

1973 S.C. Op. Atty. Gen. 234 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3578, 1973 WL 21035

Office of the Attorney General

State of South Carolina

Opinion No. 3578

July 19, 1973

***1 In Re: Driving While Right to Obtain License is Suspended, Section 46–192, 1962 Code.**

Colonel P. F. Thompson
Commanding Officer
State Highway Patrol
Columbia, South Carolina 29202

Dear Colonel Thompson:

You have inquired whether or not the penalties provided for driving under suspension (Section 192.1, 1962 Code, as amended) are applicable to a case in which an unlicensed defendant drives a motor vehicle while his right to obtain a license is suspended. (Section 46–192).

The penalties for driving while license is suspended or privilege to drive under the license of another state, the Federal government, or another country, is under suspension, are contained in Section 46–192.1, 1962 Code, as amended. Penalties are increased for second and third offenses. Section 46–192.1 does not cover cases involving the driving by a person who did not have a license or privilege which could be suspended. Such persons are covered by the provisions of Section 46–192, which provides a penalty of \$100 or 30 days. for driving when their right to obtain a license is under suspension.

The apparent inequity in our law is explained in this way. In 1959, Act No. 255, General Assembly of South Carolina, recodified most of our driver license law. Section 46–182(a) of the Act provided a penalty of \$100 or 30 days for driving while license or privilege to drive was suspended. There was no increased penalty for second or subsequent offense. Section 46–182(c) of the Act provided the same penalty for a person who had no license and was convicted of an offense for which his license could have been suspended had he possessed one, if he drove thereafter during the period for which the license could have been suspended. At that time, and until the next change in our law increasing the penalty for second and subsequent offense driving under suspension, the penalties for both offenses were the same.

When the law was changed to increase the penalties for driving while license or privilege was under suspension, second and subsequent offenses, the penalty for driving while right to obtain a license was under suspension was apparently overlooked, and, as a result, remained the same.

The offense contained in Section 46–192 is not ‘driving without a license’ (Section 46–191), but ‘driving while right to obtain a license is suspended’, and the penalty for violation of 46–192 is \$100 or 30 days.

This opinion supersedes Opinion No. 3081, Ops. of the Attorney General, dated February 1, 1971, on the same subject.

Yours very truly,

Joseph C. Coleman
Deputy Attorney General

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