



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

July 18, 1997

Douglas Graffagnino, Chief of Police  
Seneca Police Department  
P. O. Box 4773  
Seneca, South Carolina 29679-4773

Re: Informal Opinion

Dear Chief Graffagnino:

You have sought advice on two different situations. As to the first, you note that you were advised by your city attorney "that any property received by the police department [which is "lost and found" property], whose owner cannot be ascertained, falls within the requirements of the 'Unclaimed Property Act', Chapter 18 of Title 27 of the South Carolina Code of Laws." You note that "[d]ue to the amount of property acquired by the police department, any law requiring the department to hold the property for a period of five years will require us to provide additional storage space to store these items." You indicate that "[b]icycles are the most common item held in our 'lost-and-found'." Your questions are:

1. Is the police department bound by Title 27 Chapter 18 in regards to lost-and-found property?
2. Are persons who found property, and submitted said property to the police to try to ascertain ownership, entitled to the property if an owner is not found within a certain length of time?

Your second question involves the issue of the seizure of a suspended drivers license or vehicle license plate by a municipal police officer. You inquire as to whether

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1. Municipal police officers have the authority to seize suspended drivers license or vehicle license plates?
2. The seizure of such licenses [would] be in conflict with the person's fourth amendment rights since it would be a warrant-less seizure?

I believe the statute you are referencing is S.C.Code Ann. Section 27-21-20. Such Section provides as follows:

(A) If property has been recovered by a sheriff of a county or chief of police of a municipality and ownership is ascertained:

(1) The sheriff or chief of police shall notify the owner no later than ten working days after a recovery that the property has been recovered and may be reclaimed.

(2) An owner of the property must be notified by certified mail that his property has been recovered. The notice must contain a list of the specific items. An owner has sixty calendar days in which to claim the property. The notice also must include a statement that, if the property is not claimed within sixty calendar days, the property will be sold at public auction to the highest bidder.

(B) The sheriff of a county or chief of police of a municipality may sell at public auction any recovered stolen or abandoned property after he has held it for sixty days and declared it abandoned by the jurisdiction. The sheriff or chief of police shall make a diligent effort to ascertain the true owner of the property and at least twice before the sale advertise the property with its full description in a newspaper having general circulation in the county or municipality having jurisdiction of the property and post the advertisement in the sheriff's office or the police department and at the courthouse. At any time after thirty days have elapsed after publication of the second advertisement, the sheriff or chief of police may sell to the highest bidder at a place designated by the sheriff or chief of police the abandoned or recovered stolen property as advertised. The sheriff or chief of police shall turn over all

proceeds of the sale to the county or municipal treasurer who shall pay any debts incurred in holding the sale and then shall place the final proceeds in a special fund.

(C) If after diligent efforts the owner of the property cannot be ascertained or if the property is not reclaimed or sold at public auction, the sheriff of a county or chief of police of a municipality may dispose of any recovered stolen or abandoned property as provided in this subsection.

(1) Property that is not suitable for sale, including, but not limited to, clothing, food, prescription drugs, weapons, household cleaning products, chemicals, or items that appear nonusable, including, but not limited to:

(a) electric components that appear to have been skeletonized, where parts have been removed and are no longer in working order; or

(b) items that have been broken up and only pieces exist may be destroyed by the jurisdiction holding the property.

(2) The sheriff or chief of police may use any property recovered by his jurisdiction if the property is placed on the jurisdiction's inventory as property of the jurisdiction.

(3) The sheriff or chief of police, with the consent of the appropriate governing body, may turn over to any organization exempt from tax under Section 501(c)3 of the Internal Revenue Code of 1986, items of abandoned or recovered property that may be used for the betterment of that organization. However, the accrued value of the items given to an individual organization as provided above by a sheriff or chief of police shall not exceed a value of one thousand dollars in the respective government entity's fiscal year.

(D) A jurisdiction recovering property pursuant to the provisions of this section shall maintain a permanent record of all property recovered and its disposition.

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This relatively new provision of the Code is summarized by one writer as follows:

[u]nder Section 27-21-20 (A) of the South Carolina Code, if property is recovered by a sheriff or chief of police and the name of the owner is known, the owner must be notified by certified mail within 10 days after recovery that the property may be reclaimed.

If ownership is unknown, however, the sheriff or chief of police shall advertise the property at least twice before any sale of the property and shall fully describe the property in the newspaper and post a copy at the courthouse and police station. At any time after 30 days after publication, the sheriff or chief of police may sell the property at public auction. Before the property can be sold at public auction, however, it must have been held for sixty days and declared abandoned by the jurisdiction. All proceeds shall be turned over to the county or city treasurer who shall hold the funds. Within one year of the sale, the true owner may apply for the net proceeds.

9 S.C. Juris. § 20.1 (1994 Supplement). While the Uniform Unclaimed Property Act, § 27-18-10 et seq., is also clearly applicable to a municipal police department, see §27-18-20 (15) [definition of "person" includes "governmental subdivision or agency"], such Act primarily relates to intangible personal property [money, checks, currency, money orders, written instruments, etc.] and thus § 27-21-20 would most likely be the procedure to dispose of the types of tangible personal property (bicycles, etc.) with which you are concerned.

