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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

February 15, 2000

Jeremy M. Keller, Chief of Police
North Police Department
P.O. Box 399
North, South Carolina 29112-0399

Dear Chief Keller,

Thank you for your letter of January 7, 2000, which has been referred to me for a response. You ask for an opinion of this Office about provisional and restricted South Carolina drivers' licences. The South Carolina Code uses several terms to refer to each kind of license. To provide some clarification, I will attempt to distinguish some of the different licenses from another.

South Carolina Code Section 56-1-175 allows for the issuance of a "provisional driver's license" to a person between fifteen and sixteen years of age who has completed certain driver training requirements and education requirements. This provisional license permits the unsupervised use of the vehicle only during daylight hours. The statute reads, in part:

(A) The department may issue a provisional driver's license to a person who is at least fifteen years of age and less than sixteen years of age, who has:

- (1) held a beginner's permit for at least ninety days;
- (2) passed a driver's education course as defined in subsection (D);
- (3) passed successfully the road tests or other requirements the department may prescribe; and
- (4) satisfied the school attendance requirement contained in Section 56-1-176.

(B) A provisional driver's license is valid only in the operation of:

- (1) vehicles during daylight hours. The holder of a provisional license must be accompanied by a licensed adult twenty-one years of age or older after six o'clock p.m., or eight o'clock p.m. during daylight saving time. A provisional driver's license holder may not drive between midnight and six o'clock a.m., unless accompanied by the holder's licensed parent or guardian;

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S.C. Code § 56-1-175. South Carolina also allows for the issuance of another kind of provisional license to one who has been convicted of a first offense for certain violations. Article 7 of Chapter 1 of Title 56, labeled "Provisional Drivers' Licenses," reads, in part:

A person with a South Carolina driver's license, a person who had a South Carolina driver's license at the time of the offense referenced below, or a person exempted from the licensing requirements by Section 56-1-30, who is or has been convicted of a first offense violation of an ordinance of a municipality, or law of this State, that prohibits a person from operating a vehicle while under the influence of intoxicating liquor, drugs, or narcotics, and whose license is not presently suspended for any other reason, may apply to the motor vehicle division of the department to obtain *a provisional driver's license of a design to be determined by the department to operate a motor vehicle...*

S.C. Code § 56-1-1320 (emphasis added). This provisional license does not require the age, training, and education prerequisites for qualification, nor confine the hours of operation to daylight, as does the provisional license of §56-1-175. Both provisional drivers' licenses in some manner limit the driving privileges of the holder, but in § 56-1-175 the limitations are explicit and in §56-1-1320 the "department" (S.C. Department of Highways and Public Transportation) determines the design.

Also provided for in Chapter 1 of Title 56 are restricted licenses. Section 56-1-170 allows for the issuance of a "restricted license" if the department has good cause to believe restrictions are suitable for the safe operation of the vehicle. A violation of these restrictions may lead to the suspension of the license. *See* S.C. Code §56-1-170 (A). If, however, a person's license is suspended for a violation of one of the restrictions, and the person is employed or enrolled in a college or university, he may apply for a "special restricted license." A special restricted license "permit[s] him to drive only to and from work or his place of education and in the course of his employment or education during the period of his suspension." *See* S.C. Code §56-1-170 (B). The department may also issue a special restricted license to minors between the ages of sixteen and seventeen, which waives the requirement of supervision after daylight hours if the minor is traveling to and from work or school at the time. *See* S.C. Code §56-1-180.

Now that I have provided the background information above, I can now address your specific questions in turn.

1) "Is statute 56-1-175 worded wrong where it should read Issuance of a Special Restricted Driver's License as referenced in statutes 56-1-180 and 56-1-185?"

Without comment on whether the General Assembly should or should not have chosen the terms "provisional driver's license" for § 56-1-175 to describe this type of license, the Code does consistently use the terms special restricted license to refer only to licenses allowing exceptions for traveling to and from work or school. *See* S.C. Code §§56-1-170 (B), 56-1-180. In § 56-1-175, the statute is not referring to special restricted licenses, as the terms are used elsewhere.

2) "Where is there documentation on the design of a provisional license for someone who has obtained a provisional driver's license because of a DUS or DUI conviction?"

Section 56-1-1320, which allows for the issuance of a provisional license to a person whose license

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has been suspended for a DUI or other conviction, states that the person "may apply to the motor vehicle division of the department" for a license "of a design to be determined by the department." Furthermore, "[t]he determination of whether or not a provisional license may be issued...must be made by the director of the department or his designee. *Id.* Thus, the department, defined by § 56-1-10 as the South Carolina Department of Highways and Public Transportation, is charged with determining the design of the license and should have that documentation.

3) "Where is the documentation on a route restricted driver's license?"

Because there is no reference to a "route restricted driver's license" in the South Carolina Code, the license you are probably referring to is the special restricted license of §§ 56-1-170 and 56-1-180. Section 56-1-170 states "the department...shall designate reasonable restrictions on the times during which and routes on which the person may operate a motor vehicle. A change in the employment hours, place of employment, status as a student, or residence must be reported immediately to the department by the licensee." Section 56-1-180, which allows special restricted licenses for minors says "[t]he restrictions...may be waived or modified by the department if the restricted licensee proves to the department's satisfaction that the restriction interferes" with the person's employment or travel to and from work or school. Again, the department is charged with determining the reasonableness of the route and the hours of operation. Also, the department must be notified under §56-1-170 if the required information changes. Therefore, the Department of Highways and Public Transportation should have the documentation on special restricted licenses, as well.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General not officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General