



ALAN WILSON  
ATTORNEY GENERAL

June 3, 2014

The Honorable Ronald C. Halfacre  
Newberry County Magistrate Court Judge  
Law Enforcement Complex  
3239 Louis Rich Road  
Newberry, SC 29108-1540

RE: Opinion request on whether speeds posted on yellow traffic warning signs are legally enforceable or merely warnings to motorists, and, if enforceable, the appropriate traffic charges that can be issued for a violation of such speeds.

Dear Judge Halfacre:

In your letter dated November 8, 2013, you asked that this Office provide an opinion regarding the overall enforceability of speeds posted on traffic “warning signs” and, if enforceable, to clarify what charges law enforcement officials are permitted to issue to motorists exceeding speeds posted on traffic “warning signs.” Specifically, your letter states the following three questions:

- (1) “whether a charge for ‘speeding,’ [pursuant to S.C. Code Ann. §§] 56-5-1520(B)(1), 56-5-1520(B)(2), and 56-5-1520(B)(3), is a proper charge for violating the speed posted on the small yellow sign located directly underneath a warning sign;”
- (2) “whether a charge of ‘too fast for conditions’ [pursuant to S.C. Code Ann. §§] 56-5-1520(A) or 56-5-1520(F) for exceeding the speed posted on the small yellow sign located directly underneath a warning sign, when no collision has occurred, is a proper charge;” and
- (3) “whether a charge for ‘failure to obey a traffic device’ [pursuant to S.C. Code Ann. § 56-5-950], when violating the speed posted on the small yellow sign located directly underneath a warning sign is a proper charge”?

Your correspondence also includes two illustrations as presumed examples of what you refer to as “the speed posted on the small yellow sign located directly underneath a warning sign.” The first illustration depicts a rectangular yellow sign labeled “RAMP” in black letters with thirty-five miles per hour (35 MPH) written below on the same sign, also in black lettering. The second illustration shows a square yellow sign marked with thirty-five miles per hour (35 MPH) in black lettering. The first sign described is generally classified as a “horizontal alignment warning sign,” and is more specifically titled as an “advisory ramp speed sign.” U.S. Department of Transportation Federal Highway Administration, Manual on Uniform Traffic Control Devices for Streets and Highways § 2C.06, Figure 2C-1, W13-3, 2C.14 (2009) (the Manual of Uniform Traffic Control Devices (MUTCD) was adopted by the South Carolina Department of Transportation on May 1, 2011 to serve as its official traffic control manual),

available at <http://mutcd.fhwa.dot.gov>.<sup>1</sup> The sign depicted in the second illustration is officially titled as an “advisory speed plaque” and would be affixed below a larger warning sign. *Id.* at § 2C.08, Figure 2C-1, W13-1P.<sup>2</sup>

Based on the analysis below, it is the opinion of this Office that a court would likely find that speed limits posted on warning signs, such as advisory speed plaques and advisory ramp speed signs, are enforceable and that certain traffic citations may be issued to a motorist in violation of exceeding speed limits posted on such signs.

### Law/Analysis:

#### 1. Enforceability

This opinion will first address the overall enforceability of a speed limit posted on a warning sign. It is well established that when an official traffic-control device is erected by the proper officials pursuant to the authority granted by statute, obedience to its mandate is required. S.C. Code Ann. § 56-5-950 (2006); Rochester v. North Greenville Junior Coll., 249 S.C. 123, 128, 153 S.E. 2d 121, 122-23 (1967). In Rochester v. North Greenville Junior Coll., the Supreme Court addressed the meaning and application of what it termed a “double warning sign” posted near an intersection where an automobile accident occurred. 249 S.C. 123, 127, 153 S.E. 2d 121, 122 (1967). The double-warning sign displayed a “school bus crossing” warning sign on the top of the sign and a “35 MPH” below; both signs were yellow in color with black lettering. *Id.* In a companion case involving the same accident, Rochester v. Bussey, 251 S.C. 347, 350, 162 S.E.2d 841, 842 (1968), the Court noted the official classification of the 35 MPH sign below the warning sign was a “maximum advisory speed sign”<sup>3</sup> because the speed was written in black letters on a yellow background and used in connection with another warning sign as opposed to a speed limit sign with black lettering on a white background coupled with the words “Speed Limit” and the applicable miles per hour. While the lower court found that the sign was erected to protect school buses

