

1979 WL 43480 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 24, 1979

*1 Hon. J. Verne Smith
The Senate
The State House
Columbia, S.C.

Dear Senator:

You have asked this Office to review Senate Bill No. S.261, amending [Section 44-53-530 of the 1976 Code](#) relating to seizure and forfeiture of conveyances used in illegal transport of drugs, and changes made therein by the House of Representatives.

In brief, the purpose of the Bill is to bring our State law into greater conformity with the Federal act, so that the State may receive the funds realized from the sale of valuable vehicles such as aircraft, water vehicles, and truck trailers. Because of the limitations in present [Code Section 44-53-530](#), most of these vehicles are seized under Federal law and their value inures to the U. S. Treasury. See Title 49, U.S.Code, Sections 781 et seq.

In addition, Bill No. S.261 excepted ordinary motor vehicles from seizure, as in the present law, unless they are used to transport larger amounts of drugs, for the protection of innocent auto owners when the vehicle contains only a small amount of a drug.

The Bill further provides that the Attorney General commence such forfeiture proceedings, to protect the interest of the State; and also to provide that he may transfer title of forfeited conveyances to the State or local law enforcement agency who made the seizure, when that agency can make good use thereof for law enforcement.

Our opinion as to the effect of the Bill and the House amendments is as follows.

1. The Bill, as passed by the Senate, will effect the purpose for which it was designed.
2. The House amendment in line seven (7) of the first paragraph, changing the proviso to apply to 'such conveyances' rather than 'motor vehicles,' defeats the major purpose of the Bill, and forfeitures of larger conveyances (trailers, aircraft and water-going vessels) will continue to go to the benefit of the Federal government, as in the past.
3. The House amendment deleting lines three and four (3 and 4) of subparagraph (3) in the Senate Bill will prevent transfer to law enforcement agencies of vehicles useful to them; which the Attorney General could accomplish under the Senate version of the Bill.
4. The third House amendment added a fourth proviso in subparagraph (3), at line 12, providing that funds from sale of forfeited conveyances, 'except water vessels and airplanes,' should go to the county or municipality where they are seized. This amendment does not affect the central purpose of the Bill, in our opinion, but is a matter of legislative preference.^{a1}
5. The House amendment to subparagraph (6), which substantially rewrites it, in our opinion weakens the present state law by altering the rights of lienholders. It would seem highly preferable to retain the language of the Senate version to

further assure that forfeitures benefit the State, counties or municipalities, rather than pass to the Federal authorities under the more strict Federal statute.

*2 In summary, in response to your request for our recommendation we would recommend that the Senate not concur in the House amendments because of the defects outlined above. In the conference committee, we would see no objection to concurring with the House amendment adding a final sentence to subparagraph (3).

We trust these comments provide the information which you have requested.

Sincerely,

Frank K. Sloan
Deputy Attorney General

Footnotes

a1 Information as of July 24, 1979, indicates possible amendment to provide that in event of sale that proceeds will go to the General Fund of the unit of government making the seizure. This amendment would be preferable to House amendment.

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