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HENRY MCMASTER
ATTORNEY GENERAL

July 28, 2006

The Honorable Walton J. McLeod
Member, House of Representatives
308 Pomaria Street
Little Mountain, South Carolina 29075

Dear Representative McLeod:

In a letter to this office you requested our review of the one year suspension of the driving privilege of Mr. Brandon Kent for the period of 2/19/2002 until 2/19/2003. According to the driving record of Mr. Kent as prepared by the State Department of Motor Vehicles, such suspension was imposed for implied consent under 21. The copy of the summons ticket forwarded with your request indicated that Mr. Kent refused a breathalyzer test.

In your letter you referred to the provisions of S.C. Code Ann. § 56-5-2951(L) which state that

> The department must not suspend the privilege to drive of a person under the age of twenty-one pursuant to Section 56-1-286 if the person's privilege to drive has been suspended under this section arising from the same incident.

In your letter you requested that this office issue an opinion that the provisions of Section 56-5-2951(L) cannot result in an additional suspension when the person's privilege to drive has already been suspended.

Section 56-5-2951(A) states that

> The Department of Motor Vehicles must suspend the driver's license, permit, or nonresident operating privilege of or deny the issuance of a license or permit to a person who drives a motor vehicle and refuses to submit to a test provided for in Section 56-5-2950 or has an alcohol concentration of fifteen one-hundredths of one percent or more.

Therefore, Section 56-5-2951 provides for the suspension of a driving privileges in the circumstances provided. However, S.C. Code Ann. § 56-1-286(F) also provides for the suspension of driving privileges. Such provision states:

Request Letter

> If a person refuses upon the request of the primary investigating officer to submit to chemical tests as provided in subsection (C), the department must suspend his license, permit, or any nonresident operating privilege, or deny the issuance of a license or permit to him...(for the period provided)....

Such suspension is authorized as to a driver under the age of 21. See: S.C. Code Ann. § 56-1-286(B). By that provision, a driver under the age of 21 who drives a motor vehicle in this State is considered to have given consent to a chemical test of his breath or blood for the purpose of determining the presence of alcohol. Inasmuch as according to the driving record of Mr. Kent, a driver under the age of 21, he had prior convictions for driving under the influence within the preceding five years, the suspension would have been one year pursuant to Section 56-1-286(F)(2).

According to my review, there was no suspension pursuant to Section 56-5-2951. The suspension was pursuant to Section 56-1-286 inasmuch as Mr. Kent was under 21. As a result, there was no suspension in violation of Section 56-5-2951(L).

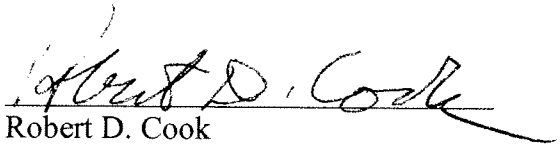
I would further advise that it is well recognized that an administrative agency possesses discretion in the area of effectuating the policy established by the General Assembly in the agency's governing law. As our Supreme Court has recognized, "construction of a statute by the agency charged with executing it is entitled to the most respectful consideration [by the courts] and should not be overruled absent cogent reasons." Op. S.C. Atty. Gen., October 20, 1997, quoting Logan v. Leatherman, 290 S.C. 400, 351 S.E.2d 146, 148 (1986). The Courts have stated that it is not necessary that the administrative agency's construction be the only reasonable one or even one the court would have reached if the question had initially arisen in a judicial proceeding. Ill. Commerce Comm. v. Interstate Commerce Comm., 749 F.2d 825 (D.C.Cir. 1984). Consistent with such, typically, so long as an administrative agency's interpretation of a statutory provision is reasonable, this office defers to that agency's construction. See: Ops. Atty. Gen. dated January 20, 2006 and July 1, 2004.

With kind regards, I am,

Very truly yours,

Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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