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<sup>1</sup> The South Carolina Department of Transportation has also issued a supplement to the 2009 MUTCD. See South Carolina Department of Transportation, Supplement to the Manual on Uniform Traffic Control Devices for Streets and Highways, [http://www.scdot.org/doing/technicalPDFs/mutcdSup/supplement\\_mutcd.pdf](http://www.scdot.org/doing/technicalPDFs/mutcdSup/supplement_mutcd.pdf) (last visited June 2, 2014).

<sup>2</sup> Pursuant to the MUTCD:

[w]arning signs call attention to unexpected conditions on or adjacent to a highway, street, or private roads open to public travel and to situations that might not be readily apparent to road users. Warning signs alert road users to conditions that might call for a reduction of speed or an action in the interest of safety and efficient traffic operations.

U.S. Department of Transportation Federal Highway Administration, Manual on Uniform Traffic Control Devices for Streets and Highways § 2C.01 (2009).

Warning signs notifying drivers of a change in roadway alignment, some of which include a speed in miles per hour, are classified as “horizontal alignment warning signs.” *Id.* at § 2C.06, Figure 2C-1.

“Advisory speed plaques” are horizontally affixed below a larger warning sign. *Id.* at § 2C.08. These signs are used to supplement a warning sign to indicate the advisory speed due to a certain condition on the roadway and cannot be installed as a separate sign installation. *Id.*

An “advisory ramp speed sign” is installed on a ramp to confirm the ramp advisory speed.” *Id.* at § 2C.14.

<sup>3</sup> At the time of the Rochester Opinions, the Highway Department Manual referred to a yellow speed sign with black letters used in connection with another warning sign as a “maximum advisory speed sign.” The current Manual of Uniform Traffic and Control Devices now calls what was a “maximum advisory speed sign” an “advisory speed plaque.” See U.S. Department of Transportation Federal Highway Administration, Manual on Uniform Traffic Control Devices for Streets and Highways § 2C.08 (2009).

and school children and applied solely when school buses would normally operate, the Supreme Court found that such interpretation was erroneous. Rochester v. North Greenville Junior Coll., 249 S.C. at 128, 153 S.E. 2d at 123. Despite the lower sign's classification as a "maximum advisory speed sign," and its pairing with a school bus warning sign, the Court concluded that such was not determinative of its legal effect. Rochester v. Bussey, 251 S.C. at 351, 162 S.E.2d at 843. Rather, it found that the sign's legal effect "must be determined from the wording of the sign in light of the statutory provisions relative to the effect to be given official signs erected by the Department to control traffic." Id. Because the sign was erected by the State Highway Department in accordance with statutory authority, it was determined to be an official traffic-control device, and, as such, traffic was required to comply with its instructions. Id. The Court went on to state the sign

meant that motorists were informed that they were approaching a school bus crossing and that 35 miles per hour was the maximum speed permitted in the area. There was nothing about the wording of the present sign to indicate that it constituted only a warning to traffic. It was not ambiguous and, to a motorist, it could only have meant that it was posted to regulate speed in the area.

Id. at 351-52, 162 S.E.2d at 843.

Statutory authority guided the Court in reaching the conclusion that compliance with a "maximum advisory speed sign" is mandatory rather than recommended in the Rochester cases. While the statutes relied upon by the Rochester cases have since been amended in certain respects and assigned different code sections, the substantive law, and thus the reasoning of the Court, remains the same. The South Carolina Department of Transportation has the general authority to erect traffic-control devices as set forth in S.C. Code Ann. § 56-5-920 (2006) which permits the adoption of "a manual of standards and specifications for a uniform system of traffic-control devices . . . for use upon highways and streets within [ ] [the State of South Carolina]," and S.C. Code Ann. § 56-5-930 (2006), which states in pertinent part that "[t]he [South Carolina] Department of Transportation may place and maintain such traffic-control devices . . . upon all state highways as it shall deem necessary . . . to regulate, warn or guide traffic." Moreover, S.C. Code Ann. § 56-5-1530 (2006) grants the South Carolina Department of Transportation the specific authority to alter the statutory maximum lawful speeds established by S.C. Code Ann. § 56-5-1520(B)-(C) (2006) when it states:

