



ALAN WILSON
ATTORNEY GENERAL

December 18, 2025

The Honorable Tiffani Tyner Mitchum
Chief Magistrate
Abbeville County Magistrate Court
PO Box 1156
Abbeville, SC 29620

Dear Chief Magistrate Mitchum:

Attorney General Alan Wilson referred your letter to the Opinions section for a response. You ask what the appropriate charge is for a person who drives a motor vehicle on a public road in South Carolina without a valid driver's license and who has been previously convicted of an offence that would have resulted in the suspension of their license, if they possessed one at the time of the conviction. Additionally, you request clarity regarding the distinction between a person's driver's license and the privilege to operate a vehicle.

You advise that you have had numerous discussions with law enforcement regarding this matter, and you included two email exchanges with Court Administration regarding this question.

Law/Analysis

We begin by noting that this opinion is purely advisory. "Because this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions." Op. S.C. Att'y Gen., 2003 WL 21040130 at *1 (Feb. 19, 2003) (quoting Op. S.C. Att'y Gen., Oct. 10, 1985, at *2 and Sept. 3, 1999, at *2). Our advice is not binding on you, or any other entity.

As you describe in your letter, there are three sections which provide penalties for driving on a public road in South Carolina without a current license. Section 56-1-20 makes it unlawful to "drive any motor vehicle upon a highway in this State unless such person has a valid motor vehicle driver's license issued to him under the provisions of this article." S.C. Code Ann. § 56-1-20 (Supp. 2025). The penalties for violating Section 56-1-20 are found in Section 56-1-440(A), which provides:

A person who drives a motor vehicle on a public highway of this State without a driver's license in violation of Section 56-1-20 is guilty of a misdemeanor

and, upon conviction of a first offense, must be fined not less than fifty dollars nor more than one hundred dollars or imprisoned for thirty days and, upon conviction of a second offense, be fined five hundred dollars or imprisoned for forty-five days, or both, and for a third and subsequent offense must be imprisoned for not less than forty-five days nor more than six months.

S.C. Code Ann. § 56-1-440(A) (2018). Section 56-1-460 establishes the penalties for driving a motor vehicle on a public highway of this State while a person's license to drive is canceled, suspended, or revoked. Id. § 56-1-460(A) (2018). Among those penalties is the automatic extension of the suspension of the individual's driver's license. Id. § 56-1-460(B).¹ Finally, Section 56-1-450 provides penalties for an individual driving a motor vehicle on a public highway of this State without a license who has previously been convicted of a violation for which suspension or revocation of a "driver's license or privilege to operate is made mandatory." Id. § 56-1-450 (2018). Under Section 56-1-450, these penalties include a fine or imprisonment, and:

[T]he period of time during which the Department may not issue to him a driver's license or find that he is properly qualified to operate as a nonresident shall be extended as provided in Section 56-1-460. Such license shall not be issued nor shall such findings be made until the lapse of the period of time counting from the date of conviction during which such person's license would have been subject to suspension or revocation had he been properly licensed at the time of such offense.

S.C. Code Ann. § 56-1-450. Put differently, Section 56-1-450 prospectively bars an individual from obtaining a driver's license for an amount of time equal to the time for mandatory license suspension so that an individual cannot avoid the period of mandatory suspension found in Section 56-1-460 by not having a license which may be suspended.

It is the opinion of this Office that an individual who drives on a public highway while their driver's license has been cancelled, suspended, or revoked, should be charged and prosecuted pursuant to Section 56-1-460. In contrast, an individual who drives on a public highway and does not have a driver's license and has not been previously convicted of a violation for which suspension or revocation of a "driver's license or privilege to operate is made mandatory" should be charged and prosecuted pursuant to Section 56-1-440.

We turn then to an individual who does not have a driver's license and who has been convicted of a violation for which suspension or revocation of a "driver's license or privilege to operate is made mandatory." We agree with the analysis of Court Administration that such an individual should not be prosecuted under Section 56-1-460. As previously stated by this Office,

¹ Notably, certain convictions lead to the immediate suspension of an individual's driver's license. See Id. § 56-1-280 (2018).

the correct charge in this instance is under Section 56-1-450. Op. S.C. Att’y Gen., 1972 WL 20454 (May 18, 1972).² Our prior opinion reads:

It would be improper to charge the unlicensed driver with [violating Section 56-1-460], 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.

² Our May 18, 1972, opinion referenced Sections 46-192 and 46-192.1 of the 1962 Code of Laws of South Carolina. In the 1962 Code of Laws of South Carolina, Section 56-1-440 was codified as Section 46-191, Section 56-1-450 was codified as Section 46-192, and Section 56-1-460 was codified as Section 46-192.1. For each of these sections, the operative language was not amended when the sections were recodified.

Section 56-1-450 has not been amended since its enactment in 1959.

Section 56-1-440 has been amended a variety of times since its enactment, but since 1959, its operative language prohibiting unlicensed drivers from driving on public highways in South Carolina has not changed. See Act No. 532 Section 2, 1988 S.C. Acts 4639, (increasing penalties); Act No. 100 Part II Section 103A, 1999 S.C. Acts 1033 (creating a defense for individuals who provide proof of licensure within 7 days); Act No. 90 Section 1, 2001 S.C. Acts 2101 (removing the 7 day deadline to provide proof of licensure); Act No. 273 Section 14.A, 2010 S.C. Acts 1955 (creating summary court jurisdiction for violations of the Section).

Similarly, Section 56-1-460 has been amended numerous times since the 1962 Code of Laws, but the prohibition on driving for persons whose “license to drive is canceled, suspended, or revoked” has remained constant. See Act No. 146, 1967 S.C. Acts 201 (creating penalties for subsequent violations); Act No. 168, 1973 S.C. Acts 199 (lengthening the time of imprisonment); Act No. 84 Section 1, 1987 S.C. Acts 217 (increasing penalties, adding a reference to Sections 56-25-20 and 56-5-2990, and creating a five year look back window); Act No. 181 Section 1321, 1993 S.C. Acts 2960 (giving responsibility to the Department of Public Safety); Act No. 459 Section 94, 1996 S.C. Acts 3542; Act No. 376 Section 1, 2000 S.C. Acts 2558 (giving magistrates exclusive jurisdiction); Act No. 263 Section 1, 2002 S.C. Acts 2664 (making magistrates’ jurisdiction concurrent, not exclusive); Act No. 176 Section 2, 2004 S.C. Acts 1812 (increasing penalties and giving certain funds to the South Carolina Highway Patrol); Act No. 273 Section 18.A, 2010 S.C. Acts 1973 (allowing for home detention, creating restricted route licenses, and removing references to the South Carolina Highway Patrol fund); Act No. 158 Section 4, 2014 S.C. Acts 2009 (restoring the South Carolina Highway Patrol fund); Act No. 275 Section 21, 2016 S.C. Acts 1825 (designating additional money for the South Carolina Highway Patrol Fund).

Id. at *1. Section 56-1-460(A)(1) only applies to individuals whose “license to drive is canceled, suspended, or revoked.” Section 56-1-460(A)(2) only applies to a person whose “license has been suspended or revoked.” Both of these subsections require a license to have been issued and then suspended, revoked, or—in the case of 460(A)(1)—canceled. Something which has never been issued cannot be suspended; therefore, an individual who has never had a license cannot be convicted under Section 56-1-460. Instead, it appears that the proper charge for an individual who does not have a driver’s license and who has been convicted of a violation for which suspension or revocation of a “driver’s license or privilege to operate is made mandatory” is a violation of Section 56-1-450.

Your letter also references our January 28, 1971, and February 1, 1971, opinions. Op. S.C. Att’y Gen., 1971 WL 17455 (Jan. 28, 1971); Op. S.C. Att’y Gen., 1971 WL 17456 (Feb. 1, 1971). These opinions address a slightly different factual scenario. Id. They address an individual who is convicted of driving without a driver’s license after having been convicted of a violation for which suspension or revocation of a driver’s license or privilege to operate is made mandatory *and then* is subsequently caught driving without a license *again*. Id. Both opinions state that in the instance of a repeat offender who has never been licensed, has been convicted of a violation for which suspension or revocation of a driver’s license or privilege is mandatory, and is caught driving without a license again during the time when he is barred from obtaining a license, he should be subject to the provisions of Section 56-1-460 for his subsequent offenses. Id.

Regarding your final question of the “privilege” to drive. As discussed in State v. Collins:

No one has an absolute right to operate a motor vehicle upon a public highway. The operation of such is a privilege which may be and has been extended to individuals under various circumstances, by sundry statutory provisions of this State. See generally 7 Am. Jur. (2d) 668, Automobiles and Highway Traffic, Sec. 97; S.C. State Highway Dept. v. Harbin, 226 S.C. 585, 86 S.E.2d 466 (1955). Code Sec. 46-153 exempts various persons from the statutory requirement of a license to drive a motor vehicle and, hence, accords them the privilege of operating a vehicle without a license. Sec. 46-157 provides for a temporary driver’s permit and thus grants, within the purview of that section, the privilege to operate a motor vehicle without a regular driver’s license. Sec. 46-156 authorizes a student’s instruction permit extending, within the limitations of that section, the privilege to drive a motor vehicle without a driver’s license. Likewise, Sec. 46-155 provides for the issuance of a beginner’s permit which grants, within the limitations of that section, the privilege to drive a motor vehicle without a driver’s license.

253 S.C. 358, 361, 170 S.E.2d 667, 668 (1969). While Collins discusses sections from the 1962 Code of Laws of South Carolina, those sections are still in effect. See S.C. Code Ann. § 56-1-30 (codifying Section 46-157); § 56-1-140 (codifying Section 46-156); § 56-1-50 (codifying 46-155). Thus, while the overwhelming majority of drivers must obtain a driver’s license from the

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Department of Motor Vehicles in order to lawfully drive on a public highway in South Carolina, there are certain exceptions which allow an individual to exercise this privilege without first obtaining a driver's license.

Conclusion

It is this Office's opinion, as it was in our prior opinion of May 18, 1972, that the proper charge for an individual who does not have a driver's license and who has been convicted of a violation for which suspension or revocation of a "driver's license or privilege to operate is made mandatory" is a violation of Section 56-1-450.


We remind you that this opinion is purely advisory, and we make no commentary on what actions are within your jurisdiction as a magistrate should you encounter a case in which an individual falling into this factual scenario is charged differently.

Sincerely,



David Leggett
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General Emeritus