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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

September 21, 2000

W. Baxter Harwell, Assistant Solicitor  
Fifteenth Judicial Circuit  
P.O. Box 1276  
Conway, South Carolina 29526

Dear Assistant Solicitor Harwell,

By your letter of June 8, 2000, you have requested an opinion of this Office concerning whether magistrates have jurisdiction over violations of South Carolina Code of Laws Section 56-5-2770 (Passing a Stopped School Bus).

South Carolina Code Section 56-5-2780 provides the penalties for unlawfully passing a stopped school bus. For a first offense the driver must be fined "not less than five hundred dollars or imprisoned not more than thirty days." A magistrate has jurisdiction over criminal offenses "which may be subject to the penalties of a fine or forfeiture not exceeding five hundred dollars, or imprisonment not exceeding thirty days, or both." S.C. CODE ANN. § 22-3-550. The ambiguity in § 56-5-2780 lies in the fine of "not less than five hundred dollars." Although the imprisonment penalty falls completely within the magistrate's jurisdictional maximum for imprisonment (thirty days), the minimum monetary fine equals a magistrate's jurisdictional maximum.

Under two circumstances, the offense is clearly within the magistrate's concurrent jurisdiction: 1) if the magistrate imposes no fine and sentences the driver only to imprisonment and 2) if the magistrate imposes the minimum monetary fine of five hundred dollars. Only if the magistrate opted to fine the driver over five hundred dollars would the offense fall outside his jurisdiction. This confusion in the application of the penalties for jurisdictional purposes leads this Office to conclude that the statutory minimum monetary fine set for unlawfully passing a stopped school bus was probably a drafting error. Nevertheless, in any interpretation of a penal statute, general statutory construction requires that it be strictly construed against the State and any ambiguity or uncertainty must be resolved in favor of the defendant. *State v. Cutler*, 274 S.C. 376, 264 S.E.2d 420 (1980). In light of this guiding principle, this Office advises that a magistrate would have jurisdiction over violations of S.C. Code Ann. § 56-5-2770, Unlawfully Passing a Stopped School Bus.

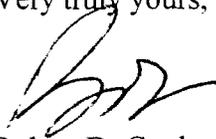
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Assistant Solicitor Harwell  
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This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,

A handwritten signature in black ink, appearing to be 'R. D. Cook', written over the typed name.

Robert D. Cook  
Assistant Deputy Attorney General