

1975 WL 29562 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 4, 1975

**\*1 Re: Restoring Possessory Lien on Motor Vehicles**

The Honorable Wheeler M. Tillman  
P. O. Box 4295  
Charleston Heights, SC 29405

Dear Mr. Tillman:

The Attorney General has referred your letter of February 20, 1975, to me for reply. The question you have raised in your letter is:

Does your proposed possessory lien on motor vehicles statute conflict with the Claim and Delivery law in South Carolina?

The Claim and Delivery Act and your proposed statute are two separate and distinct legal actions. However, the constitutional due process considerations would be the same. In 1973, the United States District Court, District of South Carolina, in the case of Jenkins v. John Halloran, et al., Civil Action 72-1477, held Section 41-151, South Carolina Code of Laws (1962) (Distress for Rent Act) to be unconstitutional as violative of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. This decision was based upon several United States Supreme Court decisions which have held statutes authorizing persons to seize other persons property without due notice and a pre-seizure hearing as unconstitutional. As a result of these decisions, South Carolina's Distress for Rent statute and its Claim and Delivery statute were amended to provide for due notice and a pre-seizure hearing.

It is my belief that your proposed statute would violate the same due process and equal protection considerations. Therefore, I would recommend that you include in your proposed statute similar provisions requiring due notice and a pre-seizure hearing. I also noticed that your statute provides that any law enforcement officer may render assistance in obtaining possession of the vehicle. Normally, statutes such as this have provided that the sheriff or a magistrate's constable are the proper law enforcement officers to make this type of seizure.

I hope this letter has been of some help to you. If you should desire a further opinion in this matter, please do not hesitate to contact me. With cordial best wishes, I remain

Very truly yours,

Richard B. Kale, Jr.  
Assistant Attorney General

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