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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

September 12, 1995

The Honorable Ronald P. Townsend
Member, House of Representatives
Route 5
Anderson, South Carolina 29621

Re: Informal Opinion

Dear Representative Townsend:

In your letter to Attorney General Condon, you reference S.C. Code Ann. Section 56-5-4160(D). You note that Subsection (D) specifies the procedure for payment of overweight vehicle penalties. Pursuant thereto, if an alleged violator pays a fine within fourteen days, no assessment may be added to the original fine. You indicate that constituents who have contacted you "have claimed that this procedure unlawfully penalizes an accused who elects to assert his legal right to a hearing."

Section 56-5-4160 proscribes the operation of vehicles on the highways of South Carolina whose axle weight is in excess of the limits imposed by Sections 56-5-4130 or 4140. Section (C) establishes the amount of fines per pounds of excess weight. A person found to exceed the excess gross weight limitations of Sections -4130 or -4140 is, upon conviction, required to pay to the Department of Transportation the fine established by such scale.

Subsection (D) provides for the procedure for payment of such fines. That Subsection reads as follows:

> [a]t the time that a uniform size and weight citation is issued pursuant to this section, the officer or agent who is authorized to issue the citation must inform the individual receiving the citation that he has the option, at that time to elect to pay his

> fine directly to the department or receive a hearing in magistrates court. If the individual at the time the citation is issued elects to pay his fine directly to the department within fourteen days, as specified on the citation, no assessments may be added to the original fine pursuant to this section. The fine may be deposited with the arresting officer or a person the department may designate. The fine must be deposited in full or other arrangements satisfactory to the department for payment must be made before the operator is allowed to move the vehicle. If there is no conviction, the fine must be returned to the owner promptly.

The issue with which you are concerned is whether Subsection (D) impermissibly "chills" one charged with a weight violation from seeking a hearing because the immediate payment of the fine entitles a violator not to be charged assessments additional to the fine. In other words, the question is whether Subsection (D) is violative of the constitutional principles of due process or equal protection of the laws.

It bears repetition that any Act of the General Assembly is presumed constitutional. No act will be deemed to infringe the Constitution unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland County, 190 S.C. 270, 2 S.E.2d 777 (1939). Every doubt regarding the constitutionality of an Act is resolved favorably to the statute's validity. Only a court, and not this Office, may declare an Act to be void for unconstitutionality.

The following general principle of law is applicable here:

> [i]t is an offense under some statutes or ordinances to operate on the highways or streets a motor vehicle which has a weight in excess of a prescribed maximum, and such statutes or ordinances have usually been held valid and enforceable on the ground they constitute a reasonable exercise of the police power.

61A C.J.S. Motor Vehicles, § 685. It is also clearly recognized that "[t]he basis for this exercise of the police power is the protection of the highways, for the construction as maintenance of which the state is responsible." 7A Am.Jur.2d Automobiles and Highway Traffic § 196. As long ago as 1935, our own Supreme Court reiterated this view in State ex rel. Daniel v. John P. Nutt Co., Inc., 180 S.C. 19, 27, 185 S.E. 25 (1935) with the following statement:

> [t]he State may prescribe regulations adapted to conserve its highways as to cost of construction and maintenance, to reasonably restrict their use in favor of normal traffic, and to promote the safety of all who may use them. That there is a direct relation between the weight and size of motor vehicles and the consequent damage to the highways resulting from their use, and the consequent danger to others from their operation, is no longer open to controversy, and reasonable regulations in this respect are within the police power and entirely within the legislative domain.

Still, the specific question of whether Subsection (D) comports with the federal and state Constitutions must be answered. The case of Department of Transp. v. Del-Cook Timber Co., 248 Ga. 734, 285 S.E.2d 913 (1982) involved a somewhat similar issue. There, a timber hauler, who had been cited on various occasions under Georgia's vehicle weight law, brought an action for declaratory relief. He contended that the weight law was unconstitutional as violative of due process.

Like our own law, Georgia's statute established a schedule to determine the financial liability for violation of the weight law. The Georgia law, at the time, required that, within 15 days after issuance of the weight citation, the operator must pay the amount of the assessment to the Department or request an administrative determination of the amount and validity of the assessment. A DOT rule applicable at the time also required that if the hearing officer found adversely to the aggrieved party, the officer was required to issue an order for the immediate payment of any monies owing under the assessment and citation. Such payment was a condition precedent to any appeal from the hearing officer's determination to a Department review. The plaintiff alleged that the requirement that monies be paid prior to any final determination of whether a violation occurred, contravened the principles of due process.

The Supreme Court of Georgia disagreed. Reversing the trial court, the appellate court stated:

> [i]t cannot be said that the administrative proceedings under review are lacking in due process either because the person accused of violating 95A-959 must initiate the proceedings, or because prior to April of 1981 the assessment had to be paid before the proceedings culminated. (emphasis added).

285 S.E.2d at 917.

The case of Levitz v. State, 339 So.2d 655 (Fla. 1976) is also particularly helpful in resolving this question. Pursuant to Florida law, appellant was charged with speeding. The Florida statute provided that one so charged could either pay a designated fine of $25.00 or could request a hearing and, if found guilty, be subject to a penalty not to exceed $500.00. Appellant challenged the constitutionality of the statute on the basis that it violated due process and equal protection. He contended that the Florida statute "subjected him to a greater penalty when he exercised his right to confront witnesses against him."

The Florida Supreme Court held otherwise, however. Responding to appellant's argument, the Court characterized the Florida statute this way:

> Chapter 318, Florida Statutes, does not deprive appellant of his due process right to a full and fair hearing but rather avails him of an alternative more expedient method of complying with the law by merely paying a statutorily determined fine.

339 So.2d at 657. The appellant, as here, after being found guilty was required to pay the designated fine plus certain assessments and court costs. The Court likened the Florida procedure to a type of plea bargain and upheld its validity.

> [a]ppellee, State, contends that in effect Chapter 318.14 Florida Statutes, provides for a type of plea bargaining, a principle not only upheld but also encouraged by the Courts. As was stated by the Second District Court of Appeal in Chambers v. State, 293 So.2d 752 (Fla. App. 2, 1974), for the trial judge to impose a greater sentence after trial than was agreed upon in a plea bargaining agreement if appellant would plead guilty did not penalize appellant for his election to exercise his constitutional right to a jury trial. Pursuant to the challenged statute, there is no question as to the terms of the agreement, if one pays the $25.00 fine he will be deemed to have complied with the law.

Continuing, the Court in Levitz stated:

> If one pleads not guilty and requests a hearing under Chapter 318, Florida Statutes, at the hearing the commission of the charged infraction must be proved beyond a reasonable doubt. Section 318.14(6), Florida Statutes.

> In Colten v. Kentucky, 407 U.S. 104, 92 S.Ct. 1953, 32 L.Ed.2d 584 (1972), wherein appellant challenged the constitutionality of the greater sentence he received in his trial de novo under Kentucky's two-tier system for adjudicating certain criminal cases (whereby a person charged with a misdemeanor may be tried first in an inferior court and, if dissatisfied with the outcome, may have a trial de novo in a court of general criminal jurisdiction but must run the risk, if convicted, of receiving a greater punishment) on the ground that it violated due process requirements, the Supreme Court upheld the constitutionality of Kentucky's two-tier system and imposition of the greater sentence and opined:
>
> > "In reality his choices are to accept the decision of the judge and the sentence imposed in the inferior court or to reject what in effect is no more than an offer in settlement of his case and seek the judgment of judge or jury in the superior court with sentence to be determined by the full record made in that court. We cannot say that the Kentucky trial de novo system, as such, is unconstitutional ... ."
>
> The State posits that by Chapter 318, Florida Statutes, the State merely grants an "offer in settlement" to one charged with a "noncriminal traffic infraction."
>
> It is undisputed that if one chooses to contest a traffic citation all constitutional guaranteed due process rights are available to him.
>
> This Court finds that Section 318.14(5), Florida Statutes, is constitutional and not violative of due process guarantees or equal protection of the law.

339 So.2d at 657-658. See also, State v. Hilton, 291 S.C. 276, 353 S.E.2d 282 (1987) [harsher sentence after appeal and retrial not unconstitutional].

Likewise, here Section 56-5-4160(D) does not deprive a person charged with committing a weight violation of any rights of due process or equal protection. The

statute permits the person to either pay the fine directly or "receive a hearing in magistrate's court." The only difference between the two procedures is that if the person chooses to pay the fine directly to the Department and pays it within the designated time, no assessments are added to the fine. If the person chooses to contest the citation and "there is no conviction, the fine must be returned to the owner promptly." Moreover, there is no suggestion whatever that any procedures are denied a person who chooses to contest the matter in magistrate's court. In short, the difference is not one of procedure, but simply the amount paid if the individual chooses to go to a hearing and loses. This is, in reality, no more than the designated "offer in settlement" upheld in the Levitz case. I conclude that the statute would pass constitutional muster in light of the foregoing authorities referenced herein.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

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