



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

March 19, 2003

The Honorable B. Lee Miller
Municipal Court Judge
City of Greenwood
520 Monument Street
Post Office Box 40
Greenwood, South Carolina 29648-0040

Re: Enhanced Penalty for Driving Under the Influence Convictions

Dear Judge Miller:

You have requested an opinion from this Office concerning the enhancement of punishment for second offense driving under the influence (DUI) convictions. By way of background, you have presented the following scenario:

Person (X) is charged with DUI 1st on 1-1-03

This same person (X) is charged with DUI 1st on 2-1-03.

Person (X) pleads guilty to the DUI 1st that occurred on 2-1-03 but had requested a jury trial on the DUI that occurred on 1-1-03 prior to the subsequent DUI arrest and conviction of the DUI that occurred on 2-1-03.

Given this background, you ask "[i]n what court should the original DUI be tried ... General Sessions or Municipal Court." You have clarified your question by asking "should the first in time DUI be considered and dealt with as DUI first or DUI Second?"

As you know, S.C. Code Ann. §56-5-2940 sets the penalty for a violations of the DUI statutes and provides for enhanced penalties for second and subsequent DUI convictions. In determining what constitutes a prior offense for purposes of enhancement, Section 56-5-2940 states:

For the purposes of this chapter any conviction, entry of a plea of guilty or of nolo contendere, or forfeiture of bail for the violation of any law or ordinance of this or any other state or any municipality of this or any other state that prohibits any person from operating a motor vehicle while under the influence of intoxicating liquor, drugs, or narcotics shall constitute a prior offense for the purpose of any prosecution for any subsequent violation hereof.

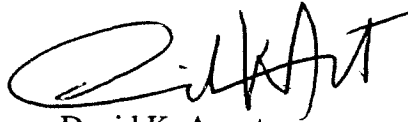
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Our Supreme Court in State v. Baucom, 340 S.C. 339, 531 S.E.2d 922 (2000), interpreted the quoted portion of Section 56-5-2940 as "... provid[ing] for enhanced punishment for each subsequent DUI conviction." As the Court's interpretation in Baucom indicates, the emphasis in Section 56-5-2940 is on the subsequent conviction, not necessarily the timing of the offense. Therefore, it is my opinion that regardless of the timing of the offense, if at the time of trial, sentencing, etc., a defendant has a prior conviction for DUI, that defendant would be subject to the enhanced penalties of Section 56-5-2940(2). Accordingly, the defendant's case should be disposed of in the Court of General Sessions.

Sincerely,

A handwritten signature in black ink, appearing to read "D. K. Avant", written in a cursive style.

David K. Avant
Assistant Attorney General

DKA/an