




OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

MEMORANDUM

TO: Anita Williams
Legal and Labor Division

FROM: Michael A. Fry
Assistant County Attorney 

DATE: November 26, 2001

RE: Voiding Red Light Citations

You have asked for advice on the proper method of voiding traffic citations issued under the Police Department's "red light" program. Your question directly asks whether the Police Department has the authority to void red-light citations. You have stated that the Police Department voids red light citations under a variety of circumstances. Recently though, in a letter to Lt. Wilkins, the Honorable James N. Vaughan, Chief Judge of the District Court of Maryland, has "suggested" that the Department not void red light citations for "any reason." Further, he suggested that we ask the State's Attorney to *not pros* the citation.

I believe that Maryland law prohibits the Police Department from voiding red light citations. So, in that regard, I agree with Judge Vaughan. I do, however, disagree that the State's Attorney may dismiss a civil citation by way of a *nolle prosequi*. The State's Attorney has jurisdiction only over criminal violations, not civil violations. It is my opinion that the County Attorney may exercise the authority suggested by Judge Vaughan.

I. TRAFFIC CONTROL SIGNAL MONITORING SYSTEMS.

In 1997, the General Assembly passed legislation permitting local jurisdictions to institute automated traffic control signal monitoring systems. See, Transportation Article, §22-202.1, et seq. From this legislation, Montgomery County initiated its "red light program." Under this program, the County installed 15 camera sites and purchased 10 cameras which are rotated between those locations. The monitoring system takes a photograph of vehicles who pass through an intersection which is controlled by a red light traffic signal. The photographs are reviewed and if a violation is noted, a traffic citation, with a unique control number, is issued. See, Sample citation attached hereto. The citation charges a violation of §21-202 of the Transportation Article dealing with passing through a steady red traffic signal without stopping. TA, §21-202(h); see also, TA, §21-202.1(b) ("This section applies to a violation of §21-202(h) of this subtitle") Unlike a traffic citation issued by a police officer as a result of witnessing a red light violation which would be a criminal offense, violations noted by a monitoring system are considered a "civil" violation. TA, §10-202.1(c)(1).

II. DEFINITION OF CITATION.

The term "citation" is defined at various places in the Annotated Code. Article 27, §594B-2(a)(2), which deals with charging criminal offenses by citation, defines "citation" as "a charging document, other than an indictment, an information, or a statement of charges, issued to a defendant by a police officer." The Courts and Judicial Proceedings Article section dealing with charging documents against police officers, contains a similar definition: "a charging document, other than an indictment, an information, or a statement of charges, issued to a defendant by a peace officer or other person authorized by law to do so." CJP, §2-608(a)(3). No distinction is made between a civil or criminal citation.

Section 21-202.1 does not contain a definition of "citation" or "traffic citation." It is clear, though, that the citation issued pursuant to a red light camera violation is a traffic citation and a "charging document." *See*, Transportation Article, §21-201.1(c)(1), indicating that the citation must include a description of the violation charged, i.e. §21-202(h).

III. DISPOSITION OF RED LIGHT TRAFFIC CITATIONS.

Transportation Article, §26-407 governs the disposition of traffic citations. Subsection (b) provides that a police officer who issues a traffic citation to an alleged violator of any State or local law must file the original copy of the citation promptly with the District Court. Similarly, TA §21-202.1(d)(1)(x)(1), vests jurisdiction in the District Court to decide contested citations issued under this section. Subsection (c) provides that after a citation is filed with the District Court, it may be disposed of only by:

- (1) Trial, dismissal of the charges, or other official action by a judge of the court;
- (2) Forfeiture of collateral, if authorized by the court; or
- (3) Payment of a fine by the person to whom the traffic citation has been issued.

More directly, subsection (d) provides that "[n]o police officer or other public employee may dispose of a traffic citation, its copies, or the record of the issuance of a traffic citation in any manner other than as required by this section and the rules and regulations adopted by the Administration."¹ Subsection 26-408(a) adds, "[a] person may not cancel a traffic citation in any manner other than as provided in this subtitle." Subsection (b) makes it illegal to solicit another person to cancel a citation.

¹The "rules and regulations adopted by the Administration" deal with disposition of the officer's copies of the citation.

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Moreover, the Attorney General's Office has opined that §26-407 "reflects the General Assembly's obvious concern about the proper handling of traffic citations by expressly prohibiting police officers and other public employees from disposing of them in any manner not authorized by law. *Neither §26-407 nor the rules and regulations adopted under it authorize a municipality to void traffic citations issued by the Police Department for violations of State or local law.* Hence, any such action would be a violation of §27-407(g)² and can result in the imposition of criminal penalties, as well as possible charge of official misconduct." 64 Op. Atty. Gen. 307 (1979)(Emphasis added). I don't think that there is a material distinction in this matter simply because the penalty for a red light violation is civil. The critical issue is that the red light citation is an official Maryland citation. I doubt that the General Assembly would invite the mischief that attends authority to void citations by making it illegal in one case, but not the other. In 7 Am. Jr. 2d *Automobiles and Highway Traffic* §168 comments on traffic rules, it states:

