7647 Library

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

June 11, 2003

The Honorable Glenn G. Reese
Senator, District No. 11
Suite 502, Gressette Senate Office Building
Columbia, South Carolina 29202

Dear Senator Reese:

You have requested an advisory opinion from this Office regarding the penalties for sixteen year old drivers who have received a citation for a violation state traffic laws. By way of background, you indicated that you have a constituent who is opposed to Section 56-1-185 as it presently exists in the South Carolina Code of Laws. The statute, in relevant part, reads as follows:

> (A) A person while operating a motor vehicle under a conditional or a special restricted driver's license who is convicted of a traffic offense or involved in an accident in which he was at fault shall have the removal of the restrictions postponed for twelve months and is not eligible to be issued a regular driver's license until one year from the date of the last traffic offense or accident in which he was at fault or until he is seventeen years of age.
> (B) A person while operating a motor vehicle under a beginner's permit or a conditional or a special restricted driver's license who is convicted of one or more point-assessable traffic offenses totaling six or more points, as determined by the values contained in Section 56-1-720, shall have his license suspended by the department for six months. This suspension shall not preclude other penalties otherwise provided for the same violations.

Your constituent indicates that she believes that these penalties are inequitable and need to be amended. Your constituent further indicates that her son has been unfairly treated as a result of this statute.

Law/Analysis

Initially, it must be noted that the statute is presumed to be valid as enacted unless and until a court declares it to be invalid. Our Supreme Court has often recognized that the powers of the General Assembly are plenary, unlike those of the federal Congress, whose powers are enumerated. State ex rel. Thompson v. Seigler, 230 S.C. 115, 94 S.E.2d 231, 233 (1956). Accordingly, any act

of the General Assembly must be presumed valid and constitutional. An act will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland Co., 190 S.C. 270, 2 S.E.2d 779 (1939).

Moreover, only a court and not this Office may strike down an act of the General Assembly as inequitable or unconstitutional. While this Office may comment upon what we deem an apparent inequity or unconstitutionality, we may not declare the Act void. Put another way, a statute "must continue to be followed until a court declares otherwise." Op. S.C. Atty. Gen., June 11, 1997. Furthermore, pursuant to the separation of powers doctrine, it is a well established principle of law that only the General Assembly can repeal or amend a statute that it has enacted.

Specifically addressing the concerns raised by your constituent, the General Assembly has general constitutional authority to establish laws on matters of public safety, as well penalties for violations of such laws. Article XII, Sec. 1 of the S.C. Constitution. In State v. Smith, 275 S.C. 164, 268 S.E.2d 276 (1980), our Supreme Court held that "[t]he penalty assessed for a particular offense is, except in the rarest of cases, purely a matter of legislative prerogative ... and the legislature's judgment will not be disturbed (citations and internal quotations omitted)." It appears that in this case the General Assembly has exercised its plenary authority to establish increased penalties for restricted and beginner drivers who violate the traffic laws of this state. As a matter of policy, the General Assembly has apparently observed that teenage drivers are more likely to drive carelessly and recklessly, and increased penalties are needed to deter such behavior. The General Assembly has also apparently determined that suspending a teenager's drivers license for up to six months, when that driver has been guilty of serious traffic violations, is not an unreasonable punishment. This type of legislative action, imposing different restrictions and/or penalties on youthful driving offenders, has been upheld by the courts of other states that have addressed the issue. See for example Backdahl v. Commissioner of Public Safety, 479 N.W.2d 89 (Ct.App.Minn. 1992); Davis v. State Department of Licensing, 977 P.2d 554 (Wash. 1999); and Lopez v. Motor Vehicle Division, Department of Revenue, 538 P.2d 446 (Colo. 1975).

Based on the above, it is our opinion that the courts of this state would likely defer to the plenary power of the General Assembly to legislate on this matter and uphold Section 56-1-185 of the Code of Laws.

Sincerely,

David K Avant
Assistant Attorney General