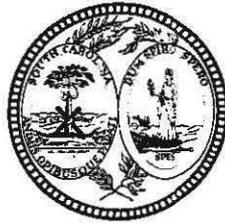


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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 2, 1996

The Honorable Lee R. Deese
Lancaster County Magistrate
P. O. Box 1809
Lancaster, South Carolina 29721

Re: Informal Opinion

Dear Judge Deese:

You have asked our opinion on the penalty of Section 56-5-1520 and 56-5-6190 of the Code. You indicate that:

Section 56-5-1520 paragraph "D" states upon conviction for a FIRST OFFENSE the penalty is stated in section 1 through 4 of paragraph D.

Since this paragraph states first offense and direct[s] the penalty, the question is the following. If a person is charged with speeding and this is their second or subsequent offense should the person be given a penalty under section ... 56-5-6190? I ask this question because section 56-5-1520 does not state a penalty for second or subsequent offense.

If the person's penalty is in section 56-5-6190, should the officer note the offense on the summons when issued? I ask this question because a lot of bonds or fines are received through the mail.

As you indicate, S.C. Code Ann. Section 56-5-1520(d) sets the penalties for speeding by degree. Such provision provides as follows:

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[a]ny person violating the speed limits established by this section is guilty of a misdemeanor and, upon conviction for a first offense, must be fined or imprisoned as follows:

- (1) in excess of the above posted limit but not in excess of ten miles an hour by a fine of not less than fifteen dollars nor more than twenty-five dollars;
- (2) in excess of ten miles an hour but less than fifteen miles an hour above the posted limit by a fine of not less than twenty-five dollars nor more than fifty dollars;
- (3) in excess of fifteen miles an hour but less than twenty-five miles an hour above the posted limit by a fine of not less than fifty dollars nor more than seventy-five dollars; and
- (4) in excess of twenty-five miles an hour above the posted limit by a fine of not less than seventy-five dollars nor more than two hundred dollars or imprisoned for more than thirty days.

The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. Bankers Trust of S.C. v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). Courts will reject the ordinary meaning of words used in a statute however plain it may be when to accept such meaning would defeat the plain legislative intent. Greenville Baseball v. Bearden, 200 S. C. 363, 20 L.E.2d 813 (1942).

Moreover, legislative intent must be gathered from a reading of the statute as a whole in light of the circumstances and conditions existing at the time of its enactment and thus where the statutory language gives rise to doubt or uncertainty as to legislative intent, the search for such intent may range beyond the borders of the statute itself. Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956). The court may properly consider the title or caption of an act in aid of construction to show intent of the legislature. Lindsay v. Southern Farm Bureau Cas. Ins. Co., 258 S.C. 272, 188 S.E.2d 374 (1972). Finally, in

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view of the principle that criminal statutes must be strictly construed, Lund v. Gray Line Water Tours, Inc., 277 S.C. 447, 289 S.E.2d 404 (1982), one charged with a crime must not only come within the letter of the law, but also the spirit. City of Anderson v. Fant, 96 S.C. 5, 79 S.E. 641 (1913).

While Section 56-5-1520(d) speaks in terms of the statute's being applicable to a "conviction for a first offense", nowhere else in the Code are there specified penalties for subsequent offenses for speeding. "Where there is a different and greater punishment for a subsequent offense, the settled law seems to be that an offense is considered a first offense unless the former offenses are not only proved on the trial, but also alleged in the indictment or allegation." State v. Weeks, 68 A.2d 426, 427 (N.J. 1949). Here, there is no "different and greater punishment for a subsequent offense" It is evident that Section 56-5-1520(d) was intended as a comprehensive speeding statute. Indeed, the General Assembly very carefully graded various speeds over the speed limit in terms of the punishment imposed.

Moreover, the offense of speeding, to my knowledge, has never been viewed as one in this State where the punishment depends upon the particular number of offenses committed. Where such is the case in other jurisdictions it is made so by specific statutory authority. See e.g. State v. Pessefall, 621 N.E.2d 1370 (Ohio 1993) [second offense speeding within one year].

Thus, even though Section 56-5-1520(d) specifically mentions the phrase "upon conviction for a first offense", and Section 56-5-6190 establishes a penalty "for a violation ... for which another penalty is not provided", the imposition of punishment for speeding based upon the number of speeding offenses committed is a legislative prerogative and cannot be implied through an opinion of this Office. In construing a statute, a court cannot read into the statute something not within the manifest intention of the Legislature. Laird v. Nationwide Ins. Co., 243 S.C. 388, 134 S.E.2d 206 (1964). Thus, it would be a matter for the General Assembly to further define the punishment for speeding in terms of the number of offenses committed.

Moreover, the title to Act No. 1069 of 1970, the statutory enactment where the graded penalties for speeding were inserted, casts further doubt upon the General Assembly's intent to punish subsequent offense for speeding differently from what is specified in the statute. The title declares Act No. 1969 to be

An Act To Amend Section 46-196; Code of Laws of South Carolina, 1962, As amended, Relating To The Point System For Motor Vehicle Moving Violations, So As To

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Further Provide For Driving Too Fast For Conditions Or
Speeding, And To Amend Section 46-361 of the 1962 Code,
As Amended, Relating to Various Speed Limits, So As To
Provide For Penalties For Violations. (emphasis added).

The title to the Act thus uses the plural, "violations", indicating the Legislature's intent that Section 56-5-1520(d) constitutes the punishment for speeding irrespective of the number of offenses committed.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an