



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Mark R. Herring
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

August 13, 2014

The Honorable Bryce E. Reeves
Member, Senate of Virginia
Post Office Box 7021
Fredericksburg, Virginia 22404

Dear Senator Reeves:

I am responding to your request for an official advisory Opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You present several questions related to the extent of the authority of a property owners' association ("POA") to regulate traffic on its privately owned streets. You specifically ask whether a POA may enforce violations of state or local traffic laws on its private streets and whether and how a POA may adopt and enforce its own rules regulating traffic. You further inquire whether, in enforcing its rules, a POA may compel a vehicle to stop or use a safety patrol vehicle that employs flashing red, blue, or amber lights.

Response

It is my opinion that Virginia law limits the manner in which a POA may regulate traffic on its private streets. A vehicle driver may be compelled to stop only if enforcement of the traffic laws is done by a local law enforcement agency or by a private security service that is properly licensed by the Department of Criminal Justice Services, and whose employees have also been appointed as conservators of the peace. Otherwise, a POA may not compel a vehicle driver to stop. As to how traffic laws can be enforced on privately owned streets, a POA may request the local law enforcement agency to do so, or the local governing body may designate the private streets as "highways" for law enforcement purposes. It is further my opinion that the use of blue or green lights on a private patrol vehicle is strictly prohibited, and that amber lights may be used only if the patrol is operated by a licensed private security business or an approved neighborhood watch group.

Background

You relate that a POA within your district is using a safety patrol to maintain traffic safety on its privately owned streets. The safety patrol is authorized by the POA to stop moving vehicles and issue citations for certain traffic infractions, including reckless driving, failing to obey traffic signs and failure to adhere to posted speed limits. In executing its duties, the safety patrol employs a vehicle with flashing

lights to compel drivers to pull over.¹ According to documents attached to your request, if a driver does not pull over as directed, he is mailed a citation for the underlying traffic violation, in addition to a citation for failure to stop. The host property owner is ultimately responsible for each violation committed by a guest. Your request also indicates that all homeowners facing private penalties for traffic rule citations are given the opportunity to appear with counsel before the POA Violations Review Panel.

Applicable Law and Discussion

The Virginia Property Owners' Association Act (the "Act")² governs generally the operation and management of property owners' associations in Virginia. A POA has no inherent power; it has only those powers that have been delegated to it by the General Assembly.³ The Act does not grant POAs the authority to enforce violations of state or local traffic laws that occur on its property, nor does the Act otherwise specifically address the regulation of traffic on POA streets.

Rather, Title 46.2 of the *Code of Virginia* contains laws governing the operation of motor vehicles in the Commonwealth, including numerous provisions creating a statewide scheme for the regulation and enforcement of traffic violations.⁴ In accordance with § 46.2-102, the enforcement of statutory traffic violations is limited to "[s]tate police officers and law-enforcement officers of every county, city, town, or other political subdivision of the Commonwealth."⁵ With respect to private streets in particular, § 46.2-102 further provides that

With the consent of the landowner, any such officer or other uniformed employee of the local law-enforcement agency may patrol the landowner's property to enforce state, county, city, or town motor vehicle registration and licensing requirements Any law-enforcement officer may patrol the streets and roads within subdivisions of real property . . . which streets and roads are maintained by . . . any association of owners, on the request or with the consent of the owners or association of owners, to enforce the provisions of this title punishable as felonies, misdemeanors, or traffic infractions.

Private entities, other than an individual who has been appointed as a conservator of the peace, are not empowered to enforce motor vehicle laws.⁶ Thus, in the absence of any statutory authority enabling them to do so, I must conclude that a POA is without power to cite motor vehicle operators for failing to abide by state and local traffic laws⁷.

¹ You indicate in your request that the safety patrol's vehicles feature "yellow and blue" lights, but documents accompanying your request refer to the use of "green and amber" lights. Regardless, this Opinion addresses the authorized use of various colored lights.

² VA. CODE ANN. §§ 55-508 through 55-516.2 (2012 & Supp. 2014).

³ See *Skeen v. Indian Acres Club of Thornburg, Inc.*, 15 Va. Cir. 167 (1992) (citing *Unit Owners Association of Buildamerica v. Gillman*, 223 Va. 752 (1982)).

⁴ See, e.g., VA. CODE ANN. § 46.2-102 (2010) (describing the classes of traffic violations established by Title 46.1 as "felonies, misdemeanors, [and] traffic infractions").

⁵ Applicable here is the maxim *expressio unius est exclusio alterius*, which "'provides that mention of a specific item in a statute implies that omitted items were not intended to be included within the scope of the statute.'" *GEICO v. Hall*, 260 Va. 349, 355, 533 S.E.2d 615, 617 (2000) (quoting *Turner v. Wexler*, 244 Va. 124, 127, 418 S.E.2d 886, 887 (1992)).

