

1983 WL 181838 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 7, 1983

***1 RE: Sentencing for a First Offense DUI**

The Honorable Irene K. Rudnick
Member
House of Representatives
310-D Blatt Building
Columbia, South Carolina 29211

Dear Mrs. Rudnick:

Attorney General Medlock has referred your letter dated April 4, 1983, to me for reply.

In your letter, you raised the following question: Could a City Court Judge, under South Carolina law, impose a 30 day mandatory jail sentence and fine for a first offense, driving under the influence.

Under South Carolina law, such a sentence would be illegal. It is a well settled rule in South Carolina that when a statute provides for punishment in the alternative, such as a jail sentence or a fine, the judge may impose either, but not both.

[Section 56-5-2930, Code of Laws of South Carolina \(1976\)](#) makes it unlawful for any person under the influence of alcohol or drugs to operate a vehicle within this state. The penalties for such a violation are provided in § 56-5-2940; any person found guilty of DUI, first offense may be punished as follows:

By a fine of not less than \$50.00 nor more than \$200.00 or imprisonment for not less than 10 days nor more than 30 days, for the first offense; . . . (emphasis added)

It is the general rule that penal statutes must be strictly construed against the state, and in favor of the defendant on whom the penalties are sought to be imposed. 3 Sutherland Statutory Construction § 59.03; [State v. Cutler, 274 S.C. 376, 264 S.E.2d 420 \(1980\)](#). In addition, in penal statutes, the use of the disjunctive term 'or' is not to be interpreted as meaning 'and', if the effect would be to aggravate the offense or increase the punishment. See, 30 Words and Phrases 125, and cases cited therein.

Our Supreme Court addressed that question in the case of [State v. Petty, 245 S.C. 42, 138 S.E.2d 643 \(1964\)](#). In that case the offense for which the defendants were convicted provided for a term of imprisonment, or a fine. The statute did not authorize the judge to impose both. In affirming the conviction but reversing the sentencing and remanding the case for resentencing, the Court said

It has long been settled in this jurisdiction that when a statute provides for punishment in the alternative, that is, by fine or imprisonment, the Court has the discretion to fix it either singly or by giving the defendant the choice of fine or imprisonment . . . However, a sentence to both fine and imprisonment exceeds the bounds of such a statute and is illegal.

Applying the reasoning of [Petty](#) to your situation, and § 56-5-2940, it would appear that a judge when sentencing a defendant convicted of first offense DUI may do one of the following:

1. Impose a fine of not less than \$50.00 nor more than \$200.00; or

2. Sentence the defendant to a term of imprisonment for not less than 10 days nor more than 30 days; or
3. Give the defendant the choice of a fine or imprisonment, within the limitations imposed above.

*2 For the trial judge to impose both a fine and imprisonment, given the clear language of § 56-5-2940, would be illegal.

If any further information can be provided, please do not hesitate to contact this office.

Sincerely yours,

James G. Bogle
Assistant Attorney General

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