

Opinion No. 2009-015

March 19, 2009

The Honorable Kathy Webb  
State Representative  
Post Office Box 251018  
Little Rock, Arkansas 72225-1018

Dear Representative Webb:

I am writing in response to your request for an opinion on the following two questions:

1. What is the requirement for enforcement of A.C.A. 27-37-601 (prohibition of noise or smoke producing devices/mufflers)?
2. Must a law enforcement officer hear the illegal modification, or may an officer write a ticket on visual inspection alone?

**RESPONSE**

***Question 1: What is the requirement for enforcement of A.C.A. 27-37-601 (prohibition of noise or smoke producing devices/mufflers)?***

As noted below, in my opinion, enforcement of A.C.A. § 27-37-601 is by misdemeanor citation by a law enforcement officer.

Section 27-37-601 of the Arkansas Code (Repl. 2004) provides as follows:

- (a) Every motor vehicle shall, at all times, be equipped with a factory-installed muffler or one duplicating factory specifications, in good working order and in constant operation, to prevent excessive or unusual noise and annoying smoke.

(b) No person shall use on a motor vehicle upon the public roads, highways, streets, or alleys of this state, nor shall any person sell for use on a motor vehicle upon the public roads, highways, streets, or alleys of this state, a muffler, other than as defined in subsection (a) of this section, cutout,<sup>[1]</sup> bypass, similar device, or any type device which produces excessive or unusual noise or smoke.

Subsection (a) of this statute mandates that the muffler on any motor vehicle be either the one installed by the factory or one "duplicating factory specifications." Subsection (b), although ungrammatically drafted, bars modification of any muffler that complies with subsection (a) in a manner that would produce "excessive or unusual noise or smoke."

With respect to the issue of enforcement, as a general proposition, law enforcement authorities are obviously charged with a duty to enforce the laws. In this regard, A.C.A. § 27-37-101 (Repl. 2004) provides in pertinent part:

It is a misdemeanor for any person to drive, or for the owner to cause or knowingly permit to be driven or moved, on any highway any vehicle, or combination of vehicles, which . . . is not at all times equipped with equipment in proper condition and adjustment as required in this chapter or which is equipped in any manner in violation of this chapter, or for any person to do any act forbidden or fail to perform any act required under this chapter.

It follows from this statute that any individual violating the provisions of A.C.A. § 27-37-601 would be subject to citation by a law enforcement officer.

***Question 2: Must a law enforcement officer hear the illegal modification, or may an officer write a ticket on visual inspection alone?***

As noted above, A.C.A. § 27-37-101 classifies as a misdemeanor "for any person to drive, or for the owner to cause or knowingly permit to be driven or moved, on any highway" any vehicle equipped in violation of title 17, chapter 37 of the Code.

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<sup>1</sup> Section 27-37-602 (Repl. 2004) classifies as a misdemeanor selling "cutouts on any motor-driven vehicle." Although the term is not defined in the Code, my inquiries reveal that a "cutout," as the name suggests, is a hole cut out of a muffler to intensify the engine noise.

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In theory, it is possible that a vehicle out of compliance with the Code is not being and is not contemplated to be used for the purpose of driving. However, although I am unaware of any authority that has addressed the issue, assuming a vehicle is apparently operative and being used for transportation, to the extent that a visual inspection might reveal a violation of A.C.A. § 27-37-601, I believe a law enforcement officer would be justified in issuing a citation based upon such an inspection. The question of whether a visual inspection might actually suffice to establish an infraction is one of fact that I am neither authorized nor equipped to address.

Assistant Attorney General Jack Druff prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN McDANIEL  
Attorney General

DM/JHD:cyh