



ALAN WILSON  
ATTORNEY GENERAL

May 16, 2023

Scott Elliott, Esq.  
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1508 Lady Street  
Columbia, SC 29201

Dear Mr. Elliott:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

I am the Town attorney for the Town of Arcadia Lakes (“Arcadia Lakes”). The Mayor and Council of Arcadia Lakes have authorized me to request an opinion of your office whether the South Carolina law permits a municipality to enforce its noise ordinance by noise detection device.

Arcadia Lakes, like most local governments, has enacted an ordinance prohibiting the operation of a motor vehicle in a manner that causes loud or unnecessary noise. Arcadia Lakes Ordinance No. 3-316. The difficulty in enforcing the noise ordinance is that law enforcement is rarely in a position to observe the offending conduct and issue a ticket for a violation of the ordinance. The Mayor Mark Huguley has investigated alternate methods of enforcement of the noise ordinance. In particular, the Mayor has been in contact with city officials in Knoxville, Tennessee concerning technology they use to address loud vehicle noise. The link below is to what is referred to as a SoundVue “noise camera” employed by Knoxville, <http://www.soundvue.com/>.

While the SoundVue device is commonly known as a noise camera, it relies upon algorithms and artificial intelligence to detect excess noise from motor vehicles. The device also captures a picture of the offending vehicle. The data would be transmitted directly to the Richland County Sheriff’s Department which enforces Arcadia Lakes ordinances; the Sheriff’s Department would then enforce any violations of Arcadia Lakes’ noise ordinance. Given the fact that the noise detection device relies upon algorithms and artificial intelligence to identify the offending vehicle, the noise detection device does not appear to fall squarely within the provisions of S.C. Code § 56-7-35.

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Consequently, on behalf of the Mayor and Council of the Town of Arcadia lakes, I request an opinion of your office whether Arcadia Lakes may acquire and deploy the SoundVue device to enforce its noise ordinance. Please let me know if you have any questions.

### Law/Analysis

It is this Office's opinion that a court would hold S.C. Code § 56-7-35 (2018) does not prohibit a municipality from using a noise camera to detect violations of its noise ordinance. However, this Opinion will address some issues that may arise in application. Of course, this Office's opinions cannot anticipate all challenges.

Section 56-7-35 is codified within Chapter 7, Title 56 of the South Carolina Code which governs traffic tickets. Section 56-7-10(A) establishes a "uniform traffic ticket" ("UTT") must be used by "all law enforcement officers in arrests for traffic offenses" as well as fifty-five additional listed offenses. Subsection (C) makes clear that "[n]o other ticket may be used for these offenses." S.C. Code § 56-7-10(C). Law enforcement officers are authorized to use the UTT to "arrest a person for an offense that has been freshly committed or is committed in the presence of a law enforcement officer if the punishment is within the jurisdiction of magistrates court and municipal court." S.C. Code § 56-7-15(A) (emphasis added); see also S.C. Code § 56-7-10(B) ("In addition to the offenses contained in subsection (A), a uniform traffic ticket may be used in an arrest for a misdemeanor offense within the jurisdiction of magistrates court that has been freshly committed or is committed in the presence of a law enforcement officer.").

A second type of citation, an ordinance summons, is authorized for the enforcement of county and municipal ordinances. S.C. Code § 56-7-80(A). In contrast to the UTT, the ordinance summons "may not be used to perform a custodial arrest." S.C. Code § 56-7-80(B). Additionally, the ordinance summons may not be used to enforce ordinances "which regulate[] the use of motor vehicles on the public roads." Id. Those ordinances which regulate the use of motor vehicles on public roads must be enforced with the UTT as described above. With this statutory framework in mind, we will address concerns raised in your request letter.

