

# The State of South Carolina



## Office of the Attorney General

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September 27, 1989

George A. Markert, Assistant Director  
South Carolina Court Administration  
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Dear George:

In a letter to this Office you referenced that Section 56-1-365 of the Code provides that any individual who forfeits bail, is convicted of or pleads guilty or nolo contendere in general sessions, municipal or magistrate's court to an offense which requires license revocation or suspension "...shall surrender immediately or cause to be surrendered his driver's license to the clerk of court or magistrate upon the verdict or plea." Such provision further states that the Department of Highways and Public Transportation

"...may collect from the clerk of court or magistrate the driver's license and ticket immediately after receipt. Along with the driver's license, the clerks and magistrates shall give the department's agents tickets, arrest warrants, and other documents or copies of them, as necessary for the department to process the revocation or suspension of the licenses. If the department does not collect the license and ticket immediately, the magistrate or clerk shall forward the license, ticket, and other documentation to the department within five days after receipt. Any clerk or magistrate who wilfully fails or neglects to forward the driver's license and ticket as required is liable to indictment and, upon conviction, must be fined not exceeding five hundred dollars."

You indicated that these provisions do not specifically provide for the surrender of driver's licenses to county clerks of court by juveniles adjudicated delinquent in family court for offenses requiring license revocation. Also, no penalties are provided for the

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wilful failure of municipal judges or municipal court clerks to forward surrendered licenses to the highway department. You have asked whether municipal judges or municipal clerks of court are required to accept surrender of licenses and are they liable for the wilful failure to forward surrender licenses to the highway department.

As you indicated, Section 20-7-410 of the Code grants magistrate and municipal courts concurrent jurisdiction with family courts for traffic violations involving juveniles. Also, Section 14-25-45 of the Code provides that municipal courts "...have all such powers, duties and jurisdiction in criminal cases made under state law and conferred upon magistrates." 1/

Pursuant to the grant of authority in Section 14-25-45, it appears that while not free from doubt, municipal judges and municipal clerks of court should accept licenses surrendered pursuant to Section 56-1-365. It is a rule of statutory construction that the primary objective in construing statutes is to ascertain and give effect to the legislative intent if at all possible. See: Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 367 S.E.2d 424 (1988). It would appear to be incongruous for municipal courts to have trial jurisdiction over certain offenses, such as traffic, and not be subject to the same procedural requirements as other courts with the same jurisdiction. Therefore, it would be reasonable to conclude that the General Assembly would have intended the requirements of Section 56-1-365 to be applicable to municipal judges and clerks. Arguably, the municipal court judges and clerks would also be subject to the penalty provisions of such provision for failing to forward licenses to the highway department. However, it is generally stated that "statutes which are criminal or penal in nature are strictly construed against the State." See: Op. Atty. Gen. dated November 14, 1983; Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). Therefore, to avoid any difficulties in a potential prosecution and to clarify the issue, it is strongly recommended that legislative clarification be sought to specifically address the responsibilities of municipal clerks and judges in this regard.

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1/ An opinion of this Office dated July 22, 1980 concluded that generally traffic offenses should be considered criminal offenses since virtually all traffic provisions in Title 56 are classified as misdemeanors with many offenses being triable in general sessions court.

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You also asked whether county clerks of court are required to accept surrender of licenses of juveniles adjudicated delinquent in family court for offenses which, if committed by adults, would require license forfeiture. Also, you asked whether the clerks are liable for wilful failure to forward surrendered licenses of these juveniles to the highway department. You indicated that clerks of court are not required to attend sessions of family court so there may be problems in accepting the surrender of licenses. 2/

As stated above, Section 56-1-365 refers to forfeitures and convictions in general sessions, municipal or magistrate's court. Family courts are not specified. However, as referenced by you, Section 20-7-410 of the Code requires family courts to report all adjudications of juveniles for moving traffic offenses to the Highway Department. Again, consistent with the construction as to municipal judges and municipal clerks stated previously, the same procedural requirements should be applicable to any court which would have jurisdiction over traffic offenses, including the family court. Again, it would be reasonable to contend that the requirements of Section 56-1-365 would similarly be applicable to family courts as to traffic offenses involving juveniles which if committed by adults would require license forfeiture.

Concerning your question regarding whether clerks of court are liable for wilful failure to forward surrendered licenses, again, to avoid difficulties in a prosecution because of the rule of strict construction and to clarify the matter, legislative clarification should also be sought as to a clerk of court's responsibility in this regard. As to any problems in surrendering licenses to clerks of court because of their absence from a session of family court, presumably a family court judge could specifically order the clerk's attendance or order that the juvenile surrender his license to the clerk at the clerk's office.

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2/ Pursuant to Section 14-17-20 of the Code, "(t)he clerk of the court of common pleas ...is ex officio clerk of... the family court... ." See also: Rule 1 of the Family Court Rules.

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In conclusion, it appears that the General Assembly would have intended that municipal judges, municipal clerks of court and clerks of court for traffic cases in family court involving juveniles should accept surrender of driver's licenses pursuant to the provisions of Section 56-1-365. However, because of the provisions regarding criminal liability and the need for clarification, it is strongly recommended that legislation be considered which would precisely address the responsibilities of these offices in circumstances under Section 56-1-365.

If there is anything further, please advise.

Sincerely,



Charles H. Richardson  
Assistant Attorney General

CHR/nnw

REVIEWED AND APPROVED BY:



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