

1973 S.C. Op. Atty. Gen. 314 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3637, 1973 WL 21089

Office of the Attorney General

State of South Carolina

Opinion No. 3637

October 1, 1973

***1 In Re: Special North Carolina Driver Licenses Permitting Restricted Operation While Regular License Suspended, Recognition by South Carolina**

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

Dear Colonel Thompson:

You have inquired whether or not the State Highway Patrol should permit operation in this State by a North Carolina resident whose regular license is under suspension for drunk driving, but who has a special license issued pursuant to a judge's order under North Carolina law permitting restricted operation, such as from home to work and return.

It is argued that such restricted license issued pursuant to North Carolina law is 'a valid operator's or chauffeur's license' under provisions of Section 46–153, 1962 Code of Laws of South Carolina, issued to the nonresident by his home State, and that operation in South Carolina should be permitted under whatever conditions are imposed upon it by North Carolina law—under authority of Section 46–153(2).

The foregoing position would be valid if the question were simply one of 'driver license or no driver license', but it overlooks entirely the provisions of Section 46–179, which reads:

'The Department may suspend or revoke the license of any resident of this State or the privilege of a nonresident to drive a motor vehicle in this State upon receiving notice of the conviction of such person in another state of an offense therein which, if committed in this State, would be grounds for the suspension or revocation of the South Carolina license.'

Although the word 'may' is used in this section, it is a well-known rule of statutory construction that 'may' will be read as 'shall' when the statute, read in its entirety and in relation to other applicable statutes, demands it. As applied to drunk driving convictions, such reading is required. Section 46–348 states that the license of a resident of South Carolina 'shall' be suspended upon conviction for drunk driving, and the South Carolina Supreme Court in [Parker v. State Highway Department](#), 224 S.C. 263, 78 S.E. 2d 382, has said:

'The suspension (for drunk driving) follows as a consequence and effect of committing the offense. It is a forfeiture of the privilege to drive, due to the failure of the licensee to observe certain conditions under which the license was issued.'

It is not conceivable to me that the General Assembly intended to make it mandatory for the 'license' of a South Carolina resident to be suspended upon conviction for drunk driving, and, at the same time, permit a nonresident to operate in this State under an out-of state 'privilege' in the same circumstances. The General Assembly could enact such a statute, but I do not feel that it has made such provision.

Under the argument made for the validity in this State of a restricted license from another state, if some state should change its laws so that suspension would not result from drunk driving, South Carolina would be required to permit continued operation by

nonresidents simply because their home state did not suspend for such violation. Further, conviction of a nonresident in this State of drunk driving would not permit South Carolina to suspend such nonresident's operating privilege unless the nonresident's home state saw fit to suspend his home state license. I cannot read such a legislative intent into South Carolina statutes.

*2 In view of the foregoing, it is the opinion of this Office that conviction of an out-of-state licensee in his home state for drunk driving results in the suspension of his privilege to operate a motor vehicle in this State for the same period of time for which the license of a resident would be suspended for conviction under the laws of this State.

More specifically, it is the opinion of this Office that a North Carolina resident whose regular North Carolina driver license has been suspended for drunk driving may not operate lawfully in this State under a special or restricted license issued by North Carolina under provisions of North Carolina law. His privilege to Operate in this State no longer exists, because of his conviction for drunk driving in his home state.

Yours very truly,

Joseph C. Coleman
Deputy Attorney General

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