[w]hensoever the [South Carolina] Department of Transportation shall determine upon the basis of an engineering and traffic investigation that any maximum speed [ ] set forth [by statute] is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of the state highway system, the Department of Transportation may determine and declare a reasonable and safe speed limit, which shall be effective when appropriate signs giving notice thereof are erected. Such maximum speed limit may be declared to be effective at all times or at such times as are indicated upon such signs; and differing limits may be established for different times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe speeds, which shall be effective when posted upon appropriate fixed or variable signs.

S.C. Code Ann. § 56-5-540 (2006) states that "all signs, signals, markings, and devices . . . placed or erected by authority of a public body or official having jurisdiction [i.e. the South Carolina Department

of Transportation] for the purpose of regulating, warning or guiding traffic are “official traffic-control devices.” Finally, the obligation that “[t]he driver of any vehicle shall obey the instruction of any official traffic-control device . . . .” is set forth in S.C. Code Ann. § 56-5-950 (2006).

Applying the warning signs included in your correspondence (i.e. an advisory speed plaque and an advisory ramp speed sign) to the relevant statutory authority cited above as interpreted in the Rochester cases, if such signs were erected by the South Carolina Department of Transportation after engineering and traffic investigations determined the necessity to reduce the speed from the fixed statutory maximum, the South Carolina Department of Transportation would be permitted to alter the statutory speed limit. An advisory speed plaque paired with a warning sign, as addressed in the Rochester cases, is enforceable and must be followed by motorists if the sign does not contain ambiguity and clearly conveys to a motorist its purpose is to regulate speed in the area. It is presumed that a Court would apply the same analysis to an advisory ramp speed sign as was applied to an advisory speed plaque and find it unambiguous and a confirmation to the motorist of a reduction in speed on the ramp due to a change in roadway alignment.

Thus, while perhaps contrary to public opinion and despite titles by the MUTCD as *advisory* ramp speed signs and *advisory* speed plaques, warning signs with speed limits posted by the South Carolina Department of Transportation in accordance with statutory authority are official traffic-control devices which motorists are obliged to follow.<sup>4</sup> It is our opinion that the term “advisory,” when used in reference to warning signs, is not synonymous with “recommendation” or meant merely as a warning to traffic. Rather, the word “advisory” is used to indicate entry into a section of roadway covered by a

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<sup>4</sup> The South Carolina Driver’s Manual issued by the South Carolina Department of Motor Vehicles as well as the South Carolina Supplement to the MUTCD give additional support for law enforcement’s authority to enforce speed limits fixed on warning signs. Within the “Warning Signs” section of the South Carolina Driver’s Manual, sign no. 32 shows a right arrow and a corresponding description which states: you must be prepared for a sharp right turn. South Carolina Department of Motor Vehicles, South Carolina Driver’s Manual 178, <http://www.scdmvonline.com/DMVNew/forms/Signs.pdf> (last visited June 2, 2014). Next, the description for sign no. 33, an advisory speed plaque, states “(sign [no.] 33, which is displayed on the post beneath the larger sign) shows the highest speed at which you can make the turn safely. Exceeding the speed posted on this type of sign is not only hazardous but also a traffic violation.” *Id.* (emphasis added). Furthermore, the description for sign no. 34 in the South Carolina Driver’s Manual, which correlates to an image of an advisory ramp speed sign, indicates that such a sign “informs you of the highest safe speed at which you may drive on interchange ramps when leaving the interstate.” *Id.*

The South Carolina Supplement to the MUTCD also provides authority of the enforceability of speeds on an advisory speed plaque when it states:

South Carolina court rulings have held that a black and yellow advisory speed plaque constitutes the legal speed limit through the section of roadway covered by the advisory speed posted. For this reason, engineering judgment must be used to establish the need for the speed reduction and the advisory speed established. Care should be taken to not post an unreasonably low advisory speed. Advisory speeds should be checked periodically to determine whether conditions have changed since the advisory speed was posted and the speed should be adjusted if necessary.

