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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

May 19, 2003

The Honorable Becky W. Gerrard
Chief Administrative Summary Court Judge
Oconee County Summary Court
15873 Wells Highway
Seneca, South Carolina 29678

Re: S.C. Code Ann. §56-5-2953

Dear Judge Gerrard:

You have requested that this Office provide clarification "... on a *Driving Under the Influence* point of law with regards to South Carolina Code of Law Section 56-5-2953 as to activation of the video camera." By way of background, you indicate that "[t]his statute does not address the concept of a vehicle never having been equipped with a video camera, only an inoperable piece of equipment ... [h]owever, the affidavit includes a box for never having been equipped." Given this background, you ask "[d]oes inoperable mean the same as never equipped ... [and] does an officer who never has had a camera fill out the affidavit (emphasis yours)."

S.C. Code Ann. §56-5-2953(A) requires in part that "[a] person who violates [the State's DUI laws] shall have his conduct at the incident site and the breath test site videotaped." Section 56-5-2953(B), however, provides in part that "[f]ailure by the arresting officer to produce the videotapes required by this section is not alone a ground for dismissal of any charge made pursuant to [the State's DUI laws] if the arresting officer submits a sworn affidavit certifying that the videotape equipment at the time of the arrest, probable cause determination, or breath test device was in an inoperable condition, stating reasonable efforts have been made to maintain the equipment in an operable condition"

As you note, Section 56-5-2953 addresses the situation involving an inoperable camera without specifically mentioning those situations where a law enforcement vehicle has never been equipped with video camera equipment. While Section 56-5-2953, as codified, does not address this specific situation, the legislative Act which created Section 56-5-2953 does. Section 56-5-2953 was created by Act No 434 of the 1998 Statutes at Large. Act 434 includes Section 18, titled "Time effective" which provides in part that "[t]he provisions in Section 56-5-2953 (A), (B), and (C) take effect for each law enforcement vehicle used for traffic enforcement as soon as the law enforcement

*Respectfully,
Henry McMaster*

The Honorable Becky W. Gerrard

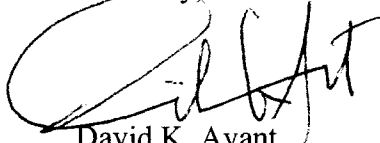
Page 2

May 19, 2003

vehicle used for traffic enforcement is equipped with a videotaping device.”¹ This Office has previously opined that, based on the provision of Section 18 of Act 434, “... an officer is not required to produce a video tape of a D.U.I. arrest if his vehicle is not yet equipped with a camera.” See Op. S.C. Atty. Gen., dated August 18, 1999.

Accordingly, while “inoperable” may not “mean the same as ‘never equipped,’” the requirements of Section 56-5-2953 do not apply to a law enforcement vehicle which has never been equipped with a video camera. As to who should fill out the Affidavit required by Section 56-5-2953, the Section addresses situations involving an inoperable camera, but does not mention those involving a vehicle which has never been equipped with a camera. Ostensibly, the arresting officer who was operating the vehicle would have sufficient knowledge of the situation to provide the sworn affidavit. However, it appears that in such a situation, any officer with sufficient knowledge could provide the affidavit.

Sincerely,

A handwritten signature in black ink, appearing to read "David K. Avant", written over a horizontal line.

David K. Avant
Assistant Attorney General

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¹ Section 17 of Act 434 is printed in the “Editor’s Note” following Section 56-5-2953 as it appears in the Code.