

1983 WL 182018 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 5, 1983

**\*1 Re: Law Enforcement, Drugs, Forfeitures, Controlled Substances**

Captain Orey F. Stutts  
Special Investigations Division  
Charleston County Police Department  
Charleston, South Carolina 29405

Dear Captain Stutts:

You have asked whether the borrower's affidavit required by [South Carolina Law Enforcement Division v. Crook, et al., 255 S.E.2d 846 \(1979\)](#) is still required to protect an 'innocent lienholder' under present law. In order to answer your question it will be necessary to trace the history of the statute involved, [§ 44-53-530 CODE OF LAWS OF SOUTH CAROLINA \(1976\)](#).

The above-cited section was enacted into law by the passage and approval of Act Number 346 of 1973. Subsection 5(a) of the original act provided for the borrower's affidavit which was later the subject of [S.L.E.D. v. Crook](#). In that case the Supreme Court held that a lienholder must inquire into the character of the borrower and secure from the borrower at the time of financing an affidavit stating that he had neither been convicted of nor was presently charged with the violation of any drug law. The Court further held that failure to secure this affidavit as required by Subsection 5(a) is fatal to the 'innocent lienholder's' claim.

Shortly after the Court announced its decision in [S.L.E.D. v. Crook](#), the above-cited section was substantially rewritten by Act Number 185 of 1979. This amendment deleted Subsection 5(a). With this deletion went the requirement of the borrower's affidavit. A subsequent amendment in 1980 leaves this fact unchanged.

As the statute presently reads, the interest of a lienholder of record with the South Carolina Department of Highways and Public Transportation or other applicable governmental agency is protected unless it can be shown that the lienholder consented to, was privy to, or had knowledge of the actual or intended concealment, containment, or transportation of controlled substances in the conveyance seized. This interest would be protected in a post-forfeiture proceeding in which the lienholder is required to execute an affidavit that he had no knowledge of any record of conviction of any drug law by the buyer and was not a consenting party or privy to the violation which resulted in the forfeiture.

In summary, the borrower's affidavit required at the time [S.L.E.D. v. Crook](#) was decided is no longer applicable because of a statutory amendment. If a conveyance subject to liens is seized under [§ 44-53-530](#) as it presently reads, the Court will first determine if said conveyance is subject to forfeiture after due notice to all concerned. In a post-forfeiture proceeding the Judge will determine if the interest of the lienholder is to be protected.

I trust this has answered your question. If not, please feel free to contact us.

Sincerely,

Clifford O. Koon, Jr.  
Assistant Attorney General

1983 WL 182018 (S.C.A.G.)