⁶ See 1977-78 Op. Va. Att'y Gen. 178; 1981-82 Op. Va. Att'y Gen. 280; 1986-87 Op. Va. Att'y Gen. 233; 1995 Op. Va. Att'y Gen. 205.

⁷ Absent such authority, the actions of the "safety patrol" described in the opinion request could be considered an attempt at false imprisonment or unlawful detention, where the safety patrol, by representing itself as an

Although POAs lack the power to enforce the traffic laws of the Commonwealth or the surrounding locality, the board of directors of a POA, pursuant to the Act, has broad power “to establish, adopt, and enforce rules and regulations with respect to the use of the common areas and with respect to such other areas of responsibility assigned to the association by the declaration, except where expressly reserved by the declaration to the members.”⁸ Based on the information provided in your request, the private streets of the POA development constitute “common areas” under the Act.⁹ Accordingly, the POA’s board of directors may “establish, adopt, and enforce rules and regulations” with respect to the use of these streets, except where expressly reserved by the declaration to its members and as otherwise limited by statute.¹⁰ Nevertheless, such rules must be in accord with state law, including § 46.2-102,¹¹ and their enforcement is prescribed by statute: “Rules and regulations may be enforced by any method normally available to the owner of private property in Virginia, including, but not limited to, application for injunctive relief or damages, during which the court may award to the association court costs and reasonable attorney fees.”¹² In addition, the board may “assess charges against any member [of the association] for any violation of the declaration or rules and regulations for which his family members, tenants, guests, or other invitees are responsible.”¹³ The Act contains no explicit or implicit authority to make arrests or otherwise stop vehicles to enforce traffic regulations. In fact, the methods that are provided for enforcement of the rules and regulations are tailored specifically to correction of violations and the imposition and collection of monetary penalties after the fact, neither of which require arrests or stops.¹⁴

authoritative entity, “. . . imposing by force or threats an unlawful restraint upon a man’s freedom of locomotion,” transgresses the bounds of acceptable behavior. *Jordan v. Sands*, 255 Va. 492, 497, 500 S.E. 2d 215, 218 (1998).

⁸ Section 55-513(A) (2012).

⁹ The Act defines a “common area” as “property within a development which is owned, leased or required by the declaration to be maintained or operated by a property owners’ association for the use of its members and designated as common area in the declaration.” Section 55-509 (2012).

¹⁰ I note, moreover, that the plain language of § 55-513(B) provides that POA rules and regulations may be made applicable to guests, in addition to property owners, although property owners ultimately are responsible for the violations of their guests. Nevertheless, § 55-513(B) and 55-514(C) both provide that neither violations of rules and regulations nor failure to pay special assessments shall be sufficient to deny a homeowner access to his or her property across commonly held roads. Also, as stated above, all rules and regulations must be consistent with any express reservations made in the declaration. Although regulated by statute, the relationship between property owners and a POA is primarily contractual, and the governing documents of a POA, including the declaration, constitute a contract entered into between a POA and its constituent members. *See White v. Boundary Ass’n, Inc.*, 271 Va. 50, 55, 624 S.E.2d 5, 8 (2006) (stating that the declaration constitutes a contract “collectively entered into” by all members of a POA); *Sully Station II Cmty. Ass’n v. Dye*, 259 Va. 282, 284, 525 S.E.2d 555, 556 (2000) (finding that the governing documents of a POA constitute a contract between a POA and its members).

¹¹ *See* VA. CODE ANN. § 1-248 (2011) (“Any ordinance, resolution, bylaw, rule, regulation, or order of any governing body or any corporation, board, or number of persons shall not be inconsistent with the Constitution and laws of the United States or of the Commonwealth.”). *Cf.* 1987-88 Op. Va. Att’y Gen. 492, 495 (stating bylaws of condominium association incorporated under Condominium Act must be consistent with federal and state constitutions and statutes).

¹² Section 55-513(A).

¹³ *Id.* The imposition of such charges requires a hearing with at least 14 days prior notice. Section 55-513(C).

¹⁴ Section 55-513(C), for example, states that “Before any action authorized in this section is taken, the member shall be given a reasonable opportunity to correct the alleged violation after written notice of the alleged violation to the member” This is not possible if a traffic stop resulting in an immediate citation is authorized.

The Code does establish specific methods by which POAs can provide for the safety of their private streets. One option is to request assistance from a local law enforcement agency pursuant to § 46.2-102, as set forth above. Another is to have the locality designate the streets as “highways” for law enforcement purposes.¹⁵ Alternatively, the board of directors may hire a properly licensed private security service¹⁶ whose employees have also qualified as special conservators of the peace.¹⁷ A conservator of the peace may enforce traffic regulations within his established jurisdiction.¹⁸ To the extent permitted by his appointment order from a court of competent jurisdiction, he has authority to effect arrests, provided he has completed the minimum training standards established by the Department of Criminal Justice Services.¹⁹ Members of a private security patrol who do not qualify as conservators of the peace do not possess these powers; thus, such patrol members serving a POA may not conduct traffic stops. That the Code sets out these specific methods evinces a legislative intent that it not be done otherwise.²⁰ I therefore conclude that the POA’s powers are limited to these methods for regulating their private streets.

