ALAN WILSON
ATTORNEY GENERAL

December 1, 2015

The Honorable Kevin S. Brackett
Solicitor, Sixteenth Judicial Circuit
Moss Justice Center
1675-1A York Highway
York, SC 29745-7422

Dear Solicitor Brackett:

We are in receipt of your opinion request concerning Section 56-5-6240(A) of the South Carolina Code. Specifically you ask "whether or not convictions for violations of the [South Carolina Driving with an Unlawful Alcohol Content] law 56-5-2933 and/or out of state convictions for violation of law prohibiting a person from driving a motor vehicle while under the influence of intoxicating liquor, drugs, or narcotics, should be considered for the purpose of determining the number of prior violations under Section 56-5-6240(A)." Our response follows.

I. Law

As mentioned in your letter, Section 56-5-6240 of the South Carolina Code addresses, among other things, the "forfeiture, confiscation, and disposition of vehicles seized for conviction of [Driving Under Suspension ("DUS") and Driving Under the Influence ("DUI")]." See S.C. Code Ann. § 56-5-6240 (2006) (explaining, via legislative title, that the statute deals with "[f]orfeiture, confiscation, and disposition of vehicles seized for conviction of DUS and DUI"). In particular, the statute explains an individual convicted of a "fourth or subsequent violation . . . of operating a motor vehicle while his license is canceled, suspended, or revoked (DUS)" within the last five years, "or a third or subsequent violation . . . of operating a motor vehicle while under the influence of intoxicating liquor or drugs (DUI)" within the last ten years, "must have the motor vehicle he drove during the offense. . . forfeited . . . ." S.C. Code Ann. § 56-5-6240(A). As we understand it, it is the meaning of Section 56-5-6240(A)'s use of the phrases—"fourth or subsequent . . . DUS" and "third or subsequent . . . DUI" which form the basis of your question.[1]

II. Analysis

[1] Section 56-5-2933(A) of the South Carolina Code, entitled, in part, "[d]riving with an unlawful alcohol concentration" explains, "[i]t is unlawful for a person to drive a motor vehicle within this State while his alcohol concentration is eight one-hundredths of one percent or more." S.C. Code Ann. § 56-5-2933(A) (2014 Supp.).

At its core, your question is one of statutory construction; particularly, whether Section 56-5-6240(A)'s language concerning convictions for "operating a motor vehicle while his license is canceled, suspended, or revoked (DUS)" or "operating a motor vehicle while under the influence of intoxicating liquor or drugs (DUI)" are intended as mere factual descriptions of DUS and DUI convictions generally or, are, in the alternative, specific references to South Carolina's DUS and DUI statutes. For instance, if Section 56-5-6240(A)'s DUS and DUI language is understood as a mere description of the class of cases that trigger forfeiture under the statute, then it follows that convictions for violating Section 56-5-2933, as well as out of state convictions, "for violation of law prohibiting a person from driving a motor vehicle while under the influence of intoxicating liquor, drugs, or narcotics" both count toward the number of offenses which trigger Section 56-5-6240(A)'s confiscation and forfeiture provisions. Conversely, if Section 56-5-6240(A)'s DUS and DUI language is construed as only referencing the South Carolina statutory crimes of DUS and DUI then a conviction for violating Section 56-5-2933 regarding driving with an unlawful alcohol content, as well as a conviction for violating out of state laws concerning driving under the influence of intoxicating liquor, drugs, or narcotics, should not be considered prior convictions for purposes of Section 56-5-6240(A)'s "fourth or subsequent . . . DUS" or "third or subsequent . . . DUI" provisions. With this in mind, we must now turn to the cannons of statutory construction.

"The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will" and "courts are bound to give effect to the expressed intent of the legislature." Media General Communications, Inc. v. South Carolina Dept. of Revenue, 388 S.C. 138, 148, 694 S.E.2d 525, 530 (2010); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002). When determining the effect of words utilized in a statute, a court looks to the "plain meaning" of the words. City of Rock Hill v. Harris, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011). Nevertheless, courts do not focus on isolated portions of the language contained within a statute, but instead consider the statute's language as a whole. See Mid-State Auto Action of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) ("In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole."). This is because "[a] statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent." 2A Norman J. Singer & J.D. Shambie Singer, Sutherland Statutes and Statutory Construction, § 46.5 (7th ed. 2007).

