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March 10, 1986

Victor S. Evans, Chief Counsel
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Public Transportation
P. O. Box 191
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RE: Removal of Habitual Traffic Offender Status

Dear Mr. Evans:

Attorney General Medlock has referred your letter of August 20, 1985 to me for inquiry and reply. The possibility of this matter being disposed of administratively resulted in the delay in my reply.

You presented the following questions, concerning the removal of habitual traffic offender status under Section 56-1-1090 of the SOUTH CAROLINA CODE OF LAWS (1976) as amended:

1. What is the proper court in which to file a petition for reduction of habitual traffic offender status under Section 56-1-1090(c)?
2. Is it the responsibility of the Solicitor's Offices or the South Carolina Department of Highways and Public Transportation to respond to petitions for reduction of habitual traffic offender status under Section 56-1-1090(c)?

Habitual Traffic Offenders are dealt with at Sections 56-1-1010, et seq., CODE OF LAWS OF SOUTH CAROLINA (1976), as amended. An "habitual offender" is defined at Section 56-1-1020 as a person who has accumulated a certain number of convictions for relatively serious traffic-related

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offenses. The numbers and types of offenses necessary to qualify as an habitual offender are set forth in that section. For example, a person convicted three or more times of reckless driving, driving under the influence, and/or driving under suspension, all within a three year period would qualify as an habitual offender.

Further in the statute, the Department of Highways and Public Transportation is required to certify conviction records of those persons who qualify as habitual offenders, and provide them to the Solicitor of the Judicial Circuit in which the person resides, or to the Attorney General if the person is not a resident of this State. A petition is then filed in the Circuit Court, and a non-jury hearing held before the Court of General Sessions. Cases involving non-residents are heard in the Court of General Sessions of Richland County. Sections 56-1-1030, 1040, 1050, and 1060.

If the Court finds that a person is an habitual offender within the definitions provided in the statute, such a declaration is issued, in the form of an order, to be filed with the Clerk of Court. The person is then prohibited from operating a motor vehicle in this State for a period of five years from the date of the order.

In 1984 the General Assembly revised the five year penalty section of the Habitual Traffic Offender Article, by amending Section 56-1-1090(c). It was provided therein that the five year period could be reduced to two years.

(c) Until upon petition, and for good cause shown, the Court may restore to the person the privilege to operate a motor vehicle in this State upon such terms and conditions as the Court may prescribe, subject to other provisions of law relating to the issuance of drivers' licenses. The petition permitted by this item may be filed after a period of one year has expired from the date of the order finding the person to be an habitual offender. At this time and after hearing, the Court in its discretion may reduce the five year period of item (a) to a two year period for good cause shown. If the two year period is granted, it shall run from the date of the original order. If the two year

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period is not granted, no petition may again be filed until after a period of five years has expired from the date of the original order.

The Legislature, then, has by amendment allowed a person declared an habitual traffic offender a one time opportunity to have the five year penalty period reduced to two.

Your first question was which would be the proper court in which to file the petition for reduction from five years to two years under new Section 56-1-1090(c). Jurisdiction for habitual traffic offender cases is vested in the Circuit Court, and more specifically, the Court of General Sessions. Section 56-1-1050 and 56-1-1060. At no point thereafter does any language in the Article relating to habitual offenders divest the Court of General Sessions of jurisdiction. While it is true that appeals shall be taken in the same form as civil actions, Section 56-1-1080, jurisdiction is still not taken from the Court of General Sessions for the original hearing. It should be noted the Habitual Traffic Offender Act carries many of the characteristics of both civil and criminal actions: It is heard in the Court of General Sessions, the burden of proof is less than beyond a reasonable doubt, appeals may be taken as in civil actions, the Solicitor shall prosecute, and the right to operate a motor vehicle in this State is forfeited, similar to the result of a DUI conviction. However, the statute is quite specific that the matter shall be initiated in the Court of General Sessions, and, in my opinion, it would continue to lie there.

As a footnote, I have discussed the matter with officials at the Office of Court Administration. They have instructed Clerks of Court to treat Section 56-1-1090(c) petitions as supplemental actions to the original action, and to be given the same docket number as the original action heard in the Court of General Sessions.

Accordingly, it would be my opinion that, absent statutory language to the contrary, the reduction proceedings described in 56-1-1090(c) should be heard in the Court of General Sessions, without a jury.

Your second question concerned the responsibility for representing the State in 56-1-1090(C) hearings. In my

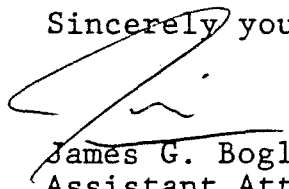
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opinion, the logic applied above would apply. Responsibility for prosecution of habitual traffic offenders is vested in the Circuit Solicitor as discussed above, or the Attorney General. Section 56-1-1040 directs the Solicitor, or the Attorney General, to file the petition against the person in the Circuit Court where he resides, or in the case of a non-resident, in Richland County, respectively. The amendment to Section 56-1-1090 does not divest this responsibility from the Solicitor or the Attorney General. Accordingly, for the reasons stated above, it would be my opinion that, absent contrary language in the statute, the responsibility for responding to petitions under Section 56-1-1090(c) would be that of the Circuit Solicitor for residents of the State, and the Attorney General for non-residents.

Incidentally, I am further advised that this Office would attempt to assist the Solicitors in these cases wherever possible. Of course, the degree of any assistance is dependent upon the availability of the manpower in this Office.

If further information is needed, please do not hesitate to contact me.


Sincerely yours,



James G. Bogle, Jr.
Assistant Attorney General

JGBJr/fc

APPROVED BY:


Robert D. Cook
Executive Assistant for
Opinions