



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

September, 30 1987

CHARLIE BROWN
ATTORNEY GENERAL

The Honorable A. James Manchin
Treasurer of State
West Virginia State Capitol
Charleston, West Virginia 25305

Dear Mr. Manchin:

We are in receipt of your letter of July 7, 1987, in which you requested an opinion as to what constitutes a non-moving violation for purposes of West Virginia Code § 8-11-1.

Specifically, Code 8-11-1 requires that, as of June 14, 1987, the municipal courts assess an additional cost of not less than \$22.00 in each proceeding "except that such additional cost shall not be assessed for a traffic offense that is not a moving violation or an offense for which the ordinance does not provide for a period of incarceration."

As noted in your letter, the term, "moving violation" is not defined in the statute and there is no relevant legislative history which would provide insight into legislative intent; however, the regulations of the Department of Motor Vehicles provide a useful interpretation of the term.

It is assumed that whenever the Legislature enacts a statute it has in mind previous provisions relating to the same topic. McCurter v. Older, 173 Cal. App. 3d 582, 219 Cal. Rptr. 104. (1985).

It is well-settled that valid regulations promulgated by an administrative agency, for the purpose of enforcing a statute pursuant to the statutory authority granted to the agency, have the force and effect of law if not in conflict with express statutory provision. See Conner v. Civil Service Commission, ___ W. Va. ___, 331 S.E.2d 858 (1985). By implication, it is assumed that the Legislature, in utilizing specific terminology which has been previously defined by valid regulations, intended the statutory language to be construed in compliance with regulations relating to the same subject matter.

At the date of enactment of Code 8-11-1, the Department of Motor Vehicles had promulgated regulations which defined the phrase "a traffic offense that is not a moving violation." Said regulations were enacted under the grant of regulatory power made to the West Virginia Department of Motor Vehicles by the Legislature and set forth in Code 17A-2-9. Said section states in pertinent part:

"(a) The commissioner is hereby vested with and is charged with the duty of observing, administering and enforcing the provisions of this chapter and of all laws the enforcement of which is now or hereafter vested in the department * * * .

(b) The commissioner is hereby authorized to adopt and enforce such rules and regulations as may be necessary to carry out the provisions of this chapter and any other laws the enforcement and administration of which are vested in the department."

In conjunction with this grant of authority, the Commissioner of the Department of Motor Vehicles established regulations for the enforcement of statutes relating to motor vehicle operating privileges. Said regulations state in pertinent part:

"7.3 Traffic Convictions That Would Have No Point Value - The abstracts of traffic convictions outlined herein would not be considered a moving violation in the administration of the Driver Improvement Program:

"Convictions for operating vehicles on the highways of this or any other state with defective or improper equipment.

"Convictions for operating vehicles on the highways of this or any other state in violation of the weight, height, length and width provisions of the Code.

"Convictions for operating a vehicle on the highways of this or any other state with improper registration.

"Convictions for operating a vehicle on the highways of this or any other state with an expired vehicle inspection decal or certificate."

West Virginia Legislative Rules Department of Motor Vehicles, 91 C.S.R. 5 (May 19, 1983).

The utilization of the term "moving violations" in the regulations of the Department of Motor Vehicles is in conformity with the common meaning of "moving" as that of "producing or transferring motion or action." See Websters New Collegiate Dictionary, (____ ed. 1973). For example, a conviction for improper equipment would not be a violation effecting the movement of the vehicle. If the improper equipment caused the operator to fail to keep the vehicle under control, that would constitute a separate violation which would be considered a moving violation and would have a point value of three. Thus, an analysis utilizing the regulations of the Department of Motor Vehicles to define "moving violation" is in conformity with the principle that words in a statute be given their common meaning.

In light of the above, it is the opinion of this office that violations such as parking offenses, invalid automobile registration, expired inspection stickers, invalid drivers' licenses, and defective equipment should not be construed as moving violations and thus would not be subject to the \$22.00 fee imposed under Code 8-11-1. In so finding, this office expressly modifies the opinion expressed in our letter of August 7, 1981, concerning the definition of "non-moving violation" under Code 14-2A-4 which applied a narrow interpretation of "non-moving violations," defining them solely as parking violations.

Very truly yours,

CHARLES G. BROWN
Attorney General

By  Assistant
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