

The State of South Carolina



T. Travis Medlock
Attorney General

803-734-3970
Columbia 29211

Attorney General

April 6, 1993

The Honorable David P. Schwacke
Solicitor, Ninth Judicial Circuit
Post Office Box 70100
North Charleston, South Carolina 29415-0100

Dear Solicitor Schwacke:

In a letter to this Office you questioned whether a sentencing judge possesses discretionary authority to suspend any or all of the monetary fine provided by S.C. Code Ann. 56-5-2945. Such statute provides a criminal penalty for causing great bodily injury or death by operating a vehicle while under the influence of drugs or alcohol. The provision states that an individual violating such provision upon conviction

... must be punished:

- (1) by a mandatory fine of not less than five thousand dollars nor more than ten thousand dollars and mandatory imprisonment for not less than thirty days nor more than ten years when great bodily injury results;
- (2) by a mandatory fine of not less than ten thousand dollars nor more than twenty-five thousand dollars and mandatory imprisonment for not less than one year nor more than twenty-five years when death results.

No part of the mandatory sentences required to be imposed by this section may be suspended, and probation may not be granted for any portion.

The Honorable David P. Schwacke

Page 2

April 6, 1993

Generally, in interpreting a statute the primary purpose is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 297 (1987). Moreover, when interpreting a statute, the legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in light of the intended purpose of the statute. Gambrell v. Travelers Insurance Co., 280 S.C. 69, 310 S.E.2d 814 (1983). It is also a rule of statutory construction that where a statute is clear and unambiguous, there is no basis for construction and the terms of the statute must be given their literal meaning. Duke Power Co. v. S.C. Tax Commission, 292 S.C. 64, 354 S.E.2d 902 (1987).

In State v. Chana, 476 N.W.2d 38 at 40 (Iowa, 1991) the term "sentence" was defined as "any punishment imposed by the court." The Court further specified that the term "sentence" is not limited to a period of incarceration. In State v. Holland, 574 P.2d 605 at 607 (1978), the New Mexico Court of Appeals determined that a "fine" is a "sentence." See also: State v. Pitts, 548 P.2d 1202 (Az. 1976) (a "fine" is a criminal penalty and plainly constitutes a "sentence"); State v. Sheaves, 747 P.2d 1237 (Az. 1987) (any "fine" imposed upon individual by sentencing court constitutes a "sentence").

As referenced, Section 56-5-2945 provides for a "mandatory fine" and "mandatory imprisonment" and further specifies that "no part of the mandatory sentences ... may be suspended." It appears that the term "sentence" as used should be construed to include both a fine and a term of imprisonment. Accordingly, it appears that a sentencing judge is without discretionary authority to suspend any or all of the monetary fine provided by Section 56-5-2945. As referenced, such provision sets forth a mandatory fine and a mandatory term of imprisonment for the offense.

Inasmuch as Section 56-5-2945 specifically provides for mandatory sentences, S.C. Code Ann. Section 24-21-410 which authorizes the court to suspend imposition of a sentence would not apply. Such construction is consistent with the general rule that as to any apparent conflict between statutes, the later statute in a general law will be construed as an exception to a former statute so as to harmonize the whole. Moreover, where a conflict exists between statutes, the more recent statute will control inasmuch as such is the later expression of the General Assembly. See: Opin. of the Atty. Gen. dated November 27, 1983; Ex parte Turner, 24 S.C. 811 (1886); 2A Sutherland Statutory Construction § 51.02. Section 56-5-2945 is the more recent expression of the legislature.

This interpretation would comport with the intention of the General Assembly as expressed in the title to Act No. 58 of 1987 which provides the sentences set forth in current Section 56-5-2945. The title states:

The Honorable David P. Schwacke
Page 3
April 6, 1993

AN ACT TO AMEND SECTION 56-5-2945, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO FELONY DUI, SO AS TO INCREASE THE PENALTY FOR VIOLATION, PROVIDE THAT NO PART OF THE MANDATORY SENTENCES REQUIRED MAY BE SUSPENDED AND PROBATION MAY NOT BE GRANTED FOR ANY PORTION,

As referenced in an opinion of this Office dated November 22, 1983 "(w)hile the title of an act is not a formal part of the act, the title is often referenced to determine the intention of the legislature and to aid in interpreting the act." The title appears to make clear the legislative intent that mandatory sentences be imposed. Such language specifically stating that no mandatory sentence may be suspended was not included in Act No. 114 of 1983 which contained the original Section 56-5-2945.

