



HENRY McMASTER
ATTORNEY GENERAL

August 25, 2009

Rosalyn W. Frierson, Director
South Carolina Court Administration
1015 Sumter Street, Suite 200
Columbia, South Carolina 29201

Dear Ms. Frierson:

In a letter to this office you referenced the recent passage of Act No. 24 of 2009 which raised fines for violations of the handicapped parking statutes. Pursuant to S.C. Code Ann. § 56-3-1910(J)(1), "...a person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars and not more than one thousand dollars or imprisoned for not more than thirty days for each offense." See also: S.C. Code Ann. §§ 56-3-1960 and 56-3-1970 which provides a similar punishment for other handicapped parking violations. You have questioned the proper court for disposal of handicapped parking violations under the new law as well as whether jurisdiction is affected by the type of ticket used to issue a citation for a violation of the handicapped parking provisions.

Generally, pursuant to S.C. Code Ann. § 22-3-550(A)

[m]agistrates have jurisdiction of all offenses which may be subject to the penalties of a fine or forfeiture not exceeding five hundred dollars, or imprisonment not exceeding thirty days, or both.

As you pointed out, in some instances, the General Assembly has written into a statute that a specific offense may be tried in the summary courts even though the punishment exceeds the court's jurisdiction consistent with Section 22-3-550(A). For instance, S.C. Code Ann. § 16-25-20 provides for a fine for a first offense CDV violation of not less than one thousand dollars nor more than two thousand five hundred dollars or imprisonment for not more than thirty days, a punishment beyond that specified under Section 22-3-550(A). However, S.C. Code Ann. § 16-25-20(B) specifically provides that notwithstanding Section 22-3-550, a first offense violation "must be tried in summary court." Also, pursuant to S.C. Code Ann. § 56-1-460, which provides the penalties for driving while a license is suspended, cancelled or revoked, for a third and subsequent offense, the penalty is a fine of one thousand dollars and imprisonment for not less than ninety days nor more than six months. It is also specifically provided that "[n]otwithstanding the provisions of Sections 22-3-540, 22-3-545,

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and 22-3-550, an offense punishable under this subitem may be tried in magistrate's court." There is no similar provision in Act No. 24 regarding a summary court's jurisdiction over all handicapped parking violations.

Pursuant to S.C. Code Ann. § 56-3-1971,

[a]ll law enforcement officers issuing tickets on public and private property and state law enforcement division licensed security officers of shopping centers and business and commercial establishments, which provide parking spaces designated for handicapped persons, are authorized to issue a uniform parking violations ticket to the vehicle for violations of the prescribed use of the parking spaces. The uniform parking violations ticket shall provide a means for tracking violators by tag number and recording the violations with the Department of Motor Vehicles.

Also, pursuant to S.C. Code Ann. § 56-3-1973,

[t]he Department of Motor Vehicles shall have the uniform parking violations ticket printed. The department may authorize a law enforcement agency to automate the issuance of uniform parking violations tickets. Law enforcement and security agencies shall order tickets from the department and shall record the identifying numbers of the tickets received by them. The cost of the tickets must be paid by the law enforcement or security agency. The audit copy and the department's record copy must be forwarded to the department within thirty days of the disposition of the case by final trial court action. The head of each law enforcement agency is responsible for forwarding the audit copies and for conducting an annual inventory on December thirty-first of all tickets received but not yet disposed of by final trial court action and forwarding the results of the inventory on a form prescribed by the department to the department within ten days of the completion of the inventory.

Finally, pursuant to S.C. Code Ann. § 56-3-1974, "[t]he service of the uniform parking violations ticket vests all traffic, recorder's, and magistrate's courts with jurisdiction to hear and dispose of the charge for which the ticket was issued and served." Therefore, the General Assembly has specifically provided that service of the uniform parking violation ticket authorized by Sections 56-3-1971 and 56-3-1973 grants magistrates, and pursuant to S.C. Code Ann. §14-25-45, municipal courts, jurisdiction to hear and dispose of State handicapped parking violations.

You indicated that your office communicated with the State Department of Motor Vehicles and was provided a Form HP 438 which has been designated as a "Uniform Handicapped Parking Ticket" which would be the ticket authorized by Section 56-3-1973. However, you also indicated that according to the Department, they process "very few" of these type tickets. Instead, many local jurisdictions issue handicapped parking tickets not on this form but instead on tickets, which I assume is the typical parking ticket used for other parking violations.

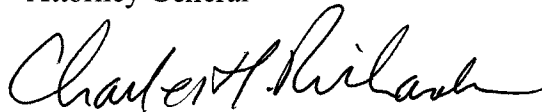
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While you indicate many jurisdictions do not utilize the uniform handicapped parking violations ticket authorized by Section 56-3-1973, in the opinion of this office, if it is desired that a magistrate's or municipal court have jurisdiction over a handicapped parking violation established by State law, such type ticket must be utilized. As note above, pursuant to Section 56-3-1974, the service of a statutorily authorized uniform handicapped parking violations ticket "...vests all traffic, recorder's, and magistrate's courts with jurisdiction to hear and dispose of the charge for which the ticket was issued and served." It appears, therefore, that if a local jurisdiction issues a typical parking ticket for such a State offense, such as used for other parking meter violations, such cases would have to be brought in General Sessions court. Of course, this is a matter that should probably be reviewed by the General Assembly inasmuch as I would assume that it was not anticipated that the practice of issuing a typical parking ticket would result in a handicapped parking case being brought in General Sessions court.

With kind regards, I am,

Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General