



ALAN WILSON  
ATTORNEY GENERAL

August 8, 2019

The Honorable B. Lee Miller  
Municipal Judge, City of Greenwood  
PO Box 40  
Greenwood, South Carolina 29648

Dear Judge Miller:

We understand from your letter, you seek an opinion of this Office concerning moped traffic violations. In an opinion dated June 28, 2019, we addressed your first question concerning the appropriate charging statute for “a person with No Valid Moped License.” In addition, you seek an opinion addressing the following: “If a traffic ticket was received for a violation while operating a moped and the defendant fails to pay the fine, what would be the appropriate charge if the moped license was suspended by the department. 56-1-1730(B).”

#### Law/Analysis

Section 56-1-1730(B) of the South Carolina Code (Supp. 2018), which you reference in your letter, states:

The Department of Motor Vehicles may suspend, revoke, or cancel a moped operator's license only for violations committed while operating a moped. A moped operator's license may be suspended, revoked, or canceled in the same manner and upon the same grounds for which any other motor vehicle operator's license or permit may be suspended, revoked, or canceled.

According to this statute, the Department of Motor Vehicles (the “Department”) is limited in suspending a moped operator's license “only for violations committed while operating a moped.” S.C. Code Ann. § 56-1-1730(B). But, this statute allows for the Department to suspend a moped operator's license for “any” ground upon which a motor vehicle operator's license can be suspended. Id. As you mentioned in your letter, this could include the failure to pay a fine imposed as part of a traffic citation. See S.C. Code Ann. § 56-25-20 (2018) (allowing the suspension of a driver's license for failure to comply with the terms of a traffic citation).

The Honorable B. Lee Miller  
Page 2  
August 8, 2019

In your letter, you present a scenario in which a person continues to drive a moped when the Department already suspended their moped license for failure to pay the fine. In speaking with you further, we understand you desire an opinion as to whether under these circumstances, the person could then be charged with driving under suspension pursuant to section 56-1-460 of the South Carolina Code (2018) or whether the person would be charged under section 56-1-1720 or 56-2-3000 South Carolina Code (Supp. 2018), both pertaining to operating a moped without a license.

We begin with the application of section 56-1-460 to the facts you present. Section 56-1-460 provides the penalties for “a person who drives a motor vehicle on a public highway of this State when the person’s license to drive is canceled, suspended, or revoked . . . .” We must consider whether the Legislature intended for this statute to apply to moped operators. As our Supreme Court explained in State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015),

[t]he primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. However, all rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.

(citations omitted) (internal quotations omitted). “A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. Words in a statute must be construed in context, and their meaning may be ascertained by reference to words associated with them in the statute.” S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm’n, 388 S.C. 486, 491, 697 S.E.2d 587, 590 (2010) (citation omitted) (internal quotations omitted).

Section 56-1-10 of the South Carolina Code (Supp. 2018) provides definitions for terms “[f]or the purpose of this title, unless otherwise indicated.” Section 56-1-10(7) defines “motor vehicle” as “every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.” In 2017, the Legislature made significant amendments to title 56 pertaining to mopeds. 2017 S.C. Acts 89. As part of these amendments, the Legislature added the following definition of “moped” to section 56-1-10:

[A] cycle, defined as a motor vehicle, with or without pedals, to permit propulsion by human power, that travels on not more than three wheels in contact with the ground whether powered by gasoline, electricity, alternative fuel, or a hybrid combination thereof. Based on the engine or fuel source, the moped must be equipped not to exceed the following limitations: a motor of fifty cubic centimeters; or designed to have an input exceeding 750 watts and no more than 1500 watts. If an internal combustion engine is used, the moped must have a power drive system that functions directly or automatically without clutching or shifting by the operator after the drive system is engaged.

2017 S.C. Acts 89 (codified as amended at S.C. Code Ann. § 56-1-10(26) (Supp. 2018)) (emphasis added). Prior to Act 89, section 56-1-10 did not define moped. In the same act, the Legislature deleted the definition of moped found in article 9 under chapter 1 of title 56, formally codified as section 56-1-1710, which provided:

For purposes of this article, “moped” means a cycle with pedals to permit propulsion by human power or without pedals and with a motor of not more than fifty cubic centimeters which produces not to exceed two break horsepower and which is not capable of propelling the vehicle at a speed in excess of thirty miles an hour on level ground. If an internal combustion engine is used the moped must have a power drive system that functions directly or automatically without clutching or shifting by the operator after the drive system is engaged.

While we note several differences between these two definitions, we find indicative of the Legislature’s intent that it chose to define “moped” for purposes of title 56 as a whole, rather than just article 9 of chapter 1 in title 56. In addition, we note the Legislature specified a moped is a motor vehicle in the amended definition. “When the Legislature adopts an amendment to a statute, this Court recognizes a presumption that the Legislature intended to change the existing law.” Duvall v. S.C. Budget & Control Bd., 377 S.C. 36, 46, 659 S.E.2d 125, 130 (2008). Accordingly, we believe the Legislature, by specifically defining mopeds as motor vehicles, intended to change the law.

