

The State of South Carolina

Library
3659



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3970

March 24, 1989

The Honorable Olin R. Phillips
Member, House of Representatives
309-C Blatt Building
Columbia, South Carolina 29211

Dear Representative Phillips:

In a letter to this Office you referenced that Act No. 532 of 1988 amended Sections 56-5-2940 and 56-5-2990 of the Code so as to increase the length of the period which may be considered for determining prior offenses of driving under the influence from five years to ten years. Section 56-5-2940 states "(o)nly those offenses which occurred within a period of ten years including and immediately preceding the date of the last offense shall constitute prior offenses within the meaning of this section." Section 56-5-2990 states "(o)nly those violations which occurred within ten years including and immediately preceding the date of the last violation shall constitute prior violations within the meaning of this section." Such statutes prior to being amended referenced five years as the time frame for prior offenses. These provisions of Act No. 532 became effective on January 1, 1989. You questioned whether in a situation where an individual is arrested for driving under the influence before January 1, 1989 and his only conviction for driving under the influence occurred more than five years before the most recent arrest, would the conviction be considered a prior offense under Sections 56-5-2940 or 56-5-2990.

As referenced, prior to January 1, 1989, again, the effective date of the referenced provisions of Act No. 532, only those offenses which occurred within a period of five years constituted prior offenses for purposes of driving under the influence cases. Therefore, as to the situation you described where the offense occurred

The Honorable Olin R. Phillips

Page 2

March 24, 1989

before January 1, 1989, any offense which occurred more than five years prior to that offense would not be considered as a prior offense for purposes of Sections 56-5-2940 or 56-5-2990. The fact that any trial and possible conviction would occur after January 1, 1989 would not make the 1988 amendments to Sections 56-5-2940 and 56-5-2990 effective in this situation. See: Rabon v. S. C. State Hwy. Dept., 258 S.C. 154, 187 S.E.2d 652 (1972).

If there is anything further, please advise.

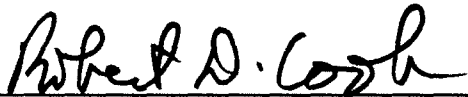
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions