



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

August 7, 1996

Lt. W. E. Robbins  
Department Training Officer  
City of York Police Department  
P. O. Box 500  
York, South Carolina 29745

Re: Informal Opinion

Dear Lt. Robbins:

You have made the following inquiry:

1. Can driving under suspension convictions in another state be legally held against a person charged with driving under suspension in South Carolina?
2. If a person is stopped in S.C. and the officer learns that the person is a S.C. resident and has been for several months, but does not have a S.C. driver's license. The officer learns that a person did have a S.C. driver's license in the state that he moved from, and that it expired several months ago, but the record shows a suspended status for that license. The officer then checks the person's S.C. driving record and finds that the record is clear.

You wish to know "[b]ased on the law, what is the proper charge to make against this person, Driving with out a driver's license or driving under suspension?"

Your questions have been addressed in prior opinions of this Office. In Op. Atty. Gen., Op. No. 87-83 (October 12, 1987), we commented upon the situation of "whether the punishment provisions for driving under suspension apply if the suspension was of an out-of-state license." We stated:

Section 56-1-460 defines the offense as "(a)ny person who drives a motor vehicle on any public highway of this state when his license to drive is canceled, suspended or revoked ...."

Pursuant to Section 56-1-30 of the Code a nonresident who possesses a valid driver's license issued by his home state is exempt from obtaining a license in this state. Instead of issuing an additional license to nonresidents, such persons are afforded the "privilege" of operating a motor vehicle in this State. See: Section 56-1-10 (10) (defines "nonresident's operating privilege" as "... the privilege conferred upon a nonresident by the laws of this State pertaining to the operation by such person of a motor vehicle, or the use of a vehicle owned by such person in this State") Such "privilege" however may be suspended by this State. See: Section 56-1-320 of the Code.

Section 56-1-340 provides that receipt by the Department of the record of the conviction in this State of a traffic offense by a nonresident, a copy of such record may be transferred to the motor vehicle administrator of the State where the person was convicted is a resident. Such provision implies that the conviction is being forwarded to the other State for its information and possible action, such as possible suspension of the driver's license issued by that State to the individual who was convicted in this State of a traffic offense. Moreover, pursuant to Section 56-1-320 of the Code, this State is authorized to suspend or revoke the license of a resident of this State upon receipt of notice of that person's conviction in another state of an offense which, if committed in South Carolina, would be grounds for suspension or revocation of a South Carolina driver's license. Therefore, such provisions indicate an intent to make it the responsibility of the State which issues a driver's license to take action to suspend or revoke any license that State issues. See: 7A Am.Jur.2d, Automobile and Highway Traffic, Section 107 (1980); Opinion of the Attorney General of Kansas dated January 18, 1985; Act No. 72 of 1987 (The Driver License Compact).

Lt. Robbins  
Page 3  
August 7, 1996

Referencing the above, in the opinion of this Office, if a resident of this State or of any other State has had his driver's license canceled, suspended or revoked he would be in violation of Section 56-1-460 if that individual drives a motor vehicle in this State during the period his license is canceled, suspended or revoked. Therefore, in specific response to your question, the punishment provisions for Driving Under Suspension do apply if the suspension was an out-of-state license. (emphasis added).

Moreover, in Op. No. 88-51 (June 20, 1988), we noted that

[a] prior opinion of this Office dated August 3, 1984 ... dealt with the question of the proper charge for individuals apprehended for Driving Under Suspension. Such opinion stated that:

Section 56-9-500 and 56-1-400, when read together, make it clear that once a license is suspended, the person has no privilege to drive, even if his term of suspension has expired, until certain procedural steps are taken to regain his license. The expiration of the suspension term operates only to signal a time after which [these] procedural steps may be initiated.

The opinion concluded that once a license is suspended, it remains suspended until proof of financial responsibility is provided and the requirements of Section 56-1-400 have been met. The opinion further determined that if such requirements are not met by an individual whose license has been suspended, then such an individual who was apprehended while Driving Under Suspension should be charged pursuant to Section 56-1-460 of the Code.

Consistent with the provisions noted above which detail requirements that must be met before a license has been suspended may be reissued or returned are the provisions of Section 56-1-390 of the Code which state

Lt. Robbins  
Page 4  
August 7, 1996

(w)henever the State Highway Department (Department), under any law of this State, suspends or revokes the license of any person under lawful authority possessed by the Department, and proof of future financial responsibility is made a prerequisite to reinstatement, such license shall remain suspended or revoked and shall not at any time thereafter be renewed, nor shall any license thereafter be issued to that person until he shall also remit to the Department a reinstatement fee of ten dollars.

Therefore a reinstatement fee must be paid in such circumstances.

These opinions remain the opinions of this Office. Accordingly, it is the position of this Office that an individual who has had his licensed suspended in another State would be treated as Driving Under Suspension in South Carolina if caught driving without a license. Until such time as the conditions for removing a Driving Under Suspension are in fact removed, this Office takes the position that an individual driving on the highways of this State while suspended in another state is Driving Under Suspension.

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

RDC/an