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June 15, 2012

Honorable Diane B. Webb
Clerk, State Court of Cobb County
12 East Park Square
Marietta, Georgia 30090-9630

Re: Your inquiry about the applicability of surcharges to civil penalties.

Dear Ms. Webb:

This letter is in response to your June 4, 2012 letter to the Attorney General in regard to the applicability of surcharges to civil penalties imposed for violations of O.C.G.A. § 40-6-163.

This question was addressed in 2005 in regard to the applicability of surcharges to a similar statutory scheme for the enforcement of red light cameras for violations of O.C.G.A. § 40-6-20. The language in O.C.G.A. § 40-6-163 appears to have been drawn almost entirely from that used in O.C.G.A. § 40-6-20. Although the word "fine" appears one time in O.C.G.A. § 40-6-163, as it once did in an earlier version of O.C.G.A. § 40-6-20, in the context of the entire statute the nature of the civil penalty is quite clear. An identical subsection in each statute provides that the civil penalty "shall not be considered a moving traffic violation . . . shall be deemed noncriminal . . . shall not be deemed a conviction . . . and shall not be made a part of the operating record of the person upon whom such liability is imposed." Therefore, for the reasons set forth in Unofficial Opinion 2005-4, a copy of which is attached, the addition of surcharges on civil monetary penalties for violation of O.C.G.A. § 40-6-163 does not appear to be authorized.

Please note that the foregoing is the view of the author and not a formal opinion, official or unofficial, of the Office of the Attorney General.

Please let us know if we can be of any other assistance.

Sincerely,

Joseph Drolet
Senior Assistant Attorney General

cc: Barry Morgan

Department of Law
State of Georgia

THURBERT E. BAKER
ATTORNEY GENERAL

40 CAPITOL SQUARE SW
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## UNOFFICIAL OPINION 2005-4

**To:** City Attorney July 12, 2005
**Re:** The additional monetary penalties provided in O.C.G.A. § 15 21 73 may not be added to the civil monetary penalties imposed pursuant to O.C.G.A. § 40 6 20.

You have requested my opinion on whether the additional monetary penalties imposed pursuant to O.C.G.A. § 15 21 73 can be added to the civil monetary penalty authorized under O.C.G.A. § 40 6 20.

In 2001 the legislature amended O.C.G.A. § 40 6 20 to provide for the use of traffic-control signal monitoring devices. 2001 Ga. Laws 770. These devices work in "conjunction with a traffic-control signal to produce recorded images of motor vehicles being operated in disregard or disobedience of a CIRCULAR RED or RED ARROW signal." O.C.G.A. § 40 6 20(f)(1)(C). For enforcement purposes, the "driver of a motor vehicle shall be liable for a civil monetary penalty of not more than $70.00 if such vehicle is found, as evidenced by recorded images produced by a traffic-control signal monitoring device, to have been operated in disregard or disobedience of a CIRCULAR RED or RED ARROW signal." O.C.G.A. § 40 6 20(f)(3)(A). Any court having jurisdiction over a violation of O.C.G.A. § 40 6 20(a) or any ordinance adopting its provisions shall be authorized to impose the civil monetary penalty "of not more than $70.00" provided by O.C.G.A. § 40 6 20(f)(3)(A). O.C.G.A § 40 6 20(f)(6).

The cardinal rule of statutory construction is to ascertain the intention of the legislature. In attempting to discern the intent of the legislature, certain presumptions are utilized. One of those presumptions is that the legislature was aware of the state of the law at the time it enacted the legislation in question. *Davis v. State*, 246 Ga. 761-62 (1980). It is clear that the legislature has chosen not to treat this civil monetary penalty as a "fine." While the legislature has provided for the imposition of fines throughout Title 40, it has specifically prescribed here that a civil monetary penalty, and not a fine, be imposed for a violation. Evidence of the legislature's intent to distinguish between a civil monetary penalty and a fine is also found in the 2003 amendments to O.C.G.A. § 40 14 21 (traffic-control signal monitoring device use) and O.C.G.A. § 40 14 24 (traffic-control signal monitoring device reporting) where "civil monetary penalty" was substituted for "fine." 2003 Ga. Laws 597, §§ 3-4. This distinction is relevant to an analysis of O.C.G.A. § 15 21 73(a)(1).

Legislative intent may further be determined by examining related laws since the legislature is presumed to know all pertinent laws existing at the time legislation is enacted. *Spence v. Rowell*, 213 Ga. 145, 150 (1957). Code section 15 21 73(a)(1) provides for additional penalties for certain offenses; among these offenses are "civil traffic violations." Civil traffic violations were included among offenses subject to additional penalties during the 2004 legislative special session. H.B. 1EX, § 5, 2004 Gen. Assem. Extra. Sess., 2005 Ga. Laws ES3. However, the legislature did not change the condition precedent to the additional penalty that the court impose a fine. Under O.C.G.A. § 15 21 73(a)(1), the imposition of a fine is a prerequisite to the imposition of any additional penalty. Because O.C.G.A. § 40 6 20(f)(3)(A) permits the imposition of a civil monetary penalty only, the condition precedent of having a fine imposed under O.C.G.A. § 15 21 73(a)(1) cannot be met and the additional penalty cannot be imposed.

Moreover, the limitation found in O.C.G.A. § 40 6 20(f)(4) clearly indicates that an additional penalty cannot be assessed. This subsection provides that the civil monetary penalty shall not be considered "a moving traffic violation," shall be deemed "non-criminal," and "shall not be deemed a conviction." This proviso prohibits the assessment of points, the reporting of a violation on a person's driving record, and the use of a violation for any insurance purpose. The language of this subsection further supports the conclusion that the penalties under O.C.G.A. § 15 21 73 should not be assessed.

Because O.C.G.A. § 15 21 73 can only apply to a case where there is a "conviction," and because a violation

of O.C.G.A. § 40 6 20, for which a civil penalty is imposed, is specifically deemed not to be a conviction, O.C.G.A. § 15 21 73 cannot apply. *Accord* 1983 Op. Att'y Gen. 83-80 (if sentence imposes neither costs nor traditional fine, no penalty can be imposed under O.C.G.A. § 15 21 73; further, O.C.G.A. §15 21 73 requires "conviction").

Therefore, it is my unofficial opinion that the additional monetary penalties provided in O.C.G.A. § 15 21 73 may not be added to the civil monetary penalties imposed pursuant to O.C.G.A. § 40 6 20.

Prepared by:

KATHERINE DIAMANDIS
Assistant Attorney General

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