South Carolina Department of Transportation, Supplement to the Manual on Uniform Traffic Control Devices for Streets and Highways, § 2C.08, [http://www.dot.state.sc.us/doing/technicalPDFs/mutcdSupp/supplement\\_mutcd.pdf](http://www.dot.state.sc.us/doing/technicalPDFs/mutcdSupp/supplement_mutcd.pdf) (last visited June 2, 2014).

mandatory speed reduction due to hazardous conditions necessitating the need for a speed lower than the usual statutory limits listed in S.C. Code Ann. § 56-5-1520(B)-(C) (2006).<sup>5</sup>

## **2. Appropriate Traffic Citations**

Having established the enforceability of speed limits listed on warning signs, such as advisory speed plaques and advisory ramp speed signs, we will now address the questions raised in your letter pertaining to specific traffic citations.

### **a. Speeding**

You first ask “whether a charge for ‘speeding’, [pursuant to S.C. Code Ann. §§] 56-5-1520(B)(1), 56-5-1520(B)(2), and 56-5-1520(B)(3), is a proper charge for violating the speed posted on the small yellow sign located directly underneath a warning sign.” S.C. Code Ann. § 56-5-1520(B)(1)-(3) (2006) provides the general statutory maximum highway speed limits as: “seventy miles an hour on the interstate highway system and other freeways where official signs giving notice of [that] speed [is] posted,” “sixty miles an hour on multilane divided primary highways where official signs giving notice of [that] speed [is] posted,” and “fifty-five miles an hour in other locations or on other sections of highways and unpaved roads are limited to the speed of forty miles an hour.” It is our opinion that a court would find that citations issued to a motorist under S.C. Code Ann. § 56-5-1520(B)(1)-(3)(2006) must relate to highway speed violations in excess of the statutory maximum lawful speeds where official signs giving notice of the speed are posted.

Alternatively, S.C. Code Ann. § 56-5-1520(E) (2006) states that: “[t]he maximum speed limits set forth in this section may be altered pursuant to Sections 56-5-1530 and 56-5-1540.” As outlined above, S.C. Code Ann. § 56-5-1530 (2006) gives the South Carolina Department of Transportation authority to alter statutory speed limits after conducting an engineering and traffic investigation, and S.C. Code Ann. § 56-5-1540 (2006) provides local authorities with the ability to alter speed limits, pursuant to the restrictions set by statute, after approval is received from the South Carolina Department of Transportation. Accordingly, a court is likely to find the proper statutory authority to issue a charge for a motorist exceeding speeds posted on an advisory speed plaque or other unambiguous horizontal alignment sign, such as an advisory ramp speed sign, would be S.C. Code Ann. § 56-5-1520(E) (2006).

### **b. Too Fast for Conditions When No Collision Has Occurred**

The second question posed in your letter is “whether a charge of ‘too fast for conditions’ [pursuant to S.C. Code Ann. §§] 56-5-1520(A) or 56-5-1520(F) for exceeding the speed posted on the small yellow sign located directly underneath a warning sign, when no collision has occurred, is a proper charge.” The general statute pertaining to “driving too fast for conditions” is as follows:

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<sup>5</sup> The maximum speed limits are: seventy miles an hour on the interstate highway system and other freeways where official signs giving notice of this speed are posted; sixty miles an hour on multilane divided primary highways where official signs giving notice of this speed limit are posted; fifty-five miles an hour in other locations or on other sections of highways and unpaved roads are limited to the speed of forty miles an hour; and thirty miles an hour in urban districts. S.C. Code Ann. § 56-5-1520(B)-(C) (2006).

[a] person shall not drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Speed must be so controlled to avoid colliding with a person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of a person to use care.

S.C. Code Ann. § 56-5-1520(A) (2006). To properly answer this question, it is necessary to provide a brief background on statutory interpretation. The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly. Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011) (citing Bryant v. State, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009)). Furthermore, the South Carolina Supreme Court has held that a statute should not be construed by concentrating on an isolated section or provision. Laurens County Sch. Dists. 55 & 56 v. Cox, 308 S.C. 171, 174, 417 S.E.2d 560, 561 (1992). A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. Sloan v. S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 468, 636 S.E.2d 598, 606-07 (2006) (citing Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992); Caughman v. Columbia Y.M.C.A., 212 S.C. 337, 341, 47 S.E.2d 788, 789 (1948)). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and the language must be construed in light of the intended purpose of the statute." State v. Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010) (quoting Broadhurst v. City of Myrtle Beach Election Comm'n, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000)). It is well settled that statutes dealing with the same subject matter are *in pari material* and must be construed together, if possible, to produce a single, harmonious result. Joiner ex rel. Rivas v. Rivas, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000) (citing Home Health Servs. Inc. v. South Carolina Dept. of Health and Envtl. Control, 298 S.C. 258, 379 S.E.2d 734 (Ct. App. 1989)).

When read in conjunction with the subsequent sections of S.C. Code Ann. § 56-5-1520 (2006) and applicable case law, a court will likely find that the legislature intended for § 56-5-1520(A) to serve as a general safety provision requiring motorists to travel at a speeds that are "reasonable and prudent" in respect to their surrounding conditions and potential and existing hazards. In other words, it can be implied that S.C. Code Ann. § 56-5-1520(A) (2006) provides motorists with a general duty of care to observe "special hazards"<sup>6</sup> that may exist on the roadway and drive at speeds to avoid collisions. Case law supports this statutory interpretation, as shown in the cases cited below that involve alleged violations of § 56-5-1520(A) by a motorist who was believed to have breached the duty of care arising under certain unforeseen circumstances or a "special hazard" existing at the time of the accident that required a reduction in speed. See, e.g., Fairchild v. South Carolina Dept. of Transp. 398 S.C. 90, 101-02, 727 S.E.2d 407, 412 (2012) (holding evidence existed that a motorist who struck another vehicle from behind while driving a commercial-sized truck, towing a twenty-eight (28) foot trailer, hauling a motorcycle, and approaching an area of merging traffic may have violated § 56-5-1520(A)); Howard v. Robertson, 376 S.C. 143, 151, 654 S.E.2d 877, 881 (Ct. App. 2007) (noting that both motorists involved in a collision when Defendant was attempting to pass a van on Highway 70 and the other motorist involved in the collision simultaneously slowed to turn onto a public road "were required to drive their automobiles at a safe speed under the conditions existing at the time of the accident;" Thomasko v. Poole, 349 S.C. 7, 561 S.E.2d 579 (2002) (finding Plaintiff had a duty to adjust her speed to conditions and hazards which included Defendant crossing three lanes of traffic to make a U-turn on highway 17); (Cohens v. Atkins,

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<sup>6</sup> S.C. Code Ann. § 56-5-1520(B) (2006) notes § 56-5-1520(A) necessitates lower speeds "when a *special hazard* exists" (emphasis added).

333 S.C. 345, 347, 509 S.E.2d 286, 288 (Ct. App. 1998) (holding prejudicial error for the trial judge not to instruct S.C. Code Ann. § 56-5-1520(A) in its entirety which emphasized the duty of care of all drivers in a “too close for conditions scenario” that involved a motorist who rear ended another vehicle after the rear-ended driver entered the left turn lane in rainy conditions).

Following the rules of construction as well as the case law in which § 56-5-1520(A) was applied, it is our opinion that a court would likely find that traffic citations associated with driving too fast for conditions pursuant to § 56-5-1520(A) should relate to motorists driving at speeds in excess of what is reasonable due to “special hazards,” or unforeseen circumstances, causing or contributing to an accident. Alternatively, traffic warning signs, such as advisory speed plaques and advisory ramp speed signs are posted by the South Carolina Department of Transportation after engineering and traffic investigations. Thus, hazards relating to warning signs are known, and the South Carolina Department of Transportation, when applicable, mandates motorists to reduce their speed at that particular portion of the roadway due to the known condition.