Applying these concepts, we believe the better understanding of Section 56-5-6240(A)'s DUS and DUI language is that the phrases were intended to serve as mere factual descriptions of the offenses and convictions triggering forfeiture of a vehicle pursuant to the terms of Section 56-5-6240. Specifically, while it is true forfeiture statutes must be strictly construed as explained in Ducworth v. Neely, 319 S.C. 158, 163, 459 S.E.2d 869, 899 (Ct. App. 1995), because the ultimate goal of statutory construction is "to ascertain and effectuate legislative intent whenever

possible" Rainey, 341 S.C. at 85, 533 S.E.2d at 581, Section 56-5-6240(A)'s mandatory forfeiture language must be read consistent with the policy, purpose and design of the Legislature. See Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992) (explaining a statute must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the Legislature). Thus, because our prior opinions reflect that forfeiture is intended as a mandatory remedy for individuals meeting the requisite number of applicable convictions, Section 56-5-6240(A) cannot be read as merely dealing with South Carolina's statutory DUS or DUI charges, but must instead be describing *any* charge characterized as either driving a vehicle without a valid license or driving a vehicle under the influence of drug or alcohol.

Both our appellate courts as well as this Office have recognized mandatory forfeiture under Section 56-5-6240 reflects a policy of making "consequences more serious upon conviction for successive violations." Op. S.C. Att'y Gen., 2001 WL 129345 (January 22, 2001) (quoting City of Sumter Police Dep't v. One (1) 1992 Blue Mazda Truck (VIN #JM2UF1132N0294812), 330 S.C. 371, 498 S.E.2d 894 (Ct. App. 1998)). As explained in our 2001 opinion, this policy goal is met through the statute's "manifest purpose to *provide for forfeiture of the driver's vehicle upon conviction* for a covered offense[.]" Op. S.C. Att'y Gen., 2001 WL 129345 (January 22, 2001) (emphasis added). Indeed, we recently said, the statute's "overarching legislative intent" is "forfeiture of the vehicle." Op. S.C. Att'y Gen., 2015 WL 5737884 (September 15, 2015).

Here, understanding the policy behind Section 56-5-6240(A)'s mandatory forfeiture provision, we believe that in order to give full effect to the statute's legislative intent—mandatory vehicle forfeiture for individuals repeatedly ignoring licensing requirements and restrictions on driving under the influence of drugs and/or alcohol—Section 56-5-6240(A)'s DUS and DUI language must necessarily be considered a factual description of the type of offenses which trigger forfeiture under the statute. While it is true the statute includes the often-used abbreviations of DUS and DUI, it does not contain a reference to South Carolina's DUS or DUI statutes as one would expect if the Legislature intended to limit the statute's applicability to violations of South Carolina's DUS and DUI statutes. See Rainey, 341 S.C. at 86-87, 533 S.E.2d at 582 (explaining with respect to statutory construction that, "to express or include one thing implies the exclusion of another or the alternative."). To the contrary, a review of the statute's language, particularly the plain meaning of the phrases "a . . . violation . . . of operating a motor vehicle while his license is canceled, suspended, or revoked" and "a . . . violation. . . of operating a motor vehicle while under the influence of intoxicating liquor or drugs" both reflect that the statute is intended to apply to any violation that could be characterized by these terms, as opposed to violation of one specific statute. In fact, if the statute were interpreted any narrower it would clearly compromise the statute's intent of providing "consequences more serious upon conviction for successive violations." Op. S.C. Att'y Gen., 2001 WL 129345 (January 22, 2001) (quoting City of Sumter Police Dep't v. One (1) 1992 Blue Mazda Truck (VIN

#JM2UF1132N0294812), 330 S.C. 371, 498 S.E.2d 894). Indeed, and as noted by the Kentucky Supreme Court in Division of Driver Licensing, Dep't of Vehicle Reg. v. Bergmann, 740 S.W.2d 948, 950 (Ky. 1987) interpreting the statute in such a manner ensures uniform treatment of all individuals violating DUS and DUI statutes rather than having different results for out-of-state offenders or new residents versus their in-state counterparts.

