



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: The Honorable Richard D. Holcomb, Commissioner
Department of Motor Vehicles

FROM: Eric K. G. Fiske *Eric K. G. Fiske*
Senior Assistant Attorney General

DATE: May 1, 2013

SUBJECT: Statutory Authority to Repeal the Regulation Governing
Evidence of Proof of Payment of Taxes on Specific Vehicles

You have asked for a letter of assurance from this Office that the Department of Motor Vehicles ("DMV") has statutory authority to repeal 24 VAC 20-90 (Evidence Required to Permit Registration of Vehicle for Which Proof of Tax Payment and of State Corporation Commission Registration is Required). With regard to the regulation that DMV wishes to repeal, I understand that DMV wishes to repeal it in its entirety.

MOTORCYCLE RIDER SAFETY TRAINING CENTER PROGRAM

It is my opinion that DMV has statutory authority to promulgate regulations governing the requirements for evidence on proof of payment of taxes and registration to a state, local or federal entity or to the State Corporation Commission ("SCC") pursuant to the provisions of Va. Code § 46.2-203 (general authority to adopt regulations). At the time these particular regulations were promulgated, DMV also had specific authority under § 46.2-649 to adopt regulations regarding motorcycle rider safety training centers. Although, as discussed below, § 46.2-649 was amended during the 2013 Session of the General Assembly and that authority will be deleted upon the effective date of that legislation (July 1, 2013), the authority under § 46.2-203 remains.

Because the authority to promulgate regulations pursuant to that statutory provision is permissive rather than mandatory, such authority, by implication, includes the authority to modify or amend or repeal such regulations as have been promulgated thereunder.

The Honorable Richard D. Holcomb, Commissioner
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2013 SESSION OF GENERAL ASSEMBLY

As you are aware, the 2013 Session of the General Assembly passed legislation amending § 46.2-649 governing the evidence of payment of taxes and of registration with DMV. This legislation was HB 2080, was signed by the Governor and will be Chapter 226 of the 2013 Acts of Assembly. That legislation will, upon its effective date of July 1, 2013, delete the authority of DMV to promulgate regulations specifically dealing with such evidence of payment of taxes. Now, the Commissioner, in consultation with the local commissioners of revenue and directors of finance, and with appropriate federal officials, will provide the kinds of evidence necessary to show proof of payment of such taxes.

CONCLUSION

As a legal matter, and not addressing the policy issues, I would conclude that DMV has the authority to repeal the existing regulation in question in its entirety.

I hope that I have addressed all of your concerns. If any other questions arise, please do not hesitate to contact me.