Unlike S.C. Code Ann. § 56-5-1520(A) (2006), § 56-5-1520(F) provides specific instances when a reduction in speed is required for motorists where it states:

[t]he driver of a vehicle shall drive consistent with the requirements in subsection (A), at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, approaching a hillcrest, when traveling upon any narrow bridge, narrow or winding roadway, and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

When read in connection with S.C. Code Ann. § 56-5-1520(A), it is our opinion that a court would find that traffic citations related to S.C. Code Ann. § 56-5-1520(F) (2006) apply to a driver’s duty to adjust speeds, on his or her own initiative, to that which is reasonable and prudent under the conditions and to avoid collision with a person, vehicle, or other conveyance on or entering the highway. Where S.C. Code Ann. § 56-5-1520(A) (2006) relates to unknown special hazards, often caused by other motorists, it is our opinion that § 56-5-1520(F) encompasses conditions that are anticipated to occur, such as highway or weather conditions, that always necessitate a reduction in speed. Case law also provides support for this interpretation. See, e.g., Burgess Brogdon v. Lake, 288 S.C. 16, 339 S.E.2d 507 (1986) (holding a truck driver who increased his speed to pass a pickup truck directly prior to a collision on a wet road shrouded in fog made it impossible to stop his vehicle within the distance of visibility was thus contributory negligent and in violation of § 56-5-1520).<sup>7</sup> We believe a court would likely find the legislature deemed S.C. Code Ann. § 56-5-1520(F) (2006) necessary due to the inability to place a warning sign at every hazardous area on the roadway, which is supported by the MUTCD: “use of warning signs should be kept to a minimum as the unnecessary use of warning signs tends to breed disrespect for all signs. In situations where the condition or activity is seasonal or temporary, the warning sign should be removed or covered

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<sup>7</sup>In the Court’s opinion, it cited the requirements of S.C. Code Ann. § 56-5-1520, stating it “requires the driver of every vehicle to drive at an appropriately reduced speed when hazards exist with respect to weather and highway conditions. A motorist whose vision is obscured by unfavorable weather conditions must exercise care commensurate with the conditions of travel.” Burgess Brogdon v. Lake, 288 S.C. 16, 19, 339 S.E.2d 507, 509 (1986).

when the condition or activity does not exist.” U.S. Department of Transportation Federal Highway Administration, Manual on Uniform Traffic Control Devices for Streets and Highways § 2C.02 (2009).

As the case law cited within this section supports, the existence of an accident coupled with driving at a speed exceeding what would be considered reasonable under the conditions would be evidence of a traffic violation pursuant to S.C. Code Ann. § 56-5-1520(A) or S.C. Code Ann. § 56-5-1520(F), depending upon the type of hazard on the roadway. Therefore, it follows and is our opinion that a court would find exceeding speeds posted on a warning sign, without the existence of a collision, is a direct violation of S.C. Code Ann. § 56-5-1520(E)(2006) and related traffic violations should be cited under such authority opposed to a “too fast for conditions” citation.

**c. Failure to Obey a Traffic Device**

Last, your letter asks “whether a charge for ‘failure to obey a traffic device’ [pursuant to S.C. Code Ann. §] 56-5-950, when violating the speed posted on the small yellow sign located directly underneath a warning sign is a proper charge.” S.C. Code Ann. § 56-5-950(a) (2006) states that “[t]he driver of any vehicle shall obey the instructions of any official traffic-control device, applicable thereto placed or held in accordance with the provisions of this chapter, unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter.” As previously addressed, the term “official traffic-control device” is defined by S.C. Code Ann. § 56-5-540 (2006) as “[a]ll signs, signals, markings and devices. . . placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning or guiding traffic. . . .” As provided by a former opinion of this office, it is our belief that “any driver who knowingly fails to obey the instructions of an official traffic-control device placed by proper officials . . . is guilty of a misdemeanor and is subject to the penalties provided by 46-689” Op. S.C. Att’y. Gen., 1974 WL 27660 (March 24, 1984).<sup>8</sup>

