

The State of South Carolina



Office of the Attorney General

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June 25, 1991

Ruby Hardy, Deputy Clerk
Court Records Division
Office of the Clerk of Court
Pickens County
Post Office Box 215
Pickens, South Carolina 29671

Dear Ms. Hardy:

In a letter to this Office you questioned whether in circumstances where a defendant is charged with a fourth offense DUI or DUS charge but pleads to a third offense, is the vehicle which was driven at the time of the arrest subject to forfeiture pursuant to Section 56-5-6240 of the Code. Such provision states in part:

In addition to the penalties for persons convicted of a fourth or subsequent violation within the last ten years of operating a motor vehicle while his license is canceled, suspended, or revoked (DUS), or a fourth or subsequent violation within the last ten years of operating a motor vehicle while under the influence of intoxicating liquor or drugs (DUI), the persons must have the motor vehicle they drove during this offense forfeited....

Section 56-1-460 of the Code provides the penalties for driving under suspension and states that

only those violations which occurred within a period of five years including and immediately preceding the date of the last violation constitute prior violations within the meaning of this section. (emphasis added)

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Section 56-5-2940 of the Code provides the penalties for driving under the influence and states that

only those offenses which occurred within a period of ten years including and immediately preceding the date of the last offense shall constitute prior offenses within the meaning of this section. (emphasis added)

The five years for considering prior DUS violations pursuant to Section 56-1-460 contrasts with the ten years for considering prior DUS violations for purposes of Section 56-5-6240. This Office in an opinion dated July 20, 1989 stated that in considering the disparity between the two provisions, it was apparent that the General Assembly intended to provide separate time periods of ten and five years for relating back for prior offenses. The opinion stated

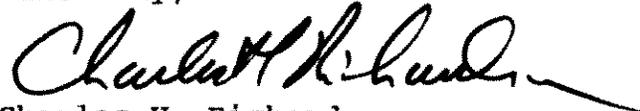
... inasmuch as such provisions relate to two distinct proceedings, one a criminal proceeding and the other a civil forfeiture proceeding, the two provisions may stand on their own. We are unable to conclude any clear basis for a construction that would provide a ten year period for Section 56-1-460.

Referencing the distinctions between Sections 56-5-6240 and 56-1-460 it appears that as to Section 56-5-6240, the reference to a "fourth or subsequent violation" of DUS within the last ten years does not necessarily indicate that for purposes of forfeiture of a motor vehicle there must be a conviction of a fourth or subsequent DUS offense pursuant to Section 56-1-460. In other words, while a defendant may only be convicted and sentenced for a DUS third offense, in reality it may be a fourth or subsequent offense. Such would be the situation where the fourth or subsequent offense may have occurred over five years before and therefore would not be considered for purposes of Section 56-1-460. Even though Section 56-5-2940 provides for a ten year period in considering prior DUI offenses and thus is the same as Section 56-5-6240, I am unaware of any basis to construe the circumstances differently than in the situation involving Section 56-1-460. Therefore, in the opinion of this Office, in circumstances where a defendant originally charged with a fourth offense DUS or DUI pleads to a third offense, the vehicle driven at the time of the arrest may still remain subject to forfeiture if in fact that offense was the fourth or subsequent DUI or DUS violation for that driver within the last ten years.

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If there is anything further, please advise.

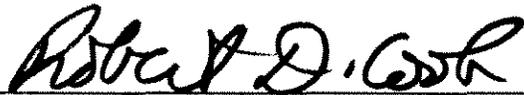
Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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