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The State of South Carolina



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January 4, 1991

The Honorable Richard E. McLawhorn
Commissioner
South Carolina Department of Youth Services
P. O. Box 7367
Columbia, South Carolina 29202

Dear Commissioner McLawhorn:

In a letter to this Office you referenced Act No. 602 of 1990 which increases the list of offenses for which an individual's driver's license shall be suspended. Section 3 of the Act states:

The driver's license of a person convicted of a controlled substance violation under Chapter 53 of Title 44 involving hashish or marijuana, committed while the person was at least thirteen years of age and under eighteen years of age, must be suspended for a period of six months. The driver's license of a person convicted of any other controlled substance violation, committed while the person was at least thirteen years of age and under eighteen years of age, must be suspended for a period of one year. If the person does not have a driver's license, the court shall order the department not to issue a driver's license for six months after the person legally is eligible for the issuance of a driver's license if the offense involves hashish or marijuana. If the offense involves any other controlled substance, the court shall order the department not to issue a driver's license for one year after the person legally is eligible for the issuance of a driver's license. For each subsequent conviction under this section, the court shall order the driver's license to be suspended for an additional six months or one year, as the case may be....

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Section 5 of the Act provides

The department shall suspend the driver's license of any person convicted of the offenses contained in Sections 56-1-510 (2), 56-1-510 (4), 56-1-515, 61-9-50, 61-9-60, 61-13-287, 20-7-370, and 20-7-380.... 1/

The specified offenses pertain to driver's licenses and ABC violations. No age limitation is specified.

In your first question you ask whether Act No. 602 applies to juveniles who are "adjudicated delinquent" in family court for drug offenses, as specified in Section 3, or driver's license or "ABC" violations, as specified in Section 5. You stated in your letter

... I would note that both Section 3 and Section 5 of this Act refer to persons who are "convicted" and not to individuals who are adjudicated delinquent for having committed similar offenses. While I recognize that Section 3 (although not Section 5) specifically is directed at persons between the ages of 13 and 18, I would also note that Section 20-7-1330 South Carolina Code of Laws (Cumm. Supp. 1989) states that:

No adjudication by the court of the status of a child is a conviction, nor does the adjudication operate to impose civil disabilities ordinarily resulting from conviction, nor may a child be charged with [a] crime or convicted in a court, except as provided in Section 20-7-430(6).

I would further note that the word "person" as used in Title 16 of the Code of Laws refers to adults (over the age of 17) and that a child, for delinquency purposes, is defined as someone under the age of 17. Section 20-7-390, Code of Laws of South Carolina (1976).

1/ Section 56-1-510 relates to the unlawful use of a driver's license; Section 56-1-515 deals with the unlawful alteration and use of a driver's license; Section 61-9-50 prohibits giving false information concerning age for the purpose of purchasing beer or wine; Section 61-9-60 prohibits the purchase and giving of beer and wine to one who cannot lawfully buy such; Section 61-13-287 makes it unlawful to give to an individual under 21 years of age beer, wine or alcoholic liquor for purposes of consumption; Section 20-7-370 prohibits the purchase or possession of beer or wine by a person under 21 years of age; Section 20-7-380 prohibits the purchase or possession of alcoholic liquor by an individual under 21 years of age.

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Section 3 of Act No. 602 is specific in mandating the suspension of the driver's license of an individual "convicted" of a controlled substance offense which is committed when the individual is at least thirteen but under eighteen years of age. Pursuant to Section 20-7-400 (A) (d) of the Code, the family court has jurisdiction with regard to a child, which as referenced by you is defined by Section 20-7-390 of the Code as a person less than seventeen years of age, "who is alleged to have violated or attempted to violate any state or local law or municipal ordinance ... except as provided in Section 20-7-410." The latter provision grants municipal and magistrate courts concurrent jurisdiction with the family courts with regard to cases involving individuals under seventeen years of age charged with traffic or wildlife violations. However, pursuant to Section 20-7-430 (4) of the Code

(i)f a child sixteen years of age or older is charged with an offense which would be a misdemeanor or felony if committed by an adult and if the court, after full investigation, deems it contrary to the best interest of such child or of the public to retain jurisdiction, the ... (family) ... court may ... bind over such child for proper criminal proceedings to any court which would have trial jurisdiction of such offense if committed by an adult. (emphasis added)

Therefore, as to offenses involving controlled substances involving children between thirteen and fifteen years of age, the family court would retain jurisdiction.

Of course, legislative clarification could be sought which would resolve any ambiguity. However, pending such clarification, Section 3 of Act No. 602, in referring to individuals between thirteen and eighteen years of age "convicted" of controlled substance offenses, should be construed as being applicable to individuals "adjudicated delinquent" in the family courts. To reach a contrary reading would lead to the absurd conclusion that the General Assembly enacted legislation, Section 3 of the referenced Act, which has no meaning. While a child sixteen years of age or older might have a controlled substance case transferred to another court, pursuant to Section 20-7-430 (4) and thereby be "convicted" in such other court, a controlled substance offense case involving a child between thirteen and fifteen years of age must be retained by the family court. To omit cases involving children in the family courts from the mandate of Section 3 that driver's licenses be suspended in the referenced circumstances would result in the conclusion that the General Assembly provided for a situation, the "conviction" of a child of a controlled substance offense, that would never occur. As stated in a prior opinion of this Office dated January 12, 1988,

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"... the Legislature is presumed not to pass legislation with an ineffective or absurd result." See also: Sutherland Statutory Construction, vol. 2A, § 45.12; State Board of Dental Examiners v. Breeland, 208 S.C. 469, 38 S.E.2d 644 (1946); State ex rel McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). Therefore, Section 3 of Act No. 602, in mandating the suspension of the driver's license of an individual convicted of a controlled substance violation who is at least thirteen years of age but under eighteen years of age, would be applicable to juveniles adjudicated delinquent in the family court for such offenses.

A similar conclusion must also be reached as to the provisions of Section 5 of such Act. Inasmuch as Section 5 should not be interpreted to indicate the General Assembly enacted legislation with an absurd result, i.e. no effect as to children between thirteen and fifteen years of age, its provisions should be read as being applicable to juveniles adjudicated delinquent in the family court for the named offenses.

You also asked whether Act No. 602 requires that licenses be suspended for juveniles who are charged with any of the drug, driver's license or ABC violations set forth in Section 3 and 5 if these individuals are allowed by a solicitor's office to participate in a pretrial diversion program, which I understand to be the pretrial diversion program authorized by Sections 17-22-10 et seq. of the Code. Pursuant to Section 17-22-150

(i)n the event an offender successfully completes a pretrial intervention program, the solicitor shall effect a noncriminal disposition of the charge or charges pending against the offender....2/

As referenced, Sections 3 and 5 require the suspension of driver's licenses for individuals convicted of the specified offenses. Inasmuch as no convictions are imposed when an individual successfully completes a pretrial intervention program, the suspension of a driver's license in such circumstance would not be authorized.

In 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 and notifying the Department of the adjudications of juveniles. You noted that pursuant to Section 20-7-410 the family court is required to report all convictions of juveniles for traffic violations to the Highway Department. Also, pursuant 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

2/ Of course, review must be had of Section 17-22-50 as to whether an individual is eligible for a pretrial intervention program.

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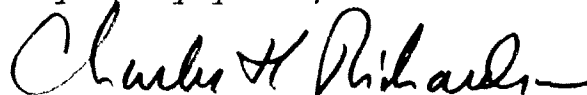
immediately or cause to be surrendered his driver's license to the clerk of court or magistrate upon the verdict or plea." You also referenced memorandums from the State Court Administration office dated December 20, 1988 and July 17, 1990 which reference the procedure for forfeiture of driver's licenses. 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.

With best wishes, I am

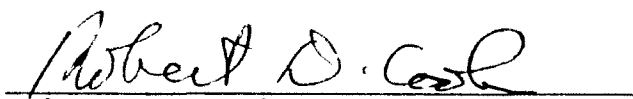
Very truly yours,



Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



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