

October 3, 2007

Frank L. Valenta, Jr., Esquire
General Counsel
South Carolina Department of Motor Vehicles
Post Office Box 1498
Blythewood, South Carolina 29016-0020

Dear Val:

In a memorandum you indicated that if the federal Transportation Security Administration (the "TSA") finds a match between a driver licensed in South Carolina with a commercial driver's license (a "CDL") and a terrorist watch list or if an immigration status check shows that the driver is not in the United States legally, it will notify the State Department of Motor Vehicles (the "DMV") so that the DMV can revoke the CDL. You have questioned whether the DMV has the authority to revoke a license based upon the TSA's findings.

S.C. Code Ann. § 56-1-20 authorizes the issuance of driver's licenses in this State. S.C. Code Ann. §§ 56-1-2010 et seq. authorizes the issuance of commercial driver's licenses in this State. Section 56-1-2070 provides that

[e]xcept as provided in subsection (C) or when driving under a commercial driver instruction permit and accompanied by the holder of a commercial driver license valid for the vehicle being driven, no person may drive a commercial motor vehicle on the highways of this State, unless the person has been issued and is in immediate possession of, a valid commercial driver license and applicable endorsements valid for the vehicle which the person is driving.

As referenced in your letter, S.C. Code Ann. § 56-1-240 states that

[t]he Department of Motor Vehicles may cancel any driver's license upon determination that the licensee was not entitled to the issuance thereof or that the licensee failed to give the required or correct information in his application or committed any fraud in making such application and for such other causes as may

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be authorized by law. Upon such cancellation, the licensee must surrender the license so cancelled by the Department.

As you pointed out, relevant statutes do not address in any manner whether an individual is on a federal terrorist watch list. However, such statutes do include illegal alien status. S.C. Code Ann. § 56-1-40 states that

[t]he Department of Motor Vehicles may not issue a motor vehicle driver's license to or renew the driver's license of a person:...

(7) who is not a resident of South Carolina. For purposes of determining eligibility to obtain or renew a South Carolina driver's license, the term "resident of South Carolina" shall expressly include all persons authorized by the United States Department of Justice, the United States Immigration and Naturalization Service, or the United States Department of State to live, work, or study in the United States on a temporary or permanent basis who present documents indicating their intent to live, work, or study in South Carolina. These persons and their dependents are eligible to obtain a motor vehicle driver's license or have one renewed pursuant to this provision.

You indicated that "[t]he DMV can use any notice of improper immigration status to initiate a cancellation process." Nevertheless, your conclusion was that "the DMV will have no authority to take any action against a person found to be on a federal terrorist watch list. However, action can be taken against a person found to have an improper immigration status."

As defined by S.C. Code Ann. § 56-1-10(12), the term "cancellation of driver's license"

...means the annulment or termination by formal action of the Department of Motor Vehicles of a person's driver's license because of some error or defect in the license or because the licensee is no longer entitled to the license....

Consistent with the above, in the opinion of this office, an individual with an illegal alien status would not be entitled to receive a South Carolina motor vehicle driver's license. As referenced, pursuant to Section 56-1-240, the DMV may cancel a commercial driver's license upon determination that the individual to whom a license was issued was not entitled to such license. While an individual with an illegal alien status could have his driver's license cancelled, in the opinion of this office, there is no provision with which we are aware that would authorize the revocation of a commercial driver's license solely on the basis that the licensed driver was on a terrorist watch list.

If there are any questions, please advise.

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Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General