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# The State of South Carolina

Opinion No 88-51
p149

## Office of the Attorney General

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June 20, 1988

Nancy E. Shealy, Esquire
South Carolina Court Administration
Post Office Box 50447
Columbia, South Carolina 29250

Dear Nancy:

In a letter to this Office you raised the following question

> (w)hen an individual has been convicted of driving under the influence, and the six-month suspension period has lapsed, but the individual has failed to file proof of financial responsibility, pay the reinstatement fee, complete the ADSAP program or otherwise failed to reinstate his operator's license, and the individual is subsequently convicted for operating a motor vehicle while his license to drive remains cancelled, suspended, or revoked, should the judge impose the general sentence for driving under suspension or must the judge treat the suspension as having been imposed pursuant to § 56-5-2990 of the Code and increase the penalties pursuant to the last paragraph of Section 56-1-460 of the Code.

Section 56-5-2990 provides for the suspension of an individual's driver's license following a conviction for operating a motor vehicle under the influence. For a first offense conviction, the period of suspension is six months. Pursuant to Section 56-1-460 of the Code, if an individual's license was suspended pursuant to Section 56-5-2990 following a conviction for operating a motor vehicle while under the influence, a harsher penalty is imposed for any subsequent conviction of driving while under suspension.

Section 56-5-2990 states in part:

> (a)ny person whose license is suspended under the provisions of this section must be notified of suspension by the Department of Highways and Public Transportation of the requirement to be evaluated by and successfully complete an Alcohol and Drug Safety Action Program certified by the South Carolina Commission on Alcohol and Drug Abuse prior to reinstatement of the license. An assessment of the degree and kind of alcohol and drug abuse problem, if any, of the applicant must be prepared and a plan of education or treatment or both must be developed based upon the assessment. Entry into and successful completion of the services, if such services are necessary, recommended in the plan of education or treatment or both developed for the applicant is a mandatory requirement of the restoration of driving privileges to the applicant.

Also, Section 56-1-400 of the Code states in part that

> ...(t)he Department shall not return nor restore a license which has been suspended for...driving under the influence of intoxicants...until the person has filed an application for a new license, submitted to an examination as upon an original application, and has satisfied the Department, after an investigation of the character, habits, and driving ability of the person, that it would be safe to grant him the privilege of driving a motor vehicle on the public highways....

Such provision was amended in 1984 to provide that for any individual whose license was suspended for a general sessions offense, the Department may not issue a license to the individual until it is furnished proof that any fine has been paid. Section 56-9-500 of the Code states further in part that

> (w)henever the Department, under any law of this State, suspends or revokes the license of any person upon receiving a record of

> conviction or forfeiture of bail...(t)he license...shall remain suspended...and shall not at any time thereafter be renewed...until permitted under the motor vehicle laws of this State and not then until he shall give and thereafter maintain proof of financial responsibility...

A prior opinion of this Office dated August 3, 1984, a copy of which is enclosed, dealt with the question of the proper charge for individuals apprehended for driving under suspension. Such opinion stated that

> Section 56-9-500 and 56-1-400, when read together, make it clear that once a license is suspended, the person under suspension has no privilege to drive, even if his term of suspension has expired, until certain procedural steps are taken to regain his license. The expiration of the suspension term operates only to signal a time after which there procedural steps may be initiated.

The opinion concluded that once a license is suspended, it remains suspended until proof of financial responsibility is provided and the requirements of Section 56-1-400 have been met. The opinion further determined that if such requirements are not met by an individual whose license has been suspended, then such an individual who was apprehended while driving under suspension should be charged pursuant to Section 56-1-460 of the Code.

Consistent with the provisions noted above which detail requirements that must be met before a license which has been suspended may be reissued or returned are the provisions of Section 56-1-390 of the Code which state

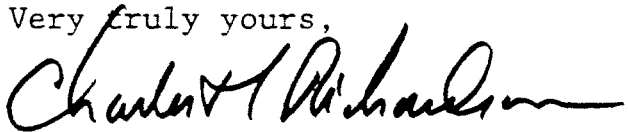
> (w)henever the State Highway Department (Department), under any law of this State, suspends or revokes the license of any person under lawful authority possessed by the Department, and proof of future financial responsibility is made a prerequisite to reinstatement, such license shall remain suspended or revoked and shall not at any time thereafter be renewed, nor shall any license thereafter be issued to that person until he shall also remit to the Department a reinstatement fee of ten dollars.

Therefore, a reinstatement fee must be paid in such circumstances.

Consistent with such opinion, it appears that in the circumstances described in your letter where an individual convicted for driving under the influence whose license is accordingly suspended pursuant to Section 56-5-2990 fails to satisfy specified requirements to regain his license and then is subsequently convicted for driving under suspension, he should be sentenced pursuant to the provisions of Section 56-1-460 relating to individuals whose licenses were suspended pursuant to Section 56-5-2990. In other words, if an individual's driver's license was suspended following a driving under the influence conviction, the license would remain suspended until all statutory requirements are met. Until such requirements are met, the individual, if convicted for driving under suspension, would be sentenced pursuant to the harsher provisions of Section 56-1-460 inasmuch as his license was originally suspended pursuant to Section 56-5-2990.

If there are any questions, please advise.

Very truly yours,

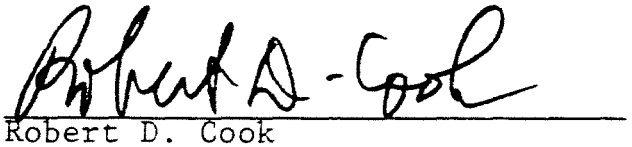


Charles H. Richardson
Assistant Attorney General

CHR:sds

Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
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