The law or rules of the road have generally been enacted into law by statute or ordinance, and as hereinafter noted, violations of such statutes or ordinances are usually made criminal offences, the prosecution of which is in the manner of criminal prosecutions generally. However, *in some jurisdictions the violation of certain traffic regulations or rules merely constitutes an offence denominated as "traffic infraction," which is not deemed to be a crime,* although prosecutions therefor are governed by the rules applicable to prosecutions for lesser crimes, such as misdemeanors. (Emphasis added)

Consequently, I believe that based on §26-407, officers and employees of the Department are prohibited from disposing of red light citations by "voiding" them. I am not convinced by an argument that the Department may void citations and thus dispose of them before they are filed with the District Court. I agree with and adopt the language of the Attorney General in the Opinion referenced above that addressed this issue in the context of parking citations:

An argument might be made that the State's Attorney does not acquire the right to enforce or refrain from enforcing a citation for a parking violation until the citation is filed in the District Court—i.e., that the political subdivision retains the right to rescind the citation until such time as the person cited has requested a trial or the political subdivision has sought the court's assistance in collecting the fine. However, acceptance of this argument would authorize local officials

²The Opinion mistakenly cites "§27-407(g)". The correct citation should be §26-407(g).

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to "screen" parking citations, thereby substituting their judgment for that of a State's Attorney or, if the case would otherwise be tried, that of a trial court. Maryland law simply does not permit this."

64 Op. Atty. Gen. 307 (1979).

I think such a rationalization invites mischief, abuse, and public scrutiny aimed at accusations of corruption that the Department voids citations issued to politicians and police officers. So, in that regard, I agree with Chief Judge Vaughan, we should not void a ticket under any circumstance. Indeed, we may not lawfully do so.

IV. THE COUNTY ATTORNEY MUST REQUEST THE DISTRICT COURT TO DISMISS ERRONEOUSLY ISSUED CITATIONS.

A. Disposition by Nolle Prosequi

Chief Judge Vaughan suggested in his letter that one option might be for the State's Attorneys Office to "*nol pros*" red light citations issued in error. Former Chief Judge Martha Rasin had a different view, at least as to part of Judge Vaughan's advice. In a letter to Corporal Larry Plant, dated April 14, 1999, Judge Rasin wrote that "the dispositions of *nolle prosequi*, *stet* and *nolo contendere* are not appropriate for civil actions." I agree partially with Judge Rasin on that issue. All three have apparent application to criminal proceedings. But contrary to Judge Rasin's advice, both *nolle prosequi* and *stet*, or more precisely, *stet processus*, may be used in civil disposition, although less frequently. A *nolle prosequi* means that there will be no further prosecution and is a formal entry on the record by a plaintiff in a civil suit, or more commonly, by the prosecuting officer in a criminal action. Black's Law Dictionary, 5th Ed. A *stet processus*, or *stet*, is an entry that all further proceedings shall be stayed and it is one of the ways that a suit may be terminated by act of a party. It may be an action by a plaintiff to suspend the action without suffering a nonsuit. Black's Law Dictionary, 5th Ed.

I'm not suggesting that we need to alter our forms, since that was the context in which Judge Rasin's advice was received. I am merely noting that Judge Vaughan was correct in his suggestion of disposition and a *nolle prosequi* might be appropriate.

B. State's Attorney Authority.

The office of State's Attorney is constitutionally created. It's powers and duties derive from Article V, §9 of the Maryland Constitution. The powers of a State's Attorney are nowhere enunciated or defined. *State v. Aquilla*, 18 Md.App. 487 (1973). Instead, the powers and duties formerly vested

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in the common law office of Attorney General with respect to the conduct of criminal prosecutions were passed to the State's Attorney. *State v. Hunter*, 10 Md. App. 300 (1970); *State v. Aquilla, supra*. Consequently, I believe Maryland law provides that the State's Attorney's Office is vested with only criminal jurisdiction, and has no lawful jurisdiction over civil matters.

Consequently, I believe Judge Vaughan's suggestion that the State's Attorney may exercise jurisdiction over these citations is inaccurate. Instead, the authority to make decisions affecting these citations falls to Montgomery County, or more precisely, to the County Attorney's Office, whose responsibility it is to represent the County in all County business, including all civil matters involving the County. Montgomery County Charter, §203.

C. Dismissal of Citations

The Maryland Rules provide the proper method for initiating and disposing of civil actions. Rule 3-101(a) provides that a civil action is commenced by filing a complaint with the court. Rule 3-508(a), on the other hand, provides for voluntary dismissal of a civil action by the party bringing the action.

Consequently, in addition to a *nolle prosequi* or a *stet*, the County may file a voluntary dismissal, pursuant to Maryland Rule 3-508(a).

V. CONCLUSION

It is my opinion that the Department's practice of "voiding" red light citations is prohibited by Transportation Article §26-407. Further, it is my opinion that only the County Attorney's Office and the District Court may properly cancel a red light citation.

I would recommend that for future cancellations of red light citations issued in error that a form letter be prepared for the County Attorney's, or his designee's, signature, listing all of the citation numbers the Department wishes to dismiss. The County Attorney should forward that letter and a proposed order listing those citation numbers to a judge of the District Court for entry of the appropriate judicial order.

The advice and opinions expressed in this memorandum represent the advice and opinions of the writer and are not intended to represent the formal or informal opinion of the County Attorney.

cc: Charles W. Thompson, Jr., County Attorney
Marc Hansen, Chief, General Counsel Division
Charles A. Moose, Ph.D., Chief