

7585 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

September 4, 2003

The Honorable Daisy M. Moore
Magistrate, Sumter County
P. O. Box 1428
Sumter, South Carolina 29151-1428

Dear Judge Moore:

In a letter to this office you raised questions relating to arrests for alleged speeding violations occurring within the corporate limits of the Town of Pinewood which are detected by radar units positioned outside town limits. I assume that the speed limits cited are set by State law.

In your first situation, a town police officer positions his radar approximately a city block outside the town limits, pointing back to an area within the town limits. At that point, the radar locks in on the speed of a vehicle traveling within the town limits. At the point outside the town where the officer is positioned the speed limit is 55 miles per hour; however, the speed limit within the town where the radar is pointed is 35 miles per hour. You questioned whether the town police officer would be authorized to make an arrest for speeding for violation of the 35 mile per hour speed limit which he observes in an area outside the municipal limits.

Generally, the jurisdiction of a municipal police officer does not extend beyond the territorial limits of the municipality. State v. Harris, 299 S.C. 157, 382 S.E.2d 925 (1989). An exception to this rule is provided by S.C. Code Section 17-13-40(2003) which authorizes a municipal officer to arrest an offender at a place within a radius of three miles of the municipal limits when that officer is in pursuit of that offender for a violation of a municipal ordinance or State statute committed within the corporate limits of the municipality.¹

However, in the situation you addressed, the officer is acting outside his jurisdiction in observing the violation within the municipal limits. The three mile limit extra-territorial authority

¹ Other statutory exceptions also exist. See, e.g., S.C. Code Ann. Section 5-7-110 (1977) (contracting for police protection beyond the corporate limits); S.C. Code Ann. Section 23-1-215 (1989) (criminal investigation in another county or municipality by agreement of the law enforcement agencies involved); S.C. Code Ann. Section 17-13-45 (2003) (responding to distress call in adjacent jurisdiction).

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would not be applicable in that the officer must be within the municipal limits when initiating pursuit. See: Op. Atty. Gen. dated September 15, 2000. Absent a grant of authority to act outside the municipal limits, it does not appear that the town officer would be authorized to position his radar outside the town limits so as to point back within the town limits to formulate the basis for a traffic stop. Therefore, the town officer would not be authorized to make an arrest for speeding in violation of the 35 mile per hour limit in the situation you addressed.

There may be situations, however, where a municipal officer, stationed outside his jurisdiction when he observes a criminal offense within the municipal limits, would be entitled to make an arrest. For instance, in certain situations an officer has the right to act as a private citizen beyond his jurisdiction. In those situations, the officer's actions would be lawful if they could have been undertaken by a private citizen. Harris, supra. S.C. Code Ann. Sections 17-13-10 and 17-13-20 (2003) set forth the authority when any person may make a warrantless arrest. For instance, pursuant to Section 17-13-10 any person may make an arrest under the following conditions:

Upon (a) view of a felony committed; (b) certain information that a felony has been committed or (c) view of a larceny committed, any person may arrest the felon or thief and take him to a judge or magistrate to be dealt with according to law.

However, a citation for a speeding offense does not fall within the guidelines of Section 17-13-10 or 17-13-20. Speeding is a misdemeanor offense. S.C. Code Ann. Section 56-5-1520 (Supp. 2002). A recent decision of the State Supreme Court indicated that "South Carolina recognizes no common law right of a citizen to arrest, without a warrant, for a misdemeanor. State v. McAteer, 340 S.C. 644, 646, 532 S.E.2d 865 (2000). Furthermore, in the situation you addressed, there would not be any action in the guise of a private citizen in that the officer in using his radar would be utilizing methods typically not granted private citizens.

You next asked about a situation where a deputy sheriff also positions his radar at a point approximately a city block outside the municipal limits pointing back to an area within the municipal limits. The speed limit within the municipality is 35 miles per hour. The speed limit at the point where the deputy sets up his radar is 55 miles per hour. You have asked whether the deputy sheriff may make an arrest for speeding for a violation of the 35 mile per hour speed limit using his radar which is positioned so as to point back to an area within the town limits.

S.C. Code Ann. Section 23-13-70 (1989) authorizes a deputy sheriff to "patrol the entire county". An opinion of this office dated July 9, 1998 commented that "since the sheriff is a county officer, his authority extends over the entire county, and includes all...(political subdivisions) within his county." That opinion further commented that "the county sheriff and his deputies retain...the authority and jurisdiction to pursue and arrest offenders in incorporated areas of their home county as part of their full countywide jurisdiction." Another opinion of this office dated May 17, 2001 determined that "...the sheriff would technically have jurisdiction (concurrent with the municipal police department) over any violation of state law occurring within the municipality." Inasmuch as

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the deputy sheriff has jurisdiction anywhere within the county, it appears that a deputy sheriff would be authorized to make an arrest for speeding using his radar positioned so as to point back to an area within town limits.

If there are any questions regarding the above, please advise.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles H. Richardson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Charles H. Richardson
Senior Assistant Attorney General