

The State of South Carolina



Office of the Attorney General

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June 2, 1994

Honorable Gene Taylor
Sheriff, Anderson County
Post Office Box 5497
Anderson, South Carolina 29623

Dear Sheriff Taylor:

In a letter to this Office you questioned whether a motorcycle could be seized in a case where the individual riding the motorcycle was convicted of fifth offense driving under suspension. You indicated that the rider, who was the owner of the bike, fled from officers and escaped capture initially. He also hid the motorcycle and, as a result, the motorcycle was not seized at the time of arrest.

S.C. Code Section 56-5-6240 provides for the confiscation of a motor vehicle as a penalty for certain DUI and DUS offenses. Subsection (A) states that the motor vehicle "...must be confiscated by the arresting officer or other law enforcement officer of that agency at the time of arrest, which officer shall deliver it immediately to the sheriff or chief of police of the jurisdiction where the motor vehicle was seized...." (emphasis added). You indicated that a court in a case involving your department had recently refused to let your department pursue a seizure where a motorcycle being driven by an individual charged with driving under suspension, fifth offense, was hidden and the motorcycle was not located until a time subsequent to the defendant's arrest.

Request Letter

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Prior opinions of this Office have indicated that it is well settled that statutes which provide for a forfeiture are to be construed strictly with doubt resolved against the penalty. See: 1987 Op. of the Atty. Gen. No. 204, 1986 Op. of the Atty. Gen. No. 340, 1984 Op. of the Atty. Gen. No. 301. Consistent with such, referencing the provision of Section 56-5-6240 which states that any vehicle confiscated must be confiscated "at the time of arrest" a motor vehicle could not be seized if such is not seized at the time the arrest is made.

With kind regards, I am

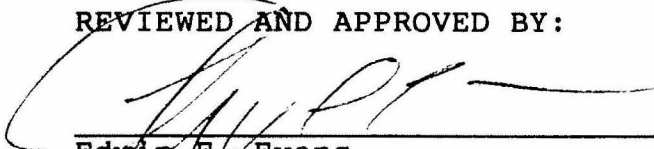
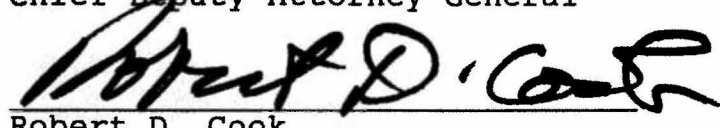
Very truly yours,



Charles H. Richardson
Assistant Attorney General

CHR:jca

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