With respect to your second factual situation regarding confiscation of a suspended driver's license and license plates, this question was addressed in Op. Atty. Gen., Op. No. 91-1 (January 4, 1991). There, we stated as follows:

[i]n your last question you asked who is responsible for performing the administrative function of confiscating and transmitting surrendered driver's licenses to the Highway Department ... . [P]ursuant to Section 56-1-365 of the Code when an individual is convicted of an offense which requires suspension or revocation of a driver's license, he "... shall surrender immediately or cause to be surrendered his driver's

license to the clerk of court or magistrate upon the verdict or plea." ... [M]emorandums from the State Court Administration office dated December 20, 1988 and July 17, 1990 ... reference the procedure for forfeiture of driver's licenses. The December, 1988 memorandum which was addressed to clerks of court, magistrates and municipal judges states as to driver's license suspensions under Section 56-1-365, highway department personnel may collect any forfeited licenses from the court. However, if such are not so collected, it would be the responsibility of the clerks of court, magistrates and municipal judges to transmit such. The July, 1990 memorandum forwarded to clerks of court, magistrates, municipal court judges, family court judges and circuit court judges referenced that Act No. 532 of 1988, which included Section 56-1-365,

"... required clerks of court, magistrates and municipal judges to forward driver's licenses that have been revoked or suspended to the Highway Department. Act Nos. 602 and 604 of 1990 substantially revised the list of offenses for which driver licenses may be revoked or suspended ... The procedure for transmittal of licenses to the Highway Department remains basically unchanged ... (citing the memorandum of December, 1988) ... .

Therefore, such instructions appear to indicate it is the responsibility of the clerks of court or the referenced judges to perform the task of confiscating and transmitting surrendered driver's licenses to the Highway Department. Presumably such would also include notifying the Department of the adjudications of juveniles as well. Of course, any clarification of such instructions should be requested of the Court Administration office. Also, clarification could be sought by statutory amendment.

However, Section 56-10-45 (A) was recently amended to provide for the following:

(A) The Department of Public Safety may enter into agreements with other municipal and county law enforcement

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agencies for the collection of suspended or revoked drivers' licenses, motor vehicle registrations, and motor vehicle plates. The department must assess a fifty dollar fine for each item recovered pursuant to this section in addition to any other fines assessed. Upon collection, this fine must be returned on a quarterly basis to the general fund of the municipality or county which initiated the enforcement action.

Thus, this Section provides for a statutory mechanism to further utilize law enforcement officers pursuant to a working agreement with the Department of Public Safety to confiscate suspended or revoked drivers' licenses, motor vehicle registrations and motor vehicle plates.

I would note that in addition Section 56-10-240 also further requires that if a motor vehicle is or becomes an uninsured vehicle while licensed, the owner shall obtain insurance within five days or surrender license plates and registration certificates. Such statute further requires that

[i]f the vehicle owner unlawfully refuses to surrender the suspended items as required in this article, the department through its designated agents or by request to a county or municipal law enforcement agency may take possession of the suspended license plates and registration certificate and may not reissue the registration until proper proof of liability insurance coverage is provided and until the owner has paid a reinstatement fee of two hundred dollars. A person who voluntarily surrenders his license plates and registration certificate before their suspension shall only be charged a reinstatement fee of five dollars.

Reference is also made to § 56-1-510 of the Code. This provision makes it a misdemeanor "to display or cause or permit to be displayed or have in [one's] possession any canceled, revoked, suspended, or fraudulently altered driver's license or personal identification card ...." Thus, it is a crime in South Carolina even to possess a suspended driver's license. It is generally recognized that "contraband" is property which is illegal for a particular offender to possess, even if possession of such property by another would not be illegal. In the Interest of Thomas B.D., 1997 WL 305063 (S.C. App. 1997). A police officer is permitted to seize what clearly is incriminating evidence or contraband when it is properly discovered by the officer. Washington v. Chrisman, 455 U.S. 1, 5-6, 102 S.Ct. 812, 815-16, 70 L.Ed.2d 778 (1982).

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Our Supreme Court has recognized that a police officer who properly stops a vehicle for a traffic violation (or some other violation by law) may briefly detain the vehicle and its occupants while he examines the vehicle registration and driver's license. Sikes v. State, 448 S.E.2d 560 (1994). The Court has also held that identification of oneself as a police officer and request to see the driver's license with nothing more, is not a "seizure" for purposes of the Fourth Amendment. State v. Culbreath, 300 S.C. 232, 387 S.E.2d 255 (1990). See, Annot., 6 A.L.R.3d 506 (1966). Other courts have held that the request by an officer to check the validity of a driver's license is reasonable. State v. Ellenbecker, 159 Wis.2d 91, 464 N.W.2d 427 (App. 1990). As noted, the mere possession of a suspended license is a crime in South Carolina and the seizure of the license by the officer is contraband and, therefore, seizable. Thus, typically no Fourth Amendment violations would occur so long as the stop was proper.

In summary, there are certain procedures and statutes which specify the manner of confiscating a suspended or expired driver's license, tags and registration. However, State law also makes it a crime to possess a suspended driver's license or personal identification card. Thus, assuming the officer's stop of a vehicle is proper, the seizure of this or other contraband or evidence of a crime may be, depending upon the facts of the situation, entirely appropriate and proper on the officer's part.

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/ph