Moreover, this Office when construing other provisions of Section 56-5-6240, has come to similar conclusions. As an example, when interpreting the statute's "fourth or subsequent violation" and "third or subsequent violation" language, we concluded the language was not intended to apply to specific offenses such as DUS 4th or DUI 3rd, but was instead a mere descriptor of when the statute's mandatory forfeiture language is triggered; after four DUS convictions or three DUI convictions within the applicable timeframe. See Op. S.C. Att'y Gen., 1991 WL 474770 (June 25, 1991) ("[I]n the opinion of this Office, in circumstances where a defendant originally charged with a fourth offense DUS or DUI pleads to a third offense, the vehicle driven at the time of the arrest may still remain subject to forfeiture if in fact that offense was the fourth or subsequent DUI or DUS violation for that driver within the last ten years.").

Additionally, our Court of Appeals, in City of Sumter Police Dep't v. One (1) 1992 Blue Mazda Truck (VIN #JM2UF1132N0294812), came to the same conclusion when interpreting Section 56-5-6240's "fourth or subsequent violation" and "third or subsequent violation" language. Specifically, the Court, after citing to prior cases from South Carolina appellate courts interpreting similar statutory provisions,[2] found Section 56-5-6240's "fourth or subsequent violation" and "third or subsequent violation" language was "determined by the number of offenses accumulated by the offender, regardless of how those convictions are denominated." 330 S.C. at 378, 498 S.E.2d at 897. Continuing, the Court, explaining its interpretation, said "[t]he exact term of the revocation is determined by the number of offenses accumulated by the offender. *The number of offenses does not relate in any way to the basic charge of DUI.*" 330 S.C. at 378, 498 S.E.2d at 898. (emphasis added). Accordingly, we believe, consistent with the understanding of Section 56-5-6240 utilized in our prior opinion as well as that relied on by our appellate courts, that Section 56-5-6240's DUS and DUI language is intended to serve as a mere factual description of the offenses and convictions triggering forfeiture of a vehicle pursuant to the terms of Section 56-5-6240, and is not intended to exclusively reference South Carolina's DUS or DUI statutes.

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[2] See City of Sumter Police Dep't v. One (1) 1992 Blue Mazda Truck (VIN #JM2UF1132N0294812), 330 S.C. at 376-77, 498 S.E.2d at 897 (citing Cummings v. S.C. State Highway Dep't, 271 S.C. 89, 245 S.E.2d 127 (1978)) (explaining that Section 56-5-2990's mandatory license suspension upon a third DUI conviction applied despite the fact the driver pled to DUI, second offense); see City of Sumter Police Dep't v. One (1) 1992 Blue Mazda Truck (VIN #JM2UF1132N0294812), 330 S.C. at 376-77, 498 S.E.2d at 897 (citing McDaniel v. S.C. Dep't of Pub. Safety, 325 S.C. 405, 481 S.E.2d 155 (Ct. App. 1996)) (detailing that Section 56-5-2990's mandatory permanent license revocation language applied to a driver who had committed a fifth DUI offense, despite the fact the individual pled to a negotiated fourth-offense DUI).

III. Conclusion

To summarize, it is the opinion of this Office that Section 56-5-6240(A)'s DUS and DUI language must be understood as providing a mere description of the class of cases triggering vehicle forfeiture in light of the statute's overriding legislative intent to provide heightened consequences for individuals repeatedly ignoring licensing requirements and restrictions on driving under the influence of drugs and/or alcohol. As explained above, had the Legislature intended a different construction, it could have done so by specifically cross-referencing South Carolina's DUS and DUI statutes; however, it did not. As a result, and relying on the plain meaning of the terms of Section 56-5-6240, it follows that convictions for violating Section 56-5-2933, as well as out of state convictions, "for violation[s] of law prohibiting a person from driving a motor vehicle while under the influence of intoxicating liquor, drugs, or narcotics" both count toward the number of offenses that trigger Section 56-5-6240(A)'s confiscation and forfeiture provisions.

Sincerely,

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REVIEWED AND APPROVED BY:

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