With regard to the use of flashing colored lights on safety patrol vehicles, I note that a prior Opinion concluded that, as a general rule, “motor vehicles may only be operated with the lighting devices required or permitted by state or federal law.”²¹ Virginia law is clear that flashing blue lights are permitted only on law-enforcement or designated Department of Corrections vehicles,²² while flashing green lights are permitted only on vehicles used by police, fire-fighting or rescue personnel as command centers at the scene of incidents.²³ Thus, a private security patrol may not use flashing blue or green lights.²⁴ State law, however, does allow the use of amber lights on vehicles owned and used by businesses providing security services²⁵ and on vehicles “used in patrol work by members of neighborhood watch groups approved by the chief law-enforcement officer of the locality in their assigned neighborhood watch program area.”²⁶ I note that, to be a “business providing security services”

¹⁵ See § 46.2-1307 (Supp. 2014) (“The governing body of any county, city, or town may adopt ordinances designating the private roads, within any residential development containing 100 or more lots or residential dwelling units, as highways for law-enforcement purposes.”).

¹⁶ Private security services must be licensed by the Virginia Department of Criminal Justice Services. VA. CODE ANN. §9.1-139.

¹⁷ The circuit court of any county or city is authorized to appoint special conservators of the peace upon application of the sheriff or chief of police of a locality “or any corporation authorized to do business in the Commonwealth . . . and the showing of a necessity for the security of property or the peace.” VA. CODE ANN. § 19.2-13(A) (Supp. 2014).

¹⁸ 1977-78 Op. Va. Att’y Gen at 180; 1981-82 Op. Va. Att’y Gen at 281.

¹⁹ Section 19.2-13(A).

²⁰ See, e.g., 2005 Op. Va. Att’y Gen. 62, 67 (citing *Grigg v. Commonwealth*, 224 Va. 356, 364, 297 S.E.2d 799, 803 (1982)). Cf. *supra* note 5 (explaining the maxim *expressio unius est exclusio alterius*).

²¹ 2006 Op. Va. Att’y Gen. 150, 151. See also 2000 Op. Va. Att’y Gen. 126, 126 and citations therein (finding that “permissible vehicular lighting devices for emergency vehicles are limited to those specified by statute”).

²² See § 46.2-1022 (2010).

²³ See § 46.2-1025(D) (Supp. 2014).

²⁴ The maxim *expressio unius est exclusio alterius*, see *supra* note 5, also is applicable here.

²⁵ Section 46.2-1025(A)(9).

²⁶ Section 46.2-1025(A)(21). The other uses of flashing amber lights permitted by § 46.2-1025 are inapplicable to the facts at hand and therefore not set out here.

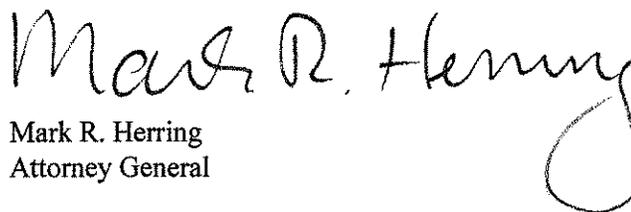
authorized to use such lights, the enterprise must be one that is licensed as such by the Department of Criminal Justice Services.²⁷

Conclusion

Accordingly, it is my opinion that Virginia law limits the manner in which a POA may regulate traffic on its private streets. A vehicle driver may be compelled to stop only if enforcement of the traffic laws is done by a local law enforcement agency or by a private security service that is properly licensed by the Department of Criminal Justice Services, and whose employees have also been appointed as conservators of the peace. Otherwise, a POA may not compel a vehicle to stop. As to how traffic laws can be enforced on privately owned streets, a POA may request the local law enforcement agency to do so, or the local governing body may designate the private streets as “highways” for law enforcement purposes. It is further my opinion that the use of blue or green lights on a patrol vehicle is strictly prohibited, and that amber lights may be used only if the patrol is operated by a licensed private security business or an approved neighborhood watch group.

With kindest regards, I am

Very truly yours,


Mark R. Herring
Attorney General

²⁷ See VA. CODE ANN. §§ 91-138 through 9.1-150 (2012 & Supp. 2014). From the facts presented, because it is unknown whether the safety patrol you describe functions as a “business providing security services” or an approved “neighborhood watch group,” I am unable to determine whether the safety patrol lawfully may use amber lights. The Attorney General “refrain[s] from commenting on matters that would require additional facts[.]” 2010 Op. Va. Att’y Gen. at 58.