

1974 S.C. Op. Atty. Gen. 12 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3681, 1974 WL 21202

Office of the Attorney General

State of South Carolina

Opinion No. 3681

January 2, 1974

***1 In Re: Magistrate's and Recorder's Traffic Cases; Jurisdiction of Circuit Court After Forfeiture of Conviction**

Honorable Frank Eppes
Circuit Judge
County Courthouse
Greenville, South Carolina

Dear Judge Eppes:

With reference to our telephone conversation of today, set forth below is the position of this Office in the question of the authority of the Circuit Court after disposition of a traffic case in magistrate's or recorder's court:

RESTRAINING SUSPENSION

Neither the Circuit Court nor a county court is empowered to restrain the State Highway Department from suspending a driver license pending appeal from conviction or bond forfeiture in magistrate's or municipal court, except for the stay provided by Section 46-189, 1962 Code of Laws of South Carolina, *viz.*, sixty days from date of conviction upon proper notice of appeal. [Parker v. State Highway Department, 224 S.C. 263, 78 S.E. 2d 382](#); [McLeod v. Franklin, et al.](#) (unpublished), issued December 19, 1973; [McLeod v. Lee, et al.](#) (unpublished), issued December 19, 1973; [McLeod v. Roseboro, et al.](#) (unpublished), issued December 19, 1973.

FAILURE OF MAGISTRATE OR RECORDER TO FILE RETURN

The failure of a magistrate or recorder to file a return so that the appeal can be heard does not entitle the defendant to a stay of license suspension or a dismissal of the charge. His remedy is to apply for an order of mandamus to require the trial judge to file the return. [State v. Adams, 244 S.C. 323, 137 S.E. 2d 100](#).

Until the return required by Section 7-104 has been filed, the appeal may not be heard and determined by the Circuit Court or a county court. [State v. Eaves, 260 S.C. 523, 197 S.E. 2d 282](#).

NOTICE TO THE STATE

It is the position of this Office, although the specific question has not been determined by the South Carolina Supreme Court, that the State is entitled to proper notice of any proceeding involving application or petition to the Circuit Court or a county court for action affecting a traffic conviction or forfeiture in magistrate's or recorder's court. Although this Office would appreciate notice to the Attorney General, service on the Solicitor or the arresting officer is sufficient, we feel.

Notice of direct appeal from conviction or denial of motion for new trial is by statutory provision to the magistrate or recorder.

NOTICE TO THE SCHD

It is our position that the State Highway Department is entitled to notice and opportunity to appear in any action in Circuit Court or a county court in which an order of the court is prayed requiring the Department to take action or refrain from taking action against any driver license. In other words, we do not feel that final orders issued in an ex parte proceeding are valid - - - particularly when the Highway Department is not made a party to the proceeding.

COLLATERAL REVIEW BY CIRCUIT COURT OR COUNTY COURT

*2 It is the position of this Office that questions involving the validity of a conviction in magistrate's or municipal court that should be put in issue by direct appeal or by motion for new trial in the trial court may not be litigated in a collateral proceeding in circuit court or county court. In other words, when a defendant does not take advantage of appeal procedures provided by statute, he may not thereafter have those questions determined by a circuit court or county court in a collateral proceeding - - - except matters that relate purely to jurisdiction of the trial court.

Sincerely,

Joseph C. Coleman
Deputy Attorney General

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