S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 09-34

Traffic Citation for Failure to Devote Full Attention to the Operation of a Motor Vehicle

QUESTION

Does a police officer have the authority to cite the operator of a motor vehicle for operating a motor vehicle in an unsafe manner if the unsafe operation of the motor vehicle is caused by talking on a cell phone, sending a cell phone text message, or engaging in any other activity?

OPINION

Yes. Under Tenn. Code Ann. § 55-8-136, an officer has the authority to issue a traffic citation to any driver who is operating a motor vehicle in an unsafe manner, regardless of whether such unsafe operation is caused by cell phone use, text messaging or any other activity that prevents the driver from exercising reasonable care in the operation of the vehicle.

ANALYSIS

Tenn. Code Ann. § 55-8-136, imposes a duty upon every driver to use reasonable care in the operation of a motor vehicle.[1] It states:

> (a) Notwithstanding the forgoing provisions of this chapter, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway, and shall give warning by sounding the horn when necessary, and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.
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> (b) Notwithstanding any speed limit or zone in effect at the time, or right of way rules that may be applicable, every driver of a motor

[1] "Due care" is defined as that care which an ordinarily prudent person would have exercised under the same or similar circumstances. "Due care," "reasonable care," and "ordinary care" are often used as convertible terms. BLACK'S LAW DICTIONARY 448 (5th ed. 1979). A duty rests on everyone to use due care under the attendant circumstances, and negligence is doing what a reasonable and prudent person would not do under the attendant circumstances. *Dooley v. Everett*, 805 S.W.2d 380, 384 (Tenn. Ct. App. 1990).

> vehicle shall exercise due care to avoid colliding with other motor vehicles, either being driven or legally parked, upon any roadway, or any road sign, guard rail or any fixed object legally placed within or beside the roadway right of way by operating the vehicle at a safe speed, by maintaining a safe lookout, by keeping the motor vehicle under proper control and by devoting full time and attention to operating the motor vehicle, under the existing circumstances to avoid endangering life, limb or property.

(c) A violation of this section is a Class C misdemeanor.

The primary objective of statutory construction is to ascertain and give effect to the intent of the legislature. *Auto Credit of Nashville v. Wimmer*, 231 S.W.3d 896 (Tenn. 2007). If a statute is clear and unambiguous, courts will find that intent in the plain and ordinary meaning of its language. *Brown v. Erachem Comilog, Inc.*, 231 S.W.3d 918 (Tenn. 2007).

Under the clear and unambiguous language of Tenn. Code Ann. § 55-8-136, the statute is violated whenever a driver fails to operate a motor vehicle in a safe and careful matter. Under the terms of the statute, the cause of such unsafe operation is not material. An officer has the authority to cite that driver whenever such unsafe operation is caused by cell phone use, text messaging, applying cosmetics or any other activity that prevents the driver from operating the vehicle in a safe manner.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

WILLIAM L. LUNDY
Assistant Attorney General

Requested by:
Honorable Vince Dean
Representative
107 War Memorial Bldg.
Nashville, TN 37243