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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
FACSIMILE: 803-253-6283

August 1, 1989

William L. Todd, Assistant Chief Counsel
South Carolina Department of Highways
and Public Transportation
P. O. Box 191
Columbia, South Carolina 29202

Dear Bill:

In a letter to this Office reference was made to an opinion of this Office dated March 24, 1989 which construed a provision in Act No. 532 of 1988 which increased the length of the period which may be considered for determining prior offenses of driving under the influence from five years to ten years. The provisions of Act No. 532 generally became effective January 1, 1989. The opinion concluded that as to an offense which occurred before such date, any offense more than five years prior to that offense would not be considered a prior offense for purposes of the referenced provision. In other words, the ten year period was not effective for offenses which occurred before the effective date of the provision.

You have questioned whether the same analysis would apply to the provisions of Section 56-5-6240(A) of the Code which relate to vehicle forfeiture. Such provision states:

> (i)n addition to the penalties for persons convicted of a fourth or subsequent violation within the last ten years of operating a motor vehicle while his license is cancelled, suspended, or revoked (DUS), or a fourth or subsequent violation within the last ten years of operating a motor vehicle while under the influence of intoxicating liquor or drugs (DUI), the persons must have the motor vehicle they drove during this offense forfeited if the offender is the owner of record, or a resident of the household of the owner of record under the terms and conditions as provided in subsections (B) and (C) and must be confiscated by the arresting officer or other law enforcement officer of that agency at the time of arrest. . . .

You are asking whether such forfeiture provisions are applicable to offenses which were committed prior to the effective date of such provision, January 1, 1989.

A prior opinion of this Office dated June 12, 1987, stated:

> (t)he rule is well established that a statute may not be applied retroactively in the absence of a specific provision or clear legislative intent. In the construction of statutes there is a presumption that statutory enactments are to be considered prospective rather than retrospective in their operation unless there is a specific provision or clear legislative intent to the contrary. No statute will be applied retroactively unless the result is so clearly compelled as to leave no room for reasonable doubt. . . .

See also: Neel v. Shealy, 261 S.C. 266, 199 S.E.2d 542 (1973); Pulliam v. Doe, 246 S.C. 106, 142 S.E.2d 861 (1965); Hyder v. Jones, 271 S.C. 85, 245 S.E.2d 123 (1978). Moreover, in an opinion of this Office dated November 20, 1986, it was stated ". . . it is well settled that statutory enactments which would work as a forfeiture or inflict a penalty should be construed not only strictly but also prospective in application."

I have also contacted individuals familiar with the history of Act No. 532 and it is their opinion that the provisions of Section 56-5-6240(a) regarding forfeiture would be ineffective as to offenses which occurred before January 1, 1989. Support for such construction is also found in language in Section 56-5-6240(A) which states that any such vehicle subject to being forfeited ". . . must be confiscated by the arresting officer or other law enforcement officer of that agency at the time of arrest. . . ." (emphasis added.) Obviously, such procedure would not have controlled as to arrests made before the date of the legislation.

Therefore, it appears that the forfeiture provisions of Section 56-5-6240(A) must be construed as being inapplicable to offenses which occurred before January 1, 1989, the effective date of such provision. Of course, should the Highway Patrol favor making such provisions applicable to offenses prior to such date, this Office would be supportive if the matter is considered by the General Assembly. If there are any questions, please advise.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:

Robert D. Cook
Executive Assistant for Opinions