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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

September 8, 2004

The Honorable B. Lee Miller  
Municipal Court Judge  
Post Office Box 40  
Greenwood, South Carolina 29648

Dear Judge Miller:

In a letter to this office you questioned at what point of time is an individual's driver's license suspended for driving under the influence, the date of conviction or the date he receives written notice of the suspension. You also asked at what point can an individual be charged for driving under suspension in such circumstances.

S.C. Code Ann. Section 56-5-2990 (Supp. 2003) provides for the suspension of the driver's license of a person who is convicted, pleads guilty or forfeits bond for a violation of S.C. Code Ann. Section 56-5-2930 (Supp. 2003), driving under the influence. Pursuant to Subsection (F) of Section 56-5-2990,

Except as provided for in Section 56-1-365(D)...(an individual already under suspension)... and (E)...(where the defendant fails to surrender his license)..., the driver's license suspension periods under this section begin on the date the person is convicted, receives sentence upon a plea of guilty or of nolo contendere, or forfeits bail posted for the violation of Section 56-5-2930.... (emphasis added)

Therefore, consistent with such provision, the driver's license of an individual who, in the situation you cited forfeits bail, is suspended on the date the bail is forfeited.

Pursuant to S.C. Code Ann. Sections 56-1-350 et seq. (Supp. 2003) notice is provided by the Department of Motor Vehicles of the suspension. However, none of those provisions detract from the conclusion of Section 56-5-2990 that the date of suspension begins on the date of conviction or forfeiture of bail. In fact, Section 56-5-2990(F) while providing that the license is suspended on the day of conviction, also requires in subsection (B) that notification of the suspension be provided. I do not read such requirement of notification as detracting from the date of the suspension however. Therefore, as to your question of at what point can an individual be charged with driving under suspension, an individual can be charged as of the date of conviction or forfeiture of bail for driving under the influence. This is especially true as to the situation you addressed where the defendant

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surrendered his driver's license when he posted bond. You indicated that in such circumstances, the defendant was advised that if he did not appear back in court, his license would be suspended on the day of court, he could not drive, and his bond would be forfeited. Moreover, such conclusion is supported by the realization that an individual should not be driving if in fact he has surrendered his driver's license.

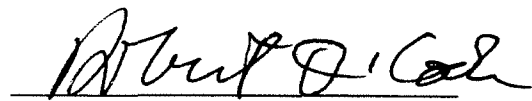
The case you cited, State v. Smith, 330 S.C. 237, 498 S.E.2d 648 (1998), does not deal with an individual cited for driving under the influence. Instead, it deals with the suspension of a driver's license for failure to provide SR-22 insurance. Suspension of a license is provided pursuant to S.C. Code Ann. Section 56-9-610 (1991) for failure to provide proof of financial responsibility, not for a conviction, such as in Section 56-5-2990. In such circumstances, notice of suspension would be provided as set forth in S.C. Code Ann. Sections 56-1-350 and 56-1-360 (Supp. 2003).

Sincerely,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General