In other provisions contained in title 56, the Legislature explicitly excluded mopeds from the definitions of “motor vehicle.” For example, in chapter 9 of title 56 the Legislature excluded mopeds from the definition of motor vehicle for purposes of the motor vehicle responsibility act. S.C. Code Ann. § 56-9-20 (2018). In chapter 15 of title 56 regulating motor vehicle manufacturers, distributors, and dealers, the Legislature again excluded mopeds from the definition of motor vehicle. S.C. Code Ann. § 56-15-10 (Supp. 2018). In addition, section 56-5-2941(A) of the South Carolina Code (Supp. 2018) excludes mopeds from required installation of ignition interlock devices upon conviction under sections 56-5-2930, 56-3-2933, 56-5-2945, or 56-5-2947 of the South Carolina Code. Section 56-19-220 of the South Carolina Code (Supp. 2018) also exempts mopeds from the titling requirement for other motor vehicles.

“The enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded.” Columbia/CSA-HS Greater Columbia Healthcare Sys. v. S.C. Med. Malpractice Liab. Joint Underwriting Ass’n, 394 S.C. 68, 73, 713 S.E.2d 639, 641 (Ct. App. 2011) (quoting German Evangelical Lutheran Church of Charleston v. City of Charleston, 352 S.C. 600, 607, 576 S.E.2d 150, 153 (2003)). The Legislature did not exempt mopeds from application of section 56-1-460. Moreover, the Legislature by specifically including mopeds as motor vehicles for purposes of title 56, indicates it intended for this statute to apply to mopeds. Therefore, it is our opinion that a person operating a moped while their

moped license is under suspension can be charged pursuant to section 56-1-460 with driving under suspension.

You also asked us to consider application of sections 56-1-1720 and 56-2-3000 of the South Carolina Code when a driver operates a moped while his or her moped license is under suspension. The Legislature made significant changes to section 56-1-1720 and added section 56-2-3000 by way of Act 89. As we stated in our recently issued opinion to you, both provisions “require that a person operating a moped must possess either a valid driver’s license or a valid moped operator’s license.” Op. S.C. Att’y Gen., 2019 WL 3243865 (S.C.A.G. June 28, 2019). We opined that “if a person operates a moped without a valid driver’s license or valid moped license, that person may be charged with a violation of either Section 56-1-1720 or Section 56-2-3000 in the prosecutors discretion, provided that the fact of the particular situation support the charge.” Id.

Presumably, the moped operator you describe obtained a valid moped license in compliance with sections 56-1-1720 and 56-2-3000. While our courts have yet to consider this scenario, we issued similar opinions dealing with non-moped motor vehicle drivers. In an opinion issued in 2001, we considered whether to charge a driver who previously obtained a license under section 56-1-20 of the South Carolina Code with driving under suspension under section 56-1-460 or driving without a valid license under section 56-1-440. Op. S.C. Att’y Gen., 2001 WL 957741 (S.C.A.G. July 16, 2002). We noted section 56-1-440 “states that ‘[a]ny person who drives a motor vehicle on any public highway of this State without a driver's license in violation of Section 56-1-20 is guilty of a misdemeanor . . .’” Id. We also noted section 56-1-20 “provides that ‘No person, except those expressly exempted in this article shall drive any motor vehicle upon a highway in this State unless such person has a valid motor vehicle driver's license issued to him under the provisions [of the S.C. Code].’” Id. The driver referenced in that opinion held an out-of-state driver’s license that was under suspension in the driver’s home state. We concluded the driver should be charged with driving under suspension pursuant to section 56-1-460 rather than section 56-1-440. Id. In another opinion issued by this Office in 1984, we also concluded a person driving under suspension should be charged under section 56-1-460 while a person driving without a license should be charged pursuant to section 56-1-440. Op. S.C. Att’y Gen., 1984 WL 159902 (S.C.A.G. August 3, 1984).

Similar to section 56-1-20, sections 56-1-1720 and 56-2-3000 require a valid moped license to operate a moped on public highways. Although a court may equate a suspended moped license with a person not possessing a valid moped license, under the same reasoning expressed in our prior opinions pertaining to other motor vehicles, we believe the appropriate charge for the situation you describe is driving under suspension as expressed in section 56-1-460.

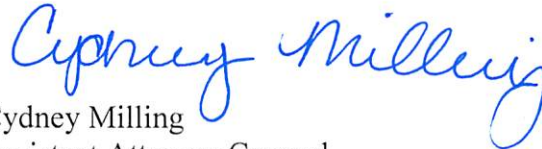
### **Conclusion**

Reading the provisions contained in title 56 of the South Carolina Code as whole, we believe the Legislature intended for section 56-1-460 of the South Carolina Code to apply to those operating

The Honorable B. Lee Miller  
Page 5  
August 8, 2019

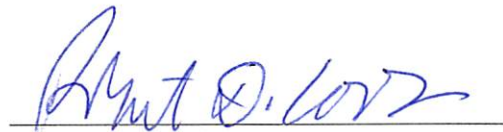
a moped while their moped license is under suspension. Although a court could apply sections 56-1-1720 and 56-2-3000 to a person in this situation, we believe the appropriate charge is driving under suspension pursuant to section 56-1-460.

Sincerely,



Cydney Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General