6572 Library

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

September 25, 1998

The Honorable Donna B. Owens
Florence Municipal Judge
City-County Complex DD
180 N. Irby Street
Florence, South Carolina 29501-3456

Re: **Informal Opinion**

Dear Judge Owens:

You reference S. C. Code Ann. Sec. 22-5-910, which deals with the Expungment of Records for offenses committed in magistrate's and municipal court. Particularly, you are concerned with the portion of the statute which states that "However, this section does not apply to an offense involving the operation of a motor vehicle, to a violation of Title 50 or the regulations promulgated under it for which points are assessed, suspension provided for, or enhanced penalties for subsequent offenses authorized, or to an offense contained in Chapter 25 of Title 16." You note that "[o]ur court has interpreted the underlined section as referring, to those offenses referred to in § 16-1-57 and based on this reading has not signed off on forwarding any expungment order to Circuit Court for charges covered by § 16-1-57. In addition, you state that

> [i]t has come to my attention that SLED is interpreting the underlined section of 22-5-910 as only being read in conjunction with Title 56 and Title 50 only which if correct would allow for the expungment of 1st offense shoplifting-1000, Breach of Trust-1000 and other property offenses. I spoke with Lt. Means of SLED and he informed me that they have been relying on an opinion from the Attorney General's Office. When I asked for a copy he said it was a verbal opinion. Therefore I am asking for some written direction as

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, S.C. 29211-1549 • TELEPHONE: 803-734-3970 • FACSIMILE: 803-253-6283

Rembert Dennis.

to the legislative intent of the underlined section of § 22-5-910.

Secondly, what is your interpretation of the period of time an individual has to wait prior to applying for expungment if they committed their offense while the code read one year, but their one year wasn't up until after the code had been changed to read three years. Our court has taken the position that they have to wait three years.

Law/Analysis

S. C. Code Ann. Sec. 22-5-910, last amended by Act No. 37 of 1997 provides in pertinent part as follows:

> [f]ollowing a first offense conviction in a magistrate's court or a municipal court, the defendant after three years from the date of the conviction may apply, or cause someone acting on his behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction. However, this section does not apply to an offense involving the operation of a motor vehicle, to a violation of Title 50 or the regulations promulgated under it for which points are assessed, suspension provided for, or enhanced penalties for subsequent offenses authorized, or to an offense contained in Chapter 25 of Title 16. If the defendant has had no other conviction during the three-year period following the first offense conviction in a magistrate's court or a municipal court, the circuit court may issue an order expunging the records. No person may have his records expunged under this section more than once. A person may have his record expunged even though the conviction occurred prior to June 1, 1992.

A number of principles of statutory construction are relevant to your inquiry. 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 697 (1987); Multi-Cinema v. South Carolina Tax Commission, 292 S.C. 411, 357 S.E.2d 6 (1987). The legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in the light of the intended purpose of the statutes. Gambrell v. Travelers Ins. Co., 280 S.C. 69, 310 S.E.2d 814 (1983). A statute as a whole must receive a practical

reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1988). Words used must be given their plain and ordinary meaning. Smith v. Eagle Const. Co., 282 S.C. 140, 318 S.E.2d 8 (1984).

The thrust of your first question is to what do the words "or enhanced penalties for subsequent offenses authorized" refer in the referenced sentence. Looking at the sentence as a whole, its structure and punctuation, it appears to me that such phrase refers solely to its precedent category of offenses, i.e. particular categories of a violation of Title 50. The most logical interpretation of the aforesaid sentence is that the Legislature intended to create three separate categories of offenses which were **excluded** from expungment under § 22-5-910: first, "an offense involving the operation of a motor vehicle"; second, "to a violation of Title 50 of the regulations promulgated under it for which points are assessed, suspension provided for, or enhanced penalties for subsequent offenses authorized" and third, "an offense contained in Chapter 25 of Title 16." The phrase "enhanced penalties for subsequent offenses authorized" is, in other words, merely part of the second category of excluded Title 50 offenses -- those "for which points are assessed, suspension provided for, or enhanced penalties for subsequent offenses authorized." It would make no sense as the sentence is structured for the "enhanced penalties" portion of the statute to refer back to "an offense involving the operation of a motor vehicle" because the Legislature would be limiting in one portion of the statute a category of offenses which had no limitation in another part. Likewise, the "enhanced penalties" phrase does not appear to stand on its own because the word "authorized" would be inappropriately placed in such a context. Accordingly, the logical manner in which to interpret this "enhanced penalties ..." portion of the statute is that such phrase refers to only Title 50 offenses.

As to your second question, I enclose a recent Informal Opinion of September 15, 1998 which addresses the application of the three year waiting period now required by § 22-5-910 to convictions prior to the effective date of the recent amendment. There, it was concluded that

> [a]ccordingly, based upon the foregoing authorities, it is my opinion that the three-year period set forth in § 22-5-910 is applicable to those convicted prior to the statute's effective date. The statute, as amended, expressly specified that the law is applicable to those convicted prior to June 1, 1992. It would make little or no sense to differentiate between the statute's applicability for purposes of the right to expungment, but not in respect to the waiting period to qualify for such

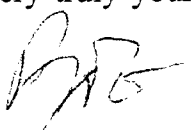
differently, depending upon when convicted. Such a distinction could create potential constitutional problems of unequal treatment.

I must advise, however, that **ultimately** this question is one for the circuit courts of this State to decide. As mentioned above, the circuit court is given exclusive jurisdiction to order expungment. Thus, while my opinion is that the three year waiting period applies uniformly, only the circuit court can resolve such issues definitively.

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
Enclosure