



ALAN WILSON
ATTORNEY GENERAL

March 1, 2012

Chief Robert H. Wunderlich
Town of Holly Hill Police Department
P.O. Box 1108
Holly Hill, SC 29059

Dear Chief Wunderlich:

We received your letter requesting an opinion of this office regarding the use of battery-operated tint meters to enforce S.C. Code Ann. §56-5-5015, South Carolina's "window tinting" law ("tint law"). By way of background, you state:

[t]he meters we use are Tint Meter Enforcer TM-100 sold by Laser Labs, Inc. They are powered by a 9-volt battery and are certified as accurate to within plus or minus 2%. Based on this, we do not issue citations for a measurement of 25% or higher. We also use the included calibration test panels to verify the accuracy of the meters.

Specifically, §56-5-5015(A) provides, in pertinent part, that:

[n]o person may operate a motor vehicle that is required to be registered in this State on any public highway, road, or street that has a sunscreen device on the windshield, the front side wings, and side windows adjacent to the right and left of the driver and windows to the rear of the driver that do not meet the requirements of this section. . . .¹

You inform us that a window tint installer has complained that your police department unlawfully issued citations based upon a violation of this provision, because the battery-operated tint meters are inaccurate and unreliable.

We note that §56-5-5015 does not dictate what device or method of proof should be used for enforcement purposes. Significantly, the provision does not exclude the use of any device for enforcement, such as a tint meter. We are unable to find any opinions in South Carolina, or other jurisdictions, holding that results from a battery-operated device may not be used in a prosecution for violating the tint law. To the contrary, there are numerous cases upholding the use of portable tint meters

¹In turn, §§56-5-5015 (C) & (D) provide minimal light transmission requirements for "sunscreening devices" that are located on "the side wings or side windows" and "the rear-most window" of a car. Such devices must "be nonreflective," and have a light transmission of "not less than twenty-seven percent."

on cars stopped for violating various state tint laws. See, e.g., United States v. Odom, 2004 WL 1179309, *3 (S.D. N.Y. 2004) [noting that, although the officer never tested the tint of the defendant's window with a tint meter, the officer nevertheless had probable cause to stop the car]; State v. Schaefer, 1999 WL 44154, *2 (Minn. Ct. App. 1999) [holding traffic stop was permissible, because the officer had a reasonable belief that the car's dark window tinting was in violation of the statutory limit and a tint meter test of the car confirmed the windows were too dark]; State v. Davis, 2012 WL 121231, *3 (N.C. Ct. App. 2012) [upholding use of a tint meter to corroborate officer's reason to stop of defendant's car for illegally tinted windows]; State v. Jones, 2010 WL 4615418, *2 (Ohio Ct. App. 2010) [upholding stop of defendant's car for suspected window tint violation and the testing of the level of window tint with a window tint meter].

However, we advise that the question of what evidence or method of proof is admissible to support a charge of violating the tint law must be left to the discretion of a court of competent jurisdiction. See Ops. S.C. Atty. Gen., November 23, 2010; July 17, 1989. The admissibility of any evidence needs to be determined on a case-by-case basis. Many questions of fact would need to be resolved before any definitive conclusion could be reached. Of course, this office is not authorized to make such a factual determination in a legal opinion. See Ops. S.C. Atty. Gen., February 21, 2012; July 1, 2003; February 26, 2001. As we have stated previously, “[u]nlike a fact-finding body such as a . . . court, we do not possess the necessary fact-finding authority and resources required to adequately determine . . . factual questions.” Op. S.C. Atty. Gen., February 19, 1999. Ultimately, the definitive answer as to whether or not evidence from a tint meter would be admissible at trial could only be given by the appellate courts of this State in an appropriate case.² Op. S.C. Atty. Gen., January 10, 2012.

²To further support a charge for violating the tint law, §56-5-5015(E) provides:

[e]ach vehicle equipped with an after-factory sunscreening device, whether installed by a consumer or professional window tinter, at all times must bear a certificate of compliance. The certificate of compliance must be of a size and form prescribed by the Department of Public Safety. Each certificate of compliance must be properly attached to the vehicle on the inside and lower right hand corner of each window containing an after-factory installed sunscreen device and must contain the following information:

- (1) the percentage of light transmission allowed by the sunscreening device;
- (2) the identity of the installer by name, address, and telephone number;
and
- (3) date of installation.

In addition, §56-5-5015(G) (2) provides that no person may install any sunscreening product or material on vehicles titled for use on the public roads of this State without permanently affixing the certificate of compliance. Penalties are provided for a violation of this provision.

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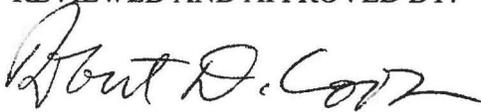
If you have any further questions, please advise.

Very truly yours,



N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General