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The State of South Carolina



Opinion No. 88-92
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Office of the Attorney General

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October 19, 1988

Motte L. Talley, Staff Attorney
South Carolina Court Administration
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Dear Motte:

In a letter to this Office you raised two questions concerning provisions of Act No. 532 of 1988, the Highway Safety Bill.

In your first question you referenced Section 56-5-2940 which provides punishment for individuals convicted of driving under the influence. Subsection (2) provides punishment

... (b) 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.

You specifically questioned whether the two hundred fifty dollars designated for the Victim's Compensation Fund (hereafter "the Fund") is to be subtracted from the revenue generated by Section 56-2-2940(2) prior to calculating the 75%/25% division of the fine between the county and State pursuant to Section 20-7-1510 of the Code 1/ or is the amount for the Fund subtracted from the 25% of

1/ You cited an example of a \$1250.00 fine which would be distributed as follows: \$250.00 to the Fund, \$250.00 to the State and \$750.00 to the county.

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the revenue designated for the State pursuant to such provision. 2/ Section 20-7-1510 provides that generally three-fourths of all fines generated by the circuit courts is to be paid over to the county while one-fourth is to be remitted to the State.

The amount referenced above for the Fund which is assessed against DUI second offenders is the only specific amount for the Fund established by the various penalty provisions of Section 56-5-2940. Therefore there are no other provisions which may be cited in construing your question. Pursuant to Section 16-3-1290 of the Code

... funds placed in the Victim's Compensation Fund shall consist of all money appropriated by the General Assembly, if any, for the purpose of compensating claimants under this article and money recovered on behalf of the State pursuant to this article by subrogation or other action, recovered by court order, received from the federal government, received from additional court costs, received from assessments or fines, or received from any other public or private source, pursuant to this article.

I am unaware of any legislative history that aids in construing such provision.

As stated, a fine assessed against a second offender may not be suspended below one thousand dollars "... and of that amount two hundred fifty dollars must be remitted to the ... (Fund)" Construing the plain language of the statute it appears that the two hundred fifty dollars for the Fund should be taken "off the top" with the remaining amount distributed pursuant to Section 20-7-1510. It does not appear that there was any legislative intent that the two hundred fifty dollars be taken from the funds given to the State pursuant to Section 20-7-1510. Therefore, as in the example cited by you where a fine was set at \$1250.00, \$250.00 would be forwarded to the Fund, \$250.00 would be forwarded to the State and the remaining \$750.00 would be distributed to the county.

2/ Under this arrangement where there is a \$1250.00 fine, \$250.00 would go to the Fund, \$62.50 to the State and \$937.50 to the county.

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In your second question you asked whether the court, which imposes the sentence on a defendant for an offense which requires the defendant's driver's license be revoked or suspended, would confiscate the driver's license of an out-of-state driver. Section 56-1-365 of the Code states:

(a)ny person who forfeits bail posted for, is convicted of, or pleads guilty or nolo contendere ... to an offense which as part of the punishment to be imposed requires that his driver's license be revoked or suspended shall surrender immediately or cause to be surrendered his driver's license ... upon the verdict or plea.

A prior opinion of this Office dated October 12, 1987 dealt with the question of whether pursuant to Section 56-1-460, the punishment provisions for driving under suspension apply if the suspension was of an out-of-state driver's license. The opinion commented that a nonresident who is licensed to drive in another state is exempt from the requirement of being licensed by this State. Instead, such nonresident is granted the "privilege" of operating a motor vehicle in this State. See: Section 56-1-10(10) of the Code. However, such "privilege" may be suspended by this State. For instance, pursuant to Section 56-1-320 of the Code,

the ... (Department of Highways and Public Transportation) ... may, in its discretion, 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.

The opinion further noted that pursuant to Section 56-1-340 of the Code, when a nonresident commits a traffic offense in this State, the Department of Highways and Public Transportation notifies the motor vehicle administrator of the state where the person who was convicted resides. It was stated that such notification implies that the record of conviction is being forwarded for possible action, such as suspension of the license, by the state which issued the license. This office concluded that "... such provisions indicate an intent to make it the responsibility of the state which issues a driver's license to take action to suspend or revoke any license that state issues."

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In reaching such conclusion, reference was made to Act No. 72 of 1987, codified as Sections 56-1-610 et seq. of the Code, which establishes South Carolina as a party to the Driver License Compact. Such legislation provides in Section 56-1-640 for the notification of the home state by each party state to the compact of convictions for traffic violations of persons from another party state. Pursuant to Section 56-1-650

(t)he licensing authority in the home state, for the purposes of suspension, revocation, or limitation of the license to operated a motor vehicle, shall give the same effect to the conduct ... as it would if the conduct had occurred in the home state, in the case of convictions ... (thereafter listed)

The term "home state" is defined pursuant to Section 56-1-630(2) as "... the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle."

Also, further provisions of Section 56-1-365 indicate that such statute should be restricted to driver's licenses issued to South Carolina drivers. It is provided that where a defendant who surrenders his license appeals any conviction, the Department of Highways and Public Transportation is authorized to issue a certificate which entitles the defendant to operate a motor vehicle for sixty days after his conviction. As stated previously, typically, South Carolina does not license nonresident drivers. Instead, these individuals are recognized as having a "privilege" to drive in this State.

Courts in other jurisdictions have similarly indicated that the state with authority to suspend a license is the state which issued the license. In the case of Matter of Johnson, 543 A.2d 454 (N.J. 1988), the New Jersey Superior Court determined that pursuant to the definition of the term "home state" in the Driver License Compact cited above, inasmuch as the State of New Jersey had issued a license, that State had the power to suspend the license. Therefore, the State of New Jersey was authorized to suspend the license it had issued to a driver for a conviction in New York State, also a party to the Compact, for driving under the influence. In State v. Kivell, 463 N.E.2d 52 (Ohio, 1983), the Ohio Court of Appeals construed a statute which provided that upon the conviction of a nonresident for driving under the influence, the trial judge shall suspend the nonresident's license for not less than thirty days nor more than three years or revoke the nonresident's license. The Court held that in such circumstances the nonresident's license should be construed as the nonresident's privilege to operate a motor vehicle in that state. Therefore the trial judge was without authority to

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order the nonresident to surrender physically his driver's license which had been issued by another state. See also: In re Levy Motor Vehicle Operator's License Case, 169 A.2d 596 (Pa. 1961) (a foreign state may not suspend or revoke a driver's license issued by the State of Pennsylvania).

Referencing the above, it appears that a South Carolina court which imposes the sentence on a defendant for an offense that requires the revocation or suspension of a driver's license would not confiscate the driver's license of a nonresident driver which had been issued by another state. Instead, it would be the responsibility of the state which issued the license to take any action toward suspending or revoking the license.

If there is anything further, please advise.

Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



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