

# The State of South Carolina



## Office of the Attorney General

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February 17, 1993

C. Jo Anne Wessinger, Esquire  
Labor, Commerce and Industry Committee  
House of Representatives  
P. O. Box 11867  
Columbia, South Carolina 29211

Dear Ms. Wessinger:

In a letter to this Office you raised questions relating to recent actions by the State Department of Highways and Public Transportation (hereafter "the Department") involving convictions for careless driving. You indicated that the Department's computer system was reprogrammed to reflect convictions retroactive to April, 1992. You stated that in October, 1992 the Department notified all entities requesting driver records information (MVRs) that a code had been developed for convictions for careless/negligent driving and such convictions would be shown on the MVR. It was indicated that this action was due in part because of a federal requirement that records of convictions of careless/negligent driving be maintained for commercial driver's licenses. Referencing such you asked the following questions:

- (1) As a result of this self-imposed creation of law, did the Highway Department usurp the power of the General Assembly to legislate in violation of the S.C. Constitution by extending a federal requirement regarding commercial licenses to others? If so, what remedies are available for aggrieved persons? Is the Highway Department subject to any penalties for this action?
- (2) Will these state officials [Highway Department] be responsible to aggrieved private citizens, assuming in

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this instance, where the official's actions are deemed invalid and inappropriate since he has overstepped his statutory authority and/or usurped the power of the General Assembly? How and to what extent? Or, is there any statute or court ruling making such person immune from the consequences and liability of his actions?

Pursuant to S.C. Code Ann. Sections 56-7-20 and 56-7-30, copies of uniform traffic tickets are forwarded to the Department "within ten days of the disposition of the case by final trial court action or by nolle prosequi." S. C. Code Ann. Section 56-1-540 (2) states that the Department shall:

File all accident reports and abstracts of court records of convictions received by it under the laws of this State and, in connection therewith, maintain convenient records or make suitable notations in order that an individual record of each licensee showing the convictions of such licensee and the traffic accidents in which he has been involved shall be readily ascertainable and available for consideration of the Department upon application for renewal of license and at other suitable times.

S.C. Code Ann. Section 38-73-455(E) states:

For purposes of determining the applicable rates to be charged an insured, an automobile insurer shall obtain and review an applicant's motor vehicle record.

See also: S.C. Code Ann. Section 38-73-455(A)(4) (Convictions for driving violations for purposes of insurance ratings are determined by review of "... the motor vehicle record of each insured driver as maintained by the Department of Highways and Public Transportation.")

The South Carolina Merit Rating Plan, State Insurance Department Regulation 69-13.1, provides for the assignment of surcharge points as to insurance coverage. The Regulation in Sections III (H)(3) and (I)(5) provides for the assignment of points for a "moving violation, except speeding, other than those specified herein," except that if any such moving violation resulted in an accident for which points are assignable, only the points for the accident shall be assigned. It is my understanding that the Department

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recognizes careless/negligent driving as a "moving traffic violation." It is also my understanding that the Department of Insurance considers a conviction for careless/negligent driving when reflected on an MVR to be a surchargeable offense.

Referencing the above, it appears that the action by the Department in including careless/negligent driving convictions on motor vehicle records of individuals was consistent with State law. Of course, if the General Assembly desires to prohibit the application of surcharge points for such a violation, presumably legislation could be enacted to specifically prevent the increase in automobile insurance premiums for the offense of careless driving. Such would be similar to other legislation which prevents an increase in premiums for first offense driving too fast for conditions or driving with a defective taillight. See S.C. Code Ann. Sections 38-77-360(A) and State Department of Insurance Regulation 69-13.1 III (A)(12) and (13).

As to your remaining question regarding any possible liability of Department officials, it appears that liability would not arise where actions are consistent with State law. Generally this State's Tort Claims Act, S.C. Code Ann. Sections 15-78-10 et seq., provides a remedy for tortious acts of an individual arising from his official duties. However, such is not exhaustive as to other potential civil remedies which may be available, such as remedies pursuant federal constitutional law, depending on the circumstances.

If there is anything further, please advise.

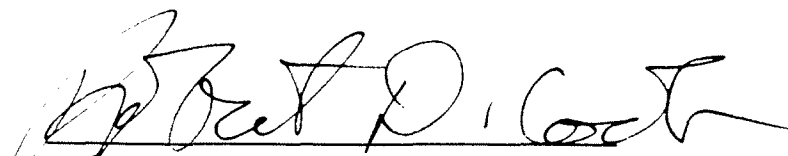
Sincerely,



Charles H. Richardson  
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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