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The State of South Carolina



Office of the Attorney General

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January 10, 1990

The Honorable Willford L. Faile
Sheriff, Lancaster County
Post Office Box 908
Lancaster ,South Carolina 29720

Dear Sheriff Faile:

In a letter to this Office you questioned sentencing practices for second offense driving under the influence. Pursuant to Section 56-5-2940 of the Code, an individual convicted for such offense is punished

... by a fine of not less than two thousand dollars nor more than five thousand dollars and imprisonment for not less than forty-eight hours nor more than one year for the second offense. However, the fine imposed by this item may not be suspended in an amount less than one thousand dollars, and of that amount two hundred fifty dollars must be remitted to the Victim's Compensation Fund. In lieu of service of imprisonment the court may require that the individual complete an appropriate term of public service employment of not less than ten days upon terms and conditions the court considers proper ... No part of the minimum sentence provided herein shall be suspended.

You questioned whether it is mandatory for a defendant to stay in jail for a full forty-eight hours if so sentenced.

In our telephone conversation you indicated that in certain circumstances, an individual serving a term of imprisonment of a specified number of days may enter jail late in a day or be released early in a day and still get credit for a day's imprisonment. As referenced, Section 56-5-2940 is quite specific in mandating a term

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of imprisonment of "not less than forty-eight hours" for individuals convicted of second offense driving under the influence. As recognized in a prior opinion of this Office dated October 12, 1989, "... where a statute is clear and unambiguous, there is no room for construction and the terms of the statute must be given their literal meaning." See also: Duke Power Co. v. S. C. Tax Commission, 292 S.C. 64, 354 S.E.2d 902 (1987). Therefore, it is apparent that pursuant to Section 56-5-2940, a full forty-eight hour term of imprisonment must be served by individuals convicted of second offense driving under the influence where such a sentence is imposed.

If there is anything further, please advise.

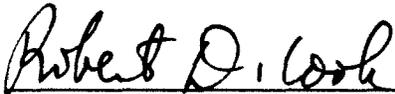
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



Robert D. Cook
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