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The State of South Carolina



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December 12, 1988

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Dear Nancy:

In a letter to this Office you referenced Section 26 of Act No. 532 of 1988, the "Highway Safety Act", which provides for the confiscation and forfeiture of a motor vehicle driven by an individual convicted of a fourth or subsequent violation within the last ten years of driving while his license is cancelled, suspended or revoked 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. In such circumstances the arresting officer or other officer of the same agency confiscates the vehicle driven by such individual. Within forty-eight hours, the head of the law enforcement agency which made the arrest notifies the clerk of court of the confiscation. The clerk of court then issues a rule to show cause as to why the confiscation should not continue. At the subsequent hearing, if the owner of record fails to make a sufficient showing, the vehicle remains confiscated until the disposition of the criminal charges. If there is a conviction, forfeiture proceedings in the circuit court are initiated.

You have indicated that you are considering denominating the referenced confiscation and forfeiture procedures as civil. Such would be consistent with the determination that a forfeiture action is generally considered to be civil, not criminal, and not part of the punishment fixed by a court nor added punishment for any offense. See: State v. Toomer, 277 S.C. 217, 284 S.E.2d 783 (1981); Parker v. State Highway Department, 224 S.C. 263, 78 S.E.2d 382 (1953); State v. Petty, 270 S.C. 206, 241 S.E.2d 561 (1978). Also you indicated that all proceedings would be within the jurisdiction of the Court of Common Pleas. You further indicated that questions have been raised as to whether a filing fee should be charged at the confiscation stage, the forfeiture stage or both.

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In a later letter you stated that the Clerks of Court Advisory Committee suggested that confiscation documentation be filed along with any pending warrant or indictment. The Committee further suggested that no filing fee be charged at this stage inasmuch as the accompanying Rule to Show Cause is initiated by the court. You also indicated that the Advisory Committee is suggesting that the law enforcement agency pay a filing fee when their attorney initiates an action to accomplish forfeiture of the vehicle.

The general fee schedule for clerks of court is set forth in Section 8-21-310 of the Code. If any fee would be applicable in the situation you referenced, presumably the provisions of subsection (11)(a) would control. Pursuant to such, the clerk of court collects

(f) or filing first complaint or petition, including application for a remedial and prerogative writ and bond on attachment or other bond, in a civil action or proceeding, in a court of record, thirty-five dollars.

The provision further states that no additional fee is to be charged for filing other papers in the same action or for entering, filing or enrolling any verdict, judgment or final decree.

As referenced, you are advising that a filing fee not be filed at the confiscation stage since the Rule to Show Cause is initiated by the court but that a fee be charged when an action is initiated to accomplish forfeiture. As you indicated, the legislation does not specifically set forth the manner of proceeding for forfeiture. I would assume, however, that consistent with Rules 2 and 3 of the Rules of Civil Procedure, a summons and petition would be filed at the forfeiture stage.

I am unaware of any separate provision granting an exemption to the payment of filing fees to a clerk of court by law enforcement officials, such as the exemption in Section 8-21-810 of the Code which states "(n)o cost or fee shall be payable to probate courts for any item or copy requested by a county officer." Admittedly, the payment of fees by county law enforcement agencies to a county clerk of court would not result in any revenue gain by a county inasmuch as the fees paid to a clerk of court are paid into the general fund of a county. See: Section 8-21-300 of the Code. However, in the absence of any exemption clearly stating that such fees are not to be paid by law enforcement agencies in a confiscation or forfeiture proceeding initiated pursuant to Section 26, it appears that such fees could be charged. Of course, legislation specifically relieving law enforcement of the obligation to pay such fees could be sought. However, consistent with the provision cited earlier stating that no additional fee is to be charged for filing

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other papers in the same action, it appears that only one filing fee should be charged in such a proceeding.

You also questioned the proper venue for confiscation or forfeiture of a motor vehicle where an individual is arrested in one county for a fourth or subsequent offense of operating a motor vehicle while his license is cancelled, suspended or revoked or a fourth or subsequent offense of operating a motor vehicle while under the influence where the owner of record of the vehicle is a resident of another county.

Pursuant to Section 26, in circumstances where a motor vehicle is confiscated by the arresting officer or another law enforcement officer of the agency such officer

... shall deliver it immediately to the head of his law enforcement agency or his authorized agent who shall notify the clerk of court within forty-eight hours of the confiscation. However, the clerk of court shall issue a Rule To Show Cause immediately upon notification of the confiscation which must be returnable before the presiding judge of the judicial circuit

Upon conviction of the driver

... the attorney representing the governmental entity of which that law enforcement agency is a part shall initiate an action in the circuit court of the county in which the vehicle was seized to accomplish forfeiture ... The court, after hearing, shall order that the vehicle be forfeited to the State or to the political subdivision of the State of which the law enforcement agency is a part and sold in the manner provided ... (emphasis added)

One of the means of giving notice of such forfeiture proceedings is by publication in a newspaper circulated in the county where the vehicle was seized. Any sale of the vehicle is to be conducted at the courthouse in the county where the vehicle was confiscated or at another suitable location in that county.

Referencing the above, it appears that the proper venue for confiscation or forfeiture of the vehicle in such circumstances would be the county where the vehicle was seized. The various provisions noted make specific reference to certain actions being undertaken in the county where the vehicle was seized. Such would also be consistent with the fact that forfeiture is generally considered

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to be an in rem proceeding against the property itself. See:
State v. Toomer, supra; State v. Petty, supra.

The comments above are first impressions as to how the referenced proceedings should be accomplished. As you indicated the legislation itself does not clearly respond to the questions that may be raised concerning the confiscation and forfeiture proceedings. Legislation could be sought which would clarify these procedures.

If there is anything further, please advise.

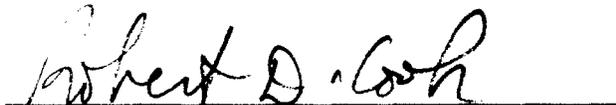
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



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