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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

September 15, 2000

The Honorable A.W. Flynn
Chief Magistrate
P.O. Box 485
306 E. Main St.
Williston, SC 29853

Dear Judge Flynn:

Thank you for your letter of July 28, 2000 which has been referred to me for response. In your correspondence, you ask for an opinion from this office regarding jurisdictional issues and other concerns relating to a traffic stop made by a Williston municipal police officer.

By way of background, you relate the following facts: that an off-duty Williston police officer was traveling in his private vehicle with his family from Aiken County back to Williston; that the officer observed, while still in Aiken County, a car approaching at a high rate of speed; that the officer attempted to pace this car with his own by driving approximately 75 mph; that the officer called Barnwell County dispatch and asked Williston County officers to be on the "lookout" for the speeding car; that the Williston officers were otherwise engaged in police business; that the driver then entered the city limits of Williston with the officer in pursuit; that the driver parked his car at a private residence ½ mile within the city limits; that the Williston officer called for back up; that two Williston police officers arrived on the scene; that the off-duty officer then issued a traffic citation to the driver using a ticket from the ticket book belonging to one of the on-duty officers citing the driver for traveling 65 mph in a 35 mph zone.

The jurisdiction of a police officer, absent specific statutory authority, generally does not extend beyond the territorial limits of the municipality. State v. Harris, 299 S.C. 157, 159 (1989). An exception is found under S.C. Code Ann. § 17-13-40 (A), through which an officer may extend his jurisdiction without election, appointment or request under the following condition:

(A) When the police authorities of a town or city are in pursuit of an offender for a violation of a municipal ordinance or statute of this State **committed within the corporate limits**, the authorities may arrest the offender, with or without warrant,

Rembert Dennis

Judge Flynn
Page 2 of 3
September 15, 2000

at a place within the corporate limits, at a place within the county in which the town or city is located, or at a place within a radius of three miles of the corporate limits.

The officer, in this instance, was outside his municipality when he first observed the alleged speeding driver. The ticket he issued cited a 35 mph zone outside of his jurisdiction. With those facts, the officer did not have authority to issue a citation for conduct he observed outside of his jurisdiction. However, if the officer observed the driver speeding within his jurisdiction, whether on or off duty, he would have been able to issue a citation. An officer may arrest a person, without warrant, for an offense committed in his view. See 1990 S.C. Op. Atty. Gen. No. 90-48. An off-duty police officer may exercise the same police power as he has when on duty. See S.C. Op. Atty. Gen. April 3, 1975.

A police officer's actions outside of his jurisdiction are lawful if they could be properly exercised by an ordinary citizen. State v. Harris, 299 S.C. 157, 159 (1989). S.C. Code Ann. § 17-13-10 provides that any person may make a warrantless 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, citation for a traffic offense does not fall within the parameters of § 17-13-10. A speeding offense is classified as a misdemeanor under S.C. Code Ann. § 56-5-1520. A recent decision of the South Carolina Supreme Court addresses this issue by stating, "South Carolina recognizes no common law right of a citizen to arrest, without a warrant, for a misdemeanor." State v. McAteer, No. 25134, 2000 WL 694094 at *1 (S.C. May, 2000). In light of this decision and the aforementioned statutes, the officer in this instance was without the authority to cite the defendant for conduct observed outside of his jurisdiction. Again, however, if the officer had occasion to witness the defendant speeding within Williston city limits, he would have authority to issue a citation.

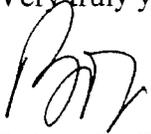
You have also asked specifically about whether 3/10 of a mile is sufficient distance to pace a car and whether an off-duty officer may use his personal vehicle to pace the speed of a car when the officer's car has not been properly calibrated for speed. Such questions are properly resolved by the fact finder within the discretion and judgment of the court. The officer could testify as to how he went about gauging the speed of the vehicle in question and if his vehicle was calibrated thereafter. The officer may also testify as to how long and how far he followed the defendant. Whether the evidence gathered by the officer is adequate to sustain the charge is a question of fact to be resolved by the jury or magistrate in this instance.

Judge Flynn
Page 3 of 3
September 15, 2000

Your final question concerns the use of another officer's ticket book by the off-duty officer. S.C. Code Ann. § 56-7-10 provides that a "uniform traffic ticket" shall be used by all law enforcement officers in arrests for all traffic offenses. The Code does not specifically state an officer may only use his ticket book in order to issue a citation. Therefore, the question you pose is one of policy. The policy directives of the Williston Police Department would control. In contacting the police department, we learned it is common practice in that department for officers to use the ticket book of another officer.

I hope the information contained herein proves helpful. This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Very truly yours,



Robert D. Cook
Senior Assistant Attorney General