Your letter asks specifically about S.C. Code § 56-7-35 and whether the use of a noise camera to enforce Arcadia Lakes' noise ordinance complies with the statute. Section 56-7-35(A)(1) states, "A law enforcement officer who issues a uniform traffic ticket for a violation of a local ordinance or traffic laws relating to speeding must do so incident to and contemporaneous with a traffic stop." S.C. Code § 56-7-35(A)(1) (emphasis added). Subsection (A)(2) requires that the UTT be "given directly to the offender by the law enforcement officer issuing the citation at

the time of the traffic stop for the offense.” Subsection (A)(3) further clarifies that the UTT may not be sent through “the United States mail, a parcel delivery service, electronic means,” or other means.<sup>1</sup> Finally, subsection (A)(4) states a UTT issued for the violation of traffic laws related to speeding “may not be issued based in whole or in part upon photographic evidence, whether gathered in conjunction with radar speed detection devices and whether the camera or other electronic device capturing the photographic evidence was attended or unattended at the time it captured the photographic evidence.” Subsection (B) contains similar restrictions related to issuing citations for “a violation of a local ordinance or the traffic laws relating to disregarding a traffic control device.” S.C. Code § 56-7-35(B)(1) (emphasis added). It must be noted that the prohibition regarding issuing a UTT based on photographic evidence, both attended or unattended, only explicitly applies to violations “relating to speeding” and “relating to disregarding a traffic control device.” S.C. Code § 56-7-35. This prohibition does not apply to all traffic offenses. Notably, subsection (C) makes clear that these restrictions do not apply to collecting tolls nor to statutory violations related to overtaking a stopped school bus. See S.C. Code § 56-7-35(C).

Turning to the ordinance at issue, Arcadia Lakes Town Code § 3-317(a) states, “It shall be unlawful for any person to make, continue, or cause to be continued, any loud, excessive, or disturbing noise, or any noise that annoys, disturbs, injures, or endangers the comfort, repose, health, peace or safety of others within the limits of the town.” The ordinance establishes a non-exclusive list of acts that are declared to be loud, excessive or disturbing noises which includes: blowing horns; radios, phonographs, televisions, etc.; pets; use of vehicle; exhaust discharge; devices using compressed air; building operations; schools, churches, etc.; loading and unloading operations; hawking, peddling or soliciting; attracting attention; loud speakers or amplifiers on vehicles; business noises at night near residences. The ordinance is not codified within Article IV of the Town Code which contains traffic ordinances, but rather it is contained in Article III which contains offenses. Arcadia Lakes Town Code § 3-317(d) reinforces this point by declaring such noise violations are public nuisances. Therefore, because Arcadia Lakes Town Code § 3-317 does not regulate traffic and more specially does not relate to speeding nor to disregarding traffic control devices, it is this Office’s opinion that a court would hold that S.C. Code § 56-7-35 does not prevent its enforcement with a noise camera as described in your letter.

Your letter describes the SoundVue device as a noise camera that uses “algorithms and artificial intelligence to detect excess noise from motor vehicles.” In a latter correspondence, you provided an explanation from the vendor of SoundVue’s monitoring services.

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<sup>1</sup> Law enforcement may, however, provide “an additional copy of a uniform citation that was issued to the operator or owner during the traffic stop” upon request via these methods of delivery. Id.

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The system is active 100% of the time but it only saves the data when it triggers. By this I mean it is continuing recording and deleting- in real time but when it triggers it saves a 14 second clip of video, noise level and audio.

The saved data is available for interrogation through a secure web browser. An officer can view the video, noise level etc and listen to the audio but the system also automatically identifies the offending vehicle and reads the license plate.

From your letter and this explanation, I understand there will be a delay of some period of time between the device detecting a noise violation, notifying law enforcement, and law enforcement issuing a citation. It seems unlikely that this system will enable law enforcement officers to issue a citation for a violation that has been freshly committed or committed in their presence, so a UTT would not be appropriate. See S.C. Code § 56-7-15(A).

While some of the acts in section 3-317(a) that are declared to be violations relate to vehicles, the majority of the acts are wholly unrelated to traffic. This Office has previously addressed a Richland County ordinance that pertained “to the manner in which the load transported has been secured, and does not have anything to do with how safely or unsafely a motorist operates the vehicle carrying the load.” Op. S.C. Att’y Gen., 2008 WL 5476549 (December 2, 2008). The opinion concluded that the ordinance did not constitute a traffic offense, nor did it regulate the use of a motor vehicle on the public roads of the State. Id. As a result, an ordinance summons could be used to cite for a violation of the transportation of refuse ordinance. Id. Similarly, section 3-317 defines what noises constitute public nuisances and its impact, if any, on traffic would be incidental to the stated purpose of curbing noise violations. Thus, it is this Office’s opinion that an ordinance summons authorized by S.C. Code § 56-7-80 could be used to cite for a