

1983 S.C. Op. Atty. Gen. 91 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-58, 1983 WL 142729

Office of the Attorney General

State of South Carolina

Opinion No. 83-58

August 10, 1983

\*1 Honorable Wade S. Kolb, Jr.

Solicitor

Third Judicial Circuit

Sumter County Courthouse

Sumter, S.C. 29150

Dear Wade:

Attorney General Medlock has referred your letter dated July 5, 1983, to me for reply.

Your question concerned whether or not there exists a criminal statute which would punish the wilful and intentional sale or disposition of a motor vehicle on which a lien exists, with intent to defraud the lienholder.

It appears from your letter, and my research through the Code, and discussions with the Legislative Council, that Section 45–157 of the 1962 Code of Laws, most recently amended in 1964, and found in the 1975 supplement to the old Code, set up a prohibition against the disposition of personal property on which a lien existed without written consent of the lienee, and failure to pay the debt secured by the lien within ten days of the sale. The statute went on to provide that a violation would be a misdemeanor, punishable by ten years imprisonment, or a fine of \$500.00, or both. Case law under that statute has held that the removal of said personal property from the State to defeat the lien fit the definition of disposition, as prohibited by the statute. [State vs. Haynes](#), 74 S.C. 450, 55 S.E. 118 (1906).

When the 1976 Code was enacted, the conversion tables listed Section 45–157 as repealed by implication. It appears from the structure of the Uniform Commercial Code, that it was thought that [Section 36–9–311 of the 1976 Code](#) repealed by implication Section 45–157. The cases annotated to the old section are grouped under [Section 36–9–311](#), and the South Carolina Reporter's comments to [Section 36–9–311](#) included a phrase stating that its enactment ‘should’ not affect applicability of Section 45–157. Nevertheless, it was omitted from the Code.

Accordingly, in 1978 the General Assembly re-enacted a modified version of Section 45–157, now found at [Section 36–9–319 of the 1976 Code of Laws](#), as amended. See 1978 Act No. 525, effective June 9, 1978. However, that latest provision, although tracking basically the same language as contained in Section 45–157, specifically excluded personal property titled by the Department of Highways and Public Transportation or the Wildlife Department. It reduced the penalty to one year imprisonment, or a fine of \$500.00 or both.

It would therefore appear from my research and discussions with persons at the South Carolina Department of Highways and Public Transportation that there exist no statutes specifically dealing with the disposition of a motor vehicle, containing substantially the same language as [Section 36–9–319](#). The probable reason for the exclusion of motor vehicles from that Section was the fact that the title remained with the lienholder. The title of other personal property would remain with the owner, but the lienholder would have a security interest therein.

It might be noted, that if the debtor actually sells the encumbered vehicle, he may violate [Section 16–21–10, Code of Laws of South Carolina \(1976\)](#) dealing with the altering, forging, or counterfeiting certificate of title, registration card, or license plate,

and including misrepresentation or concealment in the application for a certificate of title or registration. A violation of that section is a misdemeanor, punishable by up to five years imprisonment, in the discretion of the presiding judge.

\*2 In answer to your second inquiry, I am aware of no federal statute that precisely governs the situation which you present.

If further information is discovered along this line, I will contact you as soon as possible.

Sincerely,

James G. Bogle  
Assistant Attorney General

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