

1972 S.C. Op. Atty. Gen. 132 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3314, 1972 WL 20454

Office of the Attorney General

State of South Carolina

Opinion No. 3314

May 18, 1972

*1 Captain J. A. Spell
Patrol District 1
P. O. Box 191
Columbia, South Carolina 29202

Dear Captain Spell:

You have inquired of this office as to whether or not a person not licensed to drive in this state or any other state is subject to the penalties imposed by Section 46–192.1 of South Carolina Code Annotated (Supp. 1971), where that person is arrested while driving subsequent to a conviction for driving under the influence. I have consulted with Deputy Attorney General Coleman and he is of the opinion that only so much of Section 46–192.1 as is referred to by Section 46–192.1 is applicable where the defendant was never licensed to drive.

It appears, therefore, that the driver must be charged under 46–192 and that 46–192.1 applies only to determine the length of the additional period of suspension. The maximum penalty imposed by 46–192 is one hundred (\$100.00) dollars or imprisonment for thirty (30) days.

It would be improper to charge the unlicensed driver with violation of Section 46–192.1, as this section applies to persons whose license to drive or privilege to drive is cancelled. A driver who has never been licensed by any state has neither a license nor a privilege to drive, as no privilege has ever been accorded him. It follows, therefore, if no privilege has ever been granted, then it cannot be cancelled.

It also appears that the legislature desired to make some type of differentiation between the two cases in view of the fact that the two sections are side by side and different penalties are provided for each. In order for the higher penalties provided under 46–192.1 to be applied to offenders charged under 46–192, it will be necessary for the legislature to make the required changes in the statutes.

It is hoped that the foregoing will be of assistance to you. Should any further questions arise concerning this matter, please do not hesitate to call on us.

With kindest regards, I am
Yours very truly,

G. W. Thomason
Assistant Attorney General

1972 S.C. Op. Atty. Gen. 132 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3314, 1972 WL 20454