



**DEPARTMENT OF MOTOR VEHICLES
COUNSEL'S OFFICE**

**OPINION OF COUNSEL
(#1-2010)**

Subject: Section 1101 of the Vehicle and Traffic Law

Date: August 2, 2010

The question is whether Vehicle and Traffic Law §1101 is considered a violation section for which a motorist may be charged and/or convicted.

Discussion

The Department of Motor Vehicles has received several requests for a formal opinion involving the question of whether Vehicle and Traffic Law §1101 is a violation section for which a motorist may be charged and/or convicted. Because the courts in New York State have widely divergent views about this issue, we hope that this opinion will assist in addressing the courts' concerns.

Section 1101 provides:

“Required obedience to traffic laws. It is unlawful and, unless otherwise declared in this title with respect to particular offenses, it is a traffic infraction for any person to do any act forbidden or fail to perform any act required in this title.”

The Department has consistently construed §1101 to be definitional in nature -- that is, it describes what constitutes a violation of the rules of the road but is not in and of itself a violation of those rules. As the Office of the State Comptroller stated in opinion 79-196 (July 27, 1979), the Department's interpretation is the correct one. The Comptroller's opinion provides, in part:

“The legislative history of section 1101 supports this interpretation. The section is derived from section 11-102 of the Uniform Vehicle Code published by the National Committee on Uniform Traffic Laws and Ordinances...The historical notes and enactments of other states based on the Code indicated that section 11-102 is intended to be a classification section rather than a violation section (Traffic Law Annotated, 1972, pp 190-191; 1977 Supplement, pp 50-52.)”

Although the Comptroller's opinion goes on to say that DMV has issued varying opinions on this matter, we could not find opinions that vary with the conclusion of the National Committee.

The Department maintains that the plain language of the statute indicates that §1101 is intended to put the public on notice that a violation of the rules of the road is a traffic infraction, unless otherwise prescribed by a particular section of Title VII. Thus, a person who violates a rule of the road, such as speeding, following too closely or failure to yield, should be charged with a violation of that section of law (VTL §1180, 1129 or 1142) and be assessed the fine and surcharge appropriate to that section. Section 1101 merely provides that a violation of any of such sections is both unlawful and a traffic infraction.

Based upon this opinion, it is not appropriate for law enforcement personnel to charge a violation of §1101 or for a court to convict someone of such a charge. In fact, if DMV receives a §1101 disposition, it is not recorded on the license file.

In conclusion, it is the opinion of Counsel's Office that Vehicle and Traffic Law §1101 is not a violation section.

NWS/ILT/hb