

1973 WL 26810 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 11, 1973

***1 In Re: Driver License Records, SCHD Action Upon Receipt of Notice of Reopening of Cases**

Honorable Silas N. Pearman
Chief Highway Commissioner
State Highway Department
Columbia, South Carolina 29202

Dear Mr. Pearman:

This Office has received an inquiry from the Department as to what action it should take upon receipt of notice from a magistrate or municipal court that a traffic case has been reopened, requesting that the driver record of the licensee be changed in accordance with the subsequent disposition of the case, or that it be changed pending disposition of the case upon trial.

BOND FORFEITURES

When a traffic case has been disposed of by simple forfeiture of bond, the magistrate or municipal judge is empowered to grant a trial. The forfeiture of the bond money to the county or municipality is for nonappearance at trial and does not constitute a conviction in the sense that it is a determination of guilt or innocence.

For purposes of suspension and the point system, however, a bond forfeiture is tantamount to conviction.

For these reasons, you are advised that you should take no action with reference to changing a driver record upon receipt of notice (letter or order) that a trial has been granted in such a case; but, upon receipt of official notice that the licenses has been found not guilty at trial, or that the case has been not prosessed by proper authority (prosecuting officer, city prosecuting attorney, or solicitor), your driver records should be corrected accordingly. Notice from a magistrate or municipal judge that such ascase has been 'dismissed' will not be authority for you to change the driver record, because no magistrate or municipal judge is empowered to 'dismiss' a traffic change except upon a finding of not guilty upon trial of the case.

TRIAL IN ABSENCE

When a case has been disposed of by trial in absence, and the bond money applied to payment of the find, no new trial may be granted by the municipal judge or magistrate at any time thereafter for any reason. [Mitchell v. Batesburg](#), 58 S.C. 564. If written notice of appeal was served upon the judge within five days after conviction, a circuit judge or county judge may order a new trial upon appeal, even though the fine was satisfied on the day of conviction. Section 7-103, 1962 Code of Laws, as amended.

When a traffic case has been disposed of by trial in absence, a finding of guilty, and satisfaction of the fine by application of the bond money, no court has jurisdiction to order a new trial after the expiration of five days unless notice of appeal was noted within the five day period. [State v. Dickert](#) (SC), filed June 5, 1973.

You are advised that it is the statutory duty of the Department to suspend or assign points under the point system as provided by law, and that you have no authority to change such records except upon proper notice of a valid change in the disposition of the case by lawful procedures. When it is evident from the records of your office that an alleged change in such disposition has resulted from procedures that are not lawful, the matter should be referred to this Office immediately for study.

*2 Every order from a circuit court or county court affecting the suspension of a driver license should be referred to this Office for study on the same day it is received by the Department.

Yours very truly,

Joseph C. Coleman
Deputy Attorney General

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