Because warning signs such as an advisory speed plaque or an advisory ramp speed sign fall within the definition of an official traffic-control device, it is also our opinion that a court would find that a driver who knowingly exceeds the speed limit posted on a warning sign placed by proper officials could be found guilty of a misdemeanor and subject to the applicable penalty. While exceeding the speed limit posted on an official traffic-control device is not a required element for the traffic offense of failure to obey a traffic-control device, it could serve as evidence for a conviction. However, we direct your attention to Op. S.C. Att’y. Gen., 1983 WL 142755 (Nov. 4, 1983) addressing issues that may arise concerning double jeopardy as well as prohibitions from charging a defendant with a second offense arising from the same incident applicable to both magistrate courts and municipal courts pursuant to S.C. Code Ann. § 22-3-740 (2007). It is also relevant to note case law where failure to obey traffic control devices is at issue typically involve a motorist’s obvious and deliberate disregard to a signal or sign, such as a failure to stop for a red light. See, e.g., Nabors v. Spencer, 262 S.C. 630, 633, 207 S.E.2d 79, 80 (1974) (holding that pursuant to S.C. Code Ann. § 46-304 (1962) a vehicle in a funeral procession did not have the right-of-way to proceed through a red traffic control light).<sup>9</sup>

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<sup>8</sup> The current statute containing the penalty for failure to obey an official traffic-control device is S.C. Code Ann. § 56-5-6190 (2006).

<sup>9</sup> S.C. Code Ann. § 56-5-950 (2006) was formerly titled S.C. Code Ann. § 46-304 (1962); the wording of the two statutes are identical.

**Conclusion**

Based on the foregoing, it is the opinion of this Office that a court would find that speed limits posted on warning signs, such as advisory speed plaques and advisory ramp speed signs, are enforceable. The statute providing authority for the South Carolina Department of Transportation to alter maximum speed limits is S.C. Code Ann. § 56-5-1520(E) (2006). Therefore, it is our opinion that a traffic citation for a motorist in violation of the speeds posted on a warning sign should be made pursuant to S.C. Code Ann. § 56-5-1520(E) (2006) rather than the maximum lawful speeds set forth in S.C. Code Ann. § 56-5-1520(B)(1)-(3) (2006).

Furthermore, statutory interpretation as well as supporting case law indicates that citations under S.C. Code Ann. § 56-5-1520(A) (2006) and § 56-5-1520(F) for driving too fast for conditions are appropriate when evidence exists that a motorist has violated his or her duty of care by driving at a speed in excess of what is reasonable and prudent depending on the conditions or special hazards then existing that results in a collision.

Last, it is our opinion that a court would find that at a motorist exceeding speeds posted on a warning sign could be cited for knowingly failing to obey traffic-control device pursuant to S.C. Code Ann. § 56-5-950 (2006). However, such citation may prevent prosecution under S.C. Code Ann. § 56-5-1520(E) for reasons of double jeopardy if the facts necessary to establish both offenses are identical. In addition, magistrate courts and municipal courts must comply with S.C. Code Ann. § 22-3-740 (2007) requiring the court to elect one offense for a person being accused of committing an act which is susceptible of being designated as several different offenses.

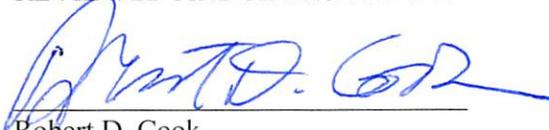
Based on this conclusion, we believe courts will continue to hold that speed limits posted on warning signs are enforceable, as was done in the Rochester cases. Furthermore, this office is of the opinion that a court would find violations of the speed limit posted on warning signs are most appropriately issued pursuant to S.C. Code Ann. § 56-5-1520(E) (2006). However, please note that this Office is only issuing a legal opinion based on the current law at this time. We caution you that many citizens may hold the belief that “yellow” warning signs are merely cautionary and not mandatory. For that reason we suggest that until further court interpretation of the law, legislative clarification, or further explanation in the South Carolina Driver’s Manual, this be viewed as an opinion. If you have any additional questions or issues relating to this opinion, please do not hesitate to contact our office.

Sincerely yours,



Anne Marie Crosswell  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General