

The State of South Carolina



Office of the Attorney General

OPINION NO 86-15
P 340

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November 20, 1986

Dr. B. L. Baker, P.E.
Chairman
South Carolina State Board of
Registration for Professional
Engineers and Land Surveyors
P. O. Box 50408
Columbia, South Carolina 29250

Re: Retroactive Application of Act 437 of 1986

Dear Dr. Baker:

You have requested an opinion from this Office as to whether the recent amendment (Act 437 of 1986) to Section 40-21-350, South Carolina Code of Laws (1976), authorizing the Board to levy a civil fine against a licensee found guilty of a violation of Section 40-21-340, can be applied retroactively to violations occurring prior to the effective date of the amendment, i.e., May 26, 1986.

The general rule is that statutory enactments are to be considered prospective rather than retroactive in their operation unless there is a specific provision or clear legislative intent to the contrary. Hyder v. Jones, 271 S.C. 85, 245 S.E.2d 123 (1978); Neel v. Shealy, 261 S.C. 266, 199 S.E.2d 542 (1973). With regard to Act 437 of 1986, there is no specific provision providing for its retroactive application. Also, a thorough examination of the Act reveals no evidence of clear legislative intent for retroactive application.

Furthermore, it is well settled that statutory enactments which would work as a forfeiture or inflict a penalty should be construed not only strictly but also prospective in application. Independence Ins. Co. v. Independence Life & Acc. I. Co., 218 S.C. 22, 61 S.E.2d 399 (1950); 82 C.J.S., Statutes, § 419. In S. C. State Hwy. Dept. v. Southern Rwy. Co., 239 S.C. 227, 230, 122 S.E.2d 422, 424 (1961), the Court defined a "penalty" as "a sum of money exacted, by way of punishment for doing some act that is prohibited, or omitting to do some act that is required to be

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done, which may or may not be a crime." Clearly, the Board's "civil fine" is a penalty, which would, with retroactive application, impose a new obligation for past events. Therefore, it is this Office's opinion that the civil fine provided for in Act 437 of 1986 should only be imposed for violations occurring after the effective date of the Act.

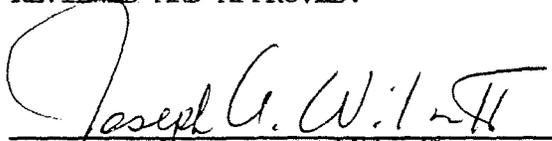
Very truly yours,



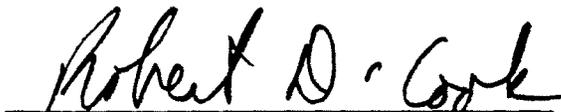
Richard B. Kale, Jr.
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REVIEWED AND APPROVED:



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