

April 7, 2008

The Honorable Jane Pittman Modla  
Judge, Rock Hill Municipal Court  
120 East Black Street  
Rock Hill, South Carolina 29730

Dear Judge Modla:

In a letter to this office you referenced S.C. Code Ann. § 56-5-730 and questioned whether such provision establishes a criminal offense. You particularly asked whether a police officer could issue a ticket under this provision and whether a solicitor could use this statute for plea bargaining. You indicated that if such was used, a violation of such provision would carry no points on a driving record.

Section 56-5-730 states that

[i]t is unlawful and, unless otherwise declared in this chapter with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden or to fail to perform any act required in this chapter.

Such provision is similar to another provision, S.C. Code Ann. § 56-5-6190 which states:

[i]t is a misdemeanor for any person to violate any of the provisions of this chapter unless such violation is by this chapter or other law of this State declared to be a felony. Every person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days.

Such penalty provision was cited in an opinion of this office dated June 28, 2004 which stated that inasmuch as S.C. Code Ann. § 56-5-1240 which requires the driver of a vehicle involved in an accident with an unattended vehicle to take certain actions does not have a specific penalty, Section 56-5-6190 would provide the penalty for such a violation. But see: Op. Atty. Gen. dated

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February 10, 1994 (Section 56-5-6190 would not pertain to a violation of S.C. Code Ann. § 56-5-1520 which establishes the offense of speeding inasmuch as a specific penalty is provided.)

Section 56-5-730 was originally enacted as part of Act No. 281 of 1949 which was a comprehensive act regulating traffic on the highways of this State. In an opinion of this office dated September 5, 1989, such provision was also cited along with S.C. Code Ann. § 56-5-740 which states:

[n]o person shall willfully fail or refuse to comply with any lawful order or direction of any police officer, fireman or uniformed adult school crossing guard invested by law with authority to direct, control, or regulate traffic.

It was stated that Section 56-5-730 would be applicable to Section 56-5-740. Another prior opinion of this office dated July 25, 1977 citing Section 56-5-730 states that consistent with such provision, "...unless otherwise indicated, violations of traffic laws are misdemeanors."

In the opinion of this office, Section 56-5-730 does not establish a separate criminal offense but is a penalty provision establishing that violations of provisions of Chapter 5 of Title 56 of the State Code are misdemeanors unless otherwise specifically provided. It does not appear that a ticket could be issued citing that provision itself for a violation and, therefore, such provision would similarly not serve as an alternative offense for plea bargaining purposes.

With kind regards, I am,

Very truly yours,

Henry McMaster  
Attorney General

By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Deputy Attorney General