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November 20, 1990

The Honorable Walter Jones
Chief Judge, Summary Courts
Richland County Law Enforcement Center
1328 Huger Street
Columbia, South Carolina 29201

Dear Judge Jones:

In a letter to this Office you referenced that by Section 1 of Act No. 602 of 1990 Section 56-1-1030 of the Code has been amended to allow individuals determined to be habitual offenders by the Department of Highways and Public Transportation (hereafter "the Department") to appeal to the chief magistrate in the county. Such provision states:

When any person is convicted of one or more of the offenses listed in Section 56-1-1020(a), (b), or (c), the department must review its records for that person. If the department's review of its records shows that the person is an habitual offender as defined in Section 56-1-1020, the department must institute agency proceedings in accordance with the Administrative Procedures Act to revoke or suspend the person's driver's license except that appeals under this section must be made to the appropriate magistrate's court as set forth below. If after appropriate proceedings, the department finds the person to be an habitual offender, the department shall direct the person not to operate a motor vehicle on the highways of this State and to surrender his driver's license or permit to the department. A resident of South Carolina found to be an habitual offender may appeal to the chief magistrate in the county in which the appellant resides. A nonresident person found to be an habitual offender may appeal to the chief magistrate of Richland County. In any appeal, the magistrate shall hear and determine the matter de novo.

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Pursuant to Section 2 of the Act, Section 56-1-1090 was amended to provide for petitioning the Department for restoration of driving privileges. The Department is authorized to reduce the period of suspension from five years to two years. Referencing a chief magistrate's role in the appeal process for individuals determined to be habitual offenders under Section 56-1-1030, you have asked whether a chief magistrate is involved in the appeal process for individuals seeking restoration of driving privileges. Subsection (C) of Section 2 provides that

... upon petition and for good cause shown, the department may restore to the person the privilege to operate a motor vehicle ... The petition ... may be filed after one year has expired from the date of the decision of the department finding the person to be an habitual offender. At this time and after hearing, the department may reduce the five year period ... to a two year period for good cause shown ... If the two year period is not granted, no petition may be filed again until after five years have expired from the date of the decision of the department.

As set forth, no provision is made for the involvement of a chief magistrate in the appeal process for individuals petitioning for restoration of driving privileges. It is a principle of statutory construction that if a statute's language is clear and unambiguous, there is no basis to employ the rules of statutory interpretation or to consider or impose any other meaning. Chestnut v. S. C. Farm Bureau Mutual Ins. Co., 298 S.C. 151, 378 S.E.2d 613 (Ct. App. 1989); Duke Power Co. v. S. C. Tax Commission, 292 S.C. 64, 354 S.E.2d 902 (1987). Therefore, inasmuch as no provision is made for the inclusion of a chief magistrate in the referenced petition process under Section 2 of Act No. 602 as contrasted with the clear inclusion of a magistrate in the appeal process under Section 1 of the referenced Act, no appeal may be made to a magistrate for restoration of driving privileges under Section 2.

With kind regards, I am

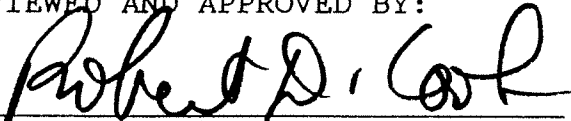
Very truly yours,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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