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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

August 23, 2001

John G. Brown, Chief of Police
Great Falls Police Department
P.O. Box 177
Great Falls, South Carolina 29055

Re: Your Letter of July 30, 2001

Dear Chief Brown:

In your above-referenced letter, you ask this Office to "render an opinion on the new seat belt law in reference to persons 17 and under required to be in safety restraints. My questions is, since it is against the law for 17 and under to ride without being restrained would it be against the law for anyone 17 and under to ride in the back of a pick up truck?"

Effective July 3, 2001, S.C. Code Ann. §56-5-6520 was amended to read as follows:

The driver and every occupant of a motor vehicle, when it is being operated on the public streets and highways of this State, must wear a fastened safety belt which complies with all provisions of federal law for its use. The driver is charged with the responsibility of requiring each occupant seventeen years of age or younger to wear a safety belt or be secured in a child restraint system as provided in Article 47 of this chapter. However, a driver is not responsible for an occupant seventeen years of age or younger who has a driver's license, special restricted license, or beginner's permit and who is not wearing a seat belt; such occupant is in violation of this article and must be fined in accordance with Section 56-5-6540.

Pursuant to Section 56-5-6510, "Motor vehicle" means a passenger car, truck, van, or recreational vehicle required to be equipped with safety belts by Federal Motor Vehicle Safety Standard No. 208 (49 CFR 571.208), manufactured after July, 1966." Clearly, pick up trucks would be covered by South Carolina's mandatory seat belt law. One exception which may apply to passenger's in the bed of a pick up truck is found in Section 56-5-6530(7). That subsection provides that the mandatory seat belt laws "do not apply to ... an occupant for which no safety belt is available because all belts are being used by other occupants." Therefore, it would appear that unless no seat with a seat belt is available in the cab of a pick up truck, an unrestrained passenger in the bed of the truck would be in violation of Section 56-5-6520.

Robert L. ...

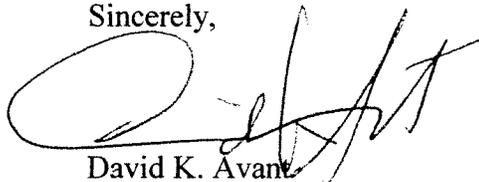
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Further, Section 56-5-6410, South Carolina's "Child Passenger Restraint System" law provides that "[e]very driver of a motor vehicle (passenger car, pickup truck, van, or recreational vehicle) operated on the highways and streets of this State when transporting a child five years of age or younger upon the public streets and highways of the State must provide an appropriate child passenger restraint system ..." Section 56-5-6420 provides an exception, however, and states "if all the seating positions with restraint devices are occupied by children under the age of six years, a child may be transported and the driver of the motor vehicle is not in violation of the provisions of this article, but priority must be given to children under the age of six years, according to their ages." Therefore, just as with the seat belt laws referenced above, unless there is an applicable exception, a driver of a pickup truck allowing children under six years of age to ride in the bed is in violation of Section 56-5-6410.

Lastly, it should be noted that 2001 South Carolina Laws Act 65 (effective July 3, 2001) had the effect of changing from secondary to primary violations of the provisions involving drivers and passengers seventeen years of age and younger. Specifically, Section 56-5-6540(B)(1) now provides that "[a] law enforcement officer must not stop a driver for a violation of this article in the absence of another violation of the motor vehicle laws except as follows ... when the officer has probable cause for a violation of this article based on his clear and unobstructed view of a driver seventeen years of age or younger or an occupant of the motor vehicle seventeen years of age or younger who is not wearing a safety belt or is not secured in a child restraint system as required ..." I have provided for your review a copy of Act 65 which contains all of the amendments to our seat belt and child restraint statutes.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant
Assistant Attorney General

DKA/an
Enclosure