

1980 WL 120741 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 24, 1980

***1 RE: Habitual Offender Law**

Senator Edward Saleeby
Post Office Box 519
Hartsville, South Carolina 29550

Dear Senator Saleeby:

You have requested an opinion from this office on the following question:

Is it proper for a conviction for Driving Under Suspension based upon a failure to meet financial responsibility requirements (failure to file SR-22) to be counted as a conviction for Driving Under Suspension for the purposes of the Habitual Offender law?

[Section 56-1-1020, South Carolina Code](#) of Laws 1976, defines an habitual offender as 'any person whose record as maintained in the office of the State Highway Department, shows that he has accumulated the convictions for separate and distinct offenses described in subsections (a), (b) and (c) committed during a three-year period . . . 'Among the so-called 'serious' offenses listed in subsection (a), paragraph (4) '[d]riving a motor vehicle while his license, permit or privilege to drive a motor vehicle has been suspended or revoked.' The act makes no distinction between types of suspensions or revocations, nor does it suggest that the reason for the suspension or revocation is in any way relevant to the determination of whether or not one is to be classified as an habitual offender.

[Section 56-9-500 S. C. Code \(1976\)](#) provides that'. . . in all cases where the Department suspends or revokes the driver's license of any person under lawful authority possessed by the Department, . . . [t]he license and registration shall remain suspended or revoked and shall not at any time thereafter be renewed nor shall any license be thereafter issued to that person nor shall any motor vehicle be thereafter registered in the name of that person 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 provided).

This section speaks in mandatory terms as to the financial responsibility requirement. It also clearly states that the license shall remain suspended or revoked until proof of financial responsibility is given and maintained. Our law, therefore, does not labor under the confusion that a conviction for driving after the fixed period suspension has expired, but before meeting financial responsibility requirements is something other than Driving Under Suspension. SEE 1963-64 Ops. Atty. Gen. No. 1680, P. 130; ALSO 1967 Ops. Atty. Gen. No. 2259, P. 68. Our Supreme Court has also recognized the mandatory nature of the financial responsibility requirements before the suspension of driving privilege may be lifted. [Warren v. Allstate Insurance Company](#), 249 SC 89, 152 S.E.2d 727 (1967); [United States Fidelity and Guaranty Company v. Security Fire and Indemnity Company](#), 248 S.C. 307, 149 S.E.2d 647 (1966).

The General Assembly has included a penalty section within the Financial Responsibility Act for driving while license or registration or operating privilege has been suspended or revoked pursuant to Chapter 9. (56-9-70 S. C. Code 1976). This section provides for fine or imprisonment, but is silent as to additional suspension time. The civil penalty of driver's license suspension or revocation in addition to criminal penalties of fine or imprisonment for an offense is not a pre-requisite for the inclusion of that offense within the ambit of the Habitual Offender Act. For example, a conviction of first offense reckless driving carries no license suspension time, but there is no question but that it must be included as one of the so-called serious offenses enumerated in [§ 56-1-1020\(a\)](#).

*2 The Legislative Declaration of Policy for the Habitual Offender Act, as contained in [Section 56-1-1010, South Carolina Code](#) 1976, states that the Act's primary purpose is '[t]o provide maximum safety for all persons who use the public highways of this State . . . ' by denying the driving privilege to persons who 'have demonstrated their indifference to the safety and welfare of others and their disrespect for the laws of this State ' . . . ' One who drives while his license is suspended or revoked, regardless of the underlying cause of the suspension or revocation, when coupled with two other so-called serious offenses as enumerated in [§ 56-1-1020](#), certainly demonstrates an indifference to the safety and welfare of others and disrespect for the laws of this State.

It is the opinion of this office that a conviction for Driving Under Suspension as a result of failure to meet financial responsibility requirements is properly included as one of the three offenses necessary to constitute the habitual offender status.

Sincerely,

Patrick M. Teague
State Attorney

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