

1982 WL 189506 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 14, 1982

***1 SUBJECT: Motor Vehicles; Licenses**

Individual caught driving whose mandatory suspension time was expired but whose license has not been restored by the Department should be charged under § 56-1-460, whether or not he has filed proof of financial responsibility.

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QUESTION:

You have asked this office to advise you concerning the proper charge to be made against any individual who is apprehended for driving on the highways of this State after his fixed suspension time for driving under the influence has expired and after he has filed with the Department proof of financial responsibility, but before the Department has reinstated his driver's license.

STATUTES AND CASES:

[S. C. Code §§ 56-1-400, 56-1-460, 56-9-70, 56-9-351, 56-9-430, 56-9-500](#); [State ex rel McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 \(1964\)](#).

DISCUSSION:

[§ 56-1-400](#) prohibits the Department from restoring a license suspended for DUI until the licensee has filed an application for a new license, submitted to an examination as upon an original application, and has satisfied the Department after an investigation of the character, habits and driving ability of the person that it would be safe to grant him the privilege of driving a motor vehicle upon the public highways. In other words, a driver's license suspended for DUI remains suspended until such time as the Department has re-examined the licensee and has been satisfied that he can safely operate a motor vehicle.

[S. C. Code § 56-9-500](#) specifies that '[w]henver the Department, under any laws of this State, suspends or revokes the license of any person upon receiving a record of conviction or forfeiture of bail . . . [t]he license . . . shall remain suspended . . . and shall not at any time thereafter be renewed . . . until permitted under the Motor Vehicle Laws of this State and not then until he shall give and thereafter maintain proof of financial responsibility.' (Emphasis added.) § 56-9-620 requires the Department to waive the requirement of filing proof of financial responsibility after three years providing no further convictions have occurred which would permit or require suspension of the individual's license. Nevertheless, it is clear from [§ 56-9-500](#) that a person's driver's license remains suspended until such time as it is restored by the Department pursuant to the Motor Vehicle Laws of this State.

§ 56-9-70 establishes a penalty of 30 days incarceration or \$100.00 fine for anyone driving a motor vehicle while his license 'has been suspended or revoked under this chapter.' (Emphasis added.) There are no enhanced penalties and no additional suspension time imposed for a conviction under § 56-9-70, unlike [§ 56-1-460](#) which does impose additional suspension time and enhanced penalties for second and third offenses. A previous opinion of this office held that § 56-9-70 provided the exclusive penalty for cases of driving while under a suspension effected under the Financial Responsibility Act. 1973-74 Ops. Att'y.Gen.,

No. 3727, p. 86. Since that opinion was issued, it has been the policy of the Highway Patrol to issue citations for violation of § 56-9-70 to anyone caught driving after his fixed period of suspension had passed but before he had filed proof of financial responsibility and was relicensed.

*2 You have inquired about the peculiar situation of a driver who is caught driving after the fixed suspension has passed and after he has filed proof of financial responsibility but before he has been relicensed under § 56-1-400. Since he has filed proof of financial responsibility, he has met all the requirements of Chapter 9 and therefore cannot be charged with a violation of § 56-9-70. But his license remains suspended because of his failure to comply with § 56-1-400, and he must therefore be charged under § 56-1-460. However, under the current Patrol policy, this produces the illogical result that it is better to avoid filing proof of financial responsibility and be charged under § 56-9-70 than to file it and be charged under § 56-1-460. This is because the penalties of § 56-1-460 are considerably more severe than the penalties for violating § 56-9-70. This interpretation thwarts, to a large extent, the scheme of Chapter 9 which seeks to require the filing of proof of financial responsibility by drivers who have had their licenses suspended.

Absurd results cannot have been intended by the legislature and must be avoided if possible. [State ex rel. McLeod v. Montgomery](#), 244 S.C. 308, 136 S.E. 2d 778 (1964). A close review of § 56-9-70 reveals an interpretation removing the absurdity: namely, that § 56-9-70 relates exclusively to suspensions effected under §§ 56-9-351 and 56-9-430. No other suspensions are made 'under this chapter.' Although § 56-9-500 is obviously found in Chapter 9 of Title 56, the section does not itself suspend any driver's license. Rather, it requires the continuation of the suspension until such time as other criteria for reinstating a license are met and until proof of financial responsibility is provided. Even if a licensee provides proof of financial responsibility to the Department, restoration of his driver's license is not automatic, and, in fact, the suspension remains in effect until such time as the Department is satisfied that the individual can safely operate a motor vehicle in this State. §§ 56-1-400 and 56-1-1320.

It is, therefore, the opinion of this office that a person whose fixed suspension time for a DUI conviction has passed and who thereafter has provided the Department with proof of financial responsibility but whose license has not been reinstated by the Department because of a failure to meet the requirements established by § 56-1-400 should be properly charged under § 56-1-460. Further, it is the opinion of this office that a person whose fixed suspension period has passed but who has failed to file proof of financial responsibility should be properly charged under § 56-1-460, not § 56-9-70.

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