

1979 WL 43494 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 31, 1979

***1 RE: Use of FR-11 relating to citizen complaints of the operation of an uninsured vehicle.**

Colonel W. J. Seaborn
Commander
S.C. Highway Patrol
P. O. Box 191
Columbia, South Carolina 29202

Dear Colonel Seaborn:

Major Meek has asked this office to evaluate the legitimacy of the Department's acting on a complaint filed by a member of the general public alleging that a licensed third party is uninsured. Because of the general importance of the reply, I have addressed it to you.

S. C. Code § 56-11-740 (Cum. Supp. 1978) requires a motor vehicle owner to either obtain insurance or surrender his license plates and registration certificates whenever the motor vehicle becomes uninsured. Section § 56-11-760 prohibits persons from falsely certifying that a motor vehicle is an insured motor vehicle. Section 56-11-770 makes it illegal for any person to knowingly operate or allow the operation of an uninsured motor vehicle. Section 56-11-790 requires the Department of Highways and Public Transportation to administer and enforce the article in which the previously-mentioned sections are found. Section 56-11-800 grants the Department the power to promulgate rules and regulations to carry out the provisions and intent of the article.

On May 20, 1976, pursuant to the authority granted under § 56-11-800, the State Highway Commission adopted rules and regulations relating to the administration and the enforcement of the Automobile Repair Reform Act. Contained therein is a section adopting the use of '[a] form similar to the Request for Driver License Re-examination used by the Field license personnel relating to driver license complaints . . .'. The form prescribed was designated as Exhibit 5 of the adopted regulations and is currently known as form FR-11.

The Administrative Procedures Act requires the publication of agency regulations 'of general public applicability.' The regulations previously described have not been published in the State Register. The APA provides for the exemption from publication of certain enumerated documents. Among those are 'descriptions of agency procedures applicable only to agency personnel . . .'. It is the opinion of this office that the use of the Form FR-11 with its attendant follow up procedures falls into the exemption from publication. The procedures outlined merely act as a catalyst for the Department to investigate more thoroughly whether or not a vehicle is actually insured. No penalty is imposed on the basis of the complaint, and therefore the procedures do not have general public applicability. In terms of general public applicability they are little different from a procedure set up to make random spot checks of insurance certificates submitted by owners at the time of registration.

As you may be aware, our use of the Request for Driver License Re-examination has been challenged in the Circuit Court. The question of its use is currently on appeal to the South Carolina Supreme Court. The Court decision could affect the use of form FR-11 depending on the issues the Court chooses to focus on in that appeal.

*2 While I believe that it is proper for the Department to act on a citizen's complaint, I would recommend certain changes be made to the form. It would appear advisable to require that the complaint made by the citizen be a sworn statement, in the same fashion as sworn complaints in Magistrate's court. Furthermore, it also appears advisable that the form FR-11 require the complainant to specifically state why he believes the person complained of is operating an uninsured vehicle. The Department should have some objective basis for believing the complainant's statement.

It is therefore the opinion of this office: (1) that the Department has the statutory authority under S. C. Code § 56-11-800 (1976) to promulgate the regulations authorizing the use of form FR-11; (2) that these regulations are exempt from the publication requirement of the Administrative Procedures Act; and (3) that the use of form FR-11 constitutes a legitimate means of enforcing Article 9 of Chapter 11 of Title 56.

Sincerely,

William L. Todd
State Attorney

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