

OFFICIAL OPINION NO. 78-32, Nonmoving traffic violations

July 25, 1978

Mr. Charles P. Schroyer
Hughes County State's Attorney
Hughes County Courthouse
Pierre, South Dakota 57501

Official Opinion No. 78-32

Nonmoving traffic violations

Dear Mr. Schroyer:

You have asked for an opinion based on the following facts:

FACTS:

Some questions have developed from the various Clerk of Courts throughout the State regarding what constitutes a nonmoving violation pursuant to the provisions of SDCL 23-3-52 requiring the assessment of a two dollar or five percent penalty for law enforcement training. The statute was amended by House Bill number 1098 which passed with an emergency clause and became effective on the 13th day of February, 1978. Section 3 of that bill provides that the penalty assessment shall be assessed and collected by the Court for criminal offenses and violations of county and municipal ordinances; including any criminal fine and penalty for a violation of the motor vehicle statutes, or for any local ordinance relating to the operation of a vehicle except nonmoving violations.

Based on the above factual situation, you have asked the following questions:

QUESTIONS:

1. Does the exception of nonmoving violation contained in SDCL 23-3-52 relate to both violations of motor vehicle statutes as well as local ordinances?
2. If the exception applies to motor vehicle statutes, what offenses are considered to be nonmoving violations?

SDCL 23-3-52, as amended by the 1978 Legislative Session, reads as follows:

In addition to any other penalty assessment or fine provided by law, there shall be levied a penalty assessment in an amount of two dollars or five per cent, whichever is greater, on every fine and penalty imposed and collected by the courts for criminal offenses and violations of county and municipal ordinances, including any criminal fine and penalty for a violation of the motor vehicle statutes, or for any local ordinance relating to the operation of a vehicle except nonmoving violations, or for a criminal violation of the game and fish statutes. If multiple offenses are involved, the penalty assessment shall be based upon the total fine for all offenses. If a fine is suspended in whole or in part, the penalty assessment shall be reduced in proportion to the suspension.

The judge may waive all or any part of the payment of which would work a hardship on the person convicted or on his immediate family.

IN RE QUESTION NO. 1:

It is my opinion that the exception of nonmoving violations contained in SDCL 23-3-52 relates only to local ordinances. By applying the last antecedent rule of statutory construction the exception for nonmoving violations relates only to the local ordinance language immediately preceding, not to the entire statute which also includes nonlocal ordinance offenses. The doctrine of the last antecedent rule is a canon of statutory construction which provides that relative or qualifying words or phrases are to be applied to the words or phrases immediately preceding not to include other words, phrases or clauses more remote, unless such extension or inclusion is clearly required by the intent in the meaning of the statute. Clearly, I do not believe any such broader intent or scope of the exclusion is intended here.

IN RE QUESTION NO. 2:

In view of the answer to your first question it is not necessary to answer your second question.

Respectfully submitted,

William J. Janklow
Attorney General

WJJ: DOC: mam