



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

April 20, 2001

Sergeant James B. Arnold, Jr.  
Georgetown Police Department  
Organized Crime/Narcotics Division  
1405 Prince Street  
Georgetown, South Carolina 29440

**Re: S.C. Code §56-5-6240**

Dear Sergeant Arnold:

You have requested an opinion from this Office "regarding vehicle seizures for SC code section 56-5-6240." Specifically, you indicate that you "need to determine if police officers should seize a vehicle if the driver has been convicted of Driving Under Suspension 3<sup>rd</sup> offense and has one or more charges for DUS pending."

Section 56-5-6240 provides in part as follows:

In addition to the penalties for a person convicted of a fourth or subsequent violation within the last five years of operating a motor vehicle while his license is canceled, suspended, or revoked (DUS) ... the person must have the motor vehicle he drove during this offense forfeited ... if the person is the registered owner or a resident of the household of the registered owner ... [Further] ... The vehicle must be confiscated by the arresting officer or other law enforcement officer of that agency at the time of arrest.

When reading Section 56-5-6240, the distinction between seizure/confiscation and forfeiture must be kept in mind. Seizure or confiscation is the act of taking possession and control of the vehicle upon arrest of the driver. Forfeiture involves a civil action whereby passage of title or ownership of the vehicle to the State is accomplished following the driver's conviction. In order for the vehicle to be forfeited at the time of conviction for a fourth DUS offense, the vehicle, as a prerequisite, must have been seized at the time of arrest. See ATTY. GEN. OP. NO. 94-35 (Dated June 2, 1994).

Accordingly, the proper procedure for law enforcement would be to seize/confiscate the vehicle at the time of arrest of any person arrested for DUS when that person has three (3) (or more)

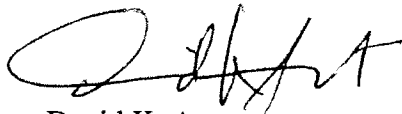
*Respectfully,  
Charles M. Condon*

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prior convictions for DUS within the last five (5) years.<sup>1</sup> Of course, the arresting officer and chief of police must comply with the provisions of §56-5-6240 ensuring the propriety of the continued seizure/confiscation of the vehicle.<sup>2</sup>

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant  
Assistant Attorney General

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<sup>1</sup> The level of the prior DUS conviction (i.e. DUS 1<sup>st</sup>, DUS 2<sup>nd</sup> or DUS 3<sup>rd</sup>) is irrelevant to the seizure determination. It only matters that the driver has been convicted at least three (3) times of DUS within the five (5) year period. City Of Sumter Police Department v. One (1) 1992 Blue Mazda Truck (VIN#JM2UF1132N0294812, 330 S.C. 371, 498 S.E.2d 894 (S.C. App. 1998).

<sup>2</sup> Section 56-5-6240 provides that the arresting officer must immediately deliver the vehicle to the chief of police who "shall by certified mail notify the registered owner of the confiscation within seventy-two hours." The Section further provides that the owner can request a hearing before the circuit court regarding the confiscation.