Rogers
Corporation Counsel, D. C.