In your letter you stated

This request is based upon a perceived conflict in the language of this offense when viewed in conjunction with South Carolina Code of Laws § 56-5-2940. I ask that your opinion specifically address the following: while both Code Sections provide that no part of the minimum sentences provided be suspended, only § 56-5-2940(2) specifically restricts the authority of the sentencing judge to suspend the fine (despite language apparently providing for a mandatory minimum fine). Therefore, is the reference to the "sentence" which may not be suspended in § 56-5-2945 inclusive of both the period of imprisonment and the fine?

Sections 56-5-2940 and 56-5-2945 were included in Act No. 114 of 1983 the former as an amendment to such provision and the latter as a newly-enacted provision. Included in Section 56-5-2940 as set forth in Act No. 114 was the language that

No part of the minimum sentences provided herein shall be suspended. The court may provide in lieu of service other sentences provided herein: For a third offense or any subsequent offense or for a violation of Section 56-5-2945 as it relates to great bodily injury the service of the minimum

The Honorable David P. Schwacke

Page 4

April 6, 1993

sentence is mandatory; provided, however, the judge may provide for the sentence to be served upon such terms and conditions as he deems proper including but not limited to weekend service or nighttime service in any fashion he deems necessary.

Nothing herein shall prohibit the court from suspending all or part of the monetary fines, except for first offense.
(emphasis added.)

There appears therefore to be a distinction in 56-5-2940 as set forth in Act No. 114 between "fines" and "imprisonment" for purposes of suspension. As referenced, the provision states:

No part of the minimum sentences provided herein shall be suspended ... (However) ... (n)othing herein shall prohibit the court from suspending all or part of the monetary fines, except for first offense.

Therefore, while a term of imprisonment may not be suspended, there was authorization for suspension of fines, except for a first offense.¹ The prior opinion of this Office dated November 22, 1983 noted previously indicated that Section 56-5-2940(3) as amended by Act No. 114 of 1983 provides for mandatory imprisonment for third and subsequent offenses without the possibility of suspending a portion of any sentence. There was no

¹In 1988, Section 56-5-2940 was amended by Act No. 532 to change the penalty for a DUI second offense to a fine of not less than two thousand dollars nor more than five thousand dollars. It was specifically provided that "... the fine imposed by this item may not be suspended in an amount less than one thousand dollars." Such sentence is reflected in your question set forth above. It was also similarly provided as in Act No. 114 of 1983 that

No part of the minimum sentences provided herein shall be suspended ... The fine for a first offense may not be suspended. The court is prohibited from suspending a monetary fine below that of the next preceding minimum monetary fine.

The Honorable David P. Schwacke

Page 5

April 6, 1993

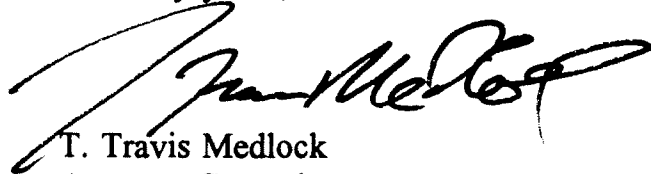
reference to any question dealing with the authority to suspend a fine. Section 56-5-2945 as set forth in Act No. 114 provided for "mandatory fines" and "mandatory imprisonment" but, again, did not specifically prohibit suspension of all or a part of any mandatory sentence. However, as indicated, pursuant to Act No. 58 of 1987, a specific prohibition against suspension of any mandatory sentence was established.

While arguably a distinction may exist for purposes of Section 56-5-2940 between "fines" and "imprisonment" for purposes of the provision prohibiting suspension of a "sentence", the provision noted above in Section 56-5-2945 which states "no part of the mandatory sentences ... may be suspended" was enacted as part of Act No. 58 of 1987. Such was therefore later in time than the provisions of Section 56-5-2940 referenced above where the ambiguity may exist as to what constitutes a "sentence." Therefore, again, it is the opinion of this Office that a sentencing judge is without authority to suspend any or all of the monetary fine provided by Section 56-5-2945.

CONCLUSION

A sentencing judge lacks the authority to suspend all or part of the monetary fine imposed upon a person convicted of felony DUI. The language contained in Section 56-5-2945, that no part of the mandatory "sentences" may be suspended, includes the fines imposed as well as the imprisonment set forth.

Sincerely yours,



T. Travis Medlock
Attorney General

TTM/an