1984 S.C. Op. Atty. Gen. 226 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-95, 1984 WL 159902

Office of the Attorney General

State of South Carolina
Opinion No. 84-95
August 3, 1984

***1 Re: Opinion Request No. 1022**

Victor S. Evans
Chief Counsel
S. C. Department of Highways and Public Transportation
Post Office Box 191
Columbia, South Carolina 29202

Dear Vic:
You have asked for a clarification or a reconsideration of an unpublished opinion issued by this office on December 14, 1982, regarding proper charges for individuals apprehended while driving an automobile while under suspension. You have proposed two hypotheticals and have asked our opinion as to the proper charge in each ease.

HYPOTHETICAL NUMBER 1:

An individual is caught driving whose mandatory suspension time has expired, who has filed proof of financial responsibility as required by § 56–9–500, CODE, but whose license has not been restored because he has not complied with § 56–1–400. The latter section basically requires reapplication and retesting for some offenses as though the applicant were applying for the first time. For those offenses no license may be renewed until these steps are completed.

Section 56–9–500 and § 56–1–400, when read together, make it clear that once a license is suspended, the person under suspension has no privilege to drive, even if his term of suspension has expired, until certain procedural steps are taken to regain his license. The expiration of the suspension term operates only to signal a time after which these procedural steps may be initiated. See: 60 C.J.S., Motor Vehicles, Section 164.49, p. 930. It is clear, then, that the individual in your hypothetical has no right to drive. Our task is to decide under which statute or statutes he may be charged.

Before this decision can be made, it is necessary to determine whether the individual in this hypothetical is still under suspension or is merely driving without a license because the term of his suspension has run out. If it is the former, he must be charged under § 56–1–460. If it is the latter, he must be charged under § 56–1–440.

This determination may be made by reference to § 56–9–500. This section applies to all suspensions and revocations made by the Department under any provision of its statutory authority, with one inapplicable exception. This section states that when the Department has revoked or suspended a license ‘under any law of this State’ the license shall remain revoked or suspended and shall not be renewed ‘until permitted under to motor vehicle laws of this State and not then until he shall give and thereafter maintain proof of financial responsibility’ (emphasis added).

Reading § 56–9–500 and § 56–1–400 together yields the inescapable conclusion that, once suspended, a license remains suspended until (1) proof of financial responsibility is provided, and (2) the procedural steps of § 56–1–400 have been completed. This means that your driver in hypothetical number 1 was apprehended while driving under suspension. He must, therefore, be charged under § 56–1–460. We feel that the 1982 opinion was correct on this point.

HYPOTHETICAL NUMBER 2:

***2** An individual is caught driving whose mandatory suspension time has expired, who has not filed proof of financial responsibility, and whose license has not been restored because the individual has not complied with § 56–1–400. Based on our analysis of hypothetical number 1, we feel that this driver is also apprehended while driving under suspension.

Because your hypothetical asks for reconsideration of the 1982 opinion, because that opinion dealt with individuals whose licenses were suspended for driving under the influence, and because your hypothetical assumes some requirement on the part of the driver to employ with § 56–1–400, we assume that the individual in hypothetical number 2 had his driving privileges suspended for some reason other than a chapter nine violation. This assumption is critical because § 56–9–70 is the exclusive criminal penalty for chapter nine violations. 1973–74 Ops. Atty. Gen., No. 3727, p. 86.

If our assumption is valid, then § 56–9–70 cannot apply because, by its own terms, it only applies where the original suspension was for a chapter nine violation. The only section then left under which to charge this individual would be § 56–1–460.

CONCLUSION

We believe the 1982 opinion reached the proper conclusions under the facts assumed therein. It is, therefore, the opinion of this Office that the individual in hypothetical number 1 must be charged under § 56–1–460. The individual in hypothetical number 2 must be charged under the same statute for the same reason if his original suspension was for something other than a chapter nine violation. If the individual in hypothetical number 2 had his privileges suspended for a chapter nine violation, he must be charged under § 56–9–70.

With kind regards,

Clifford O. Koon, Jr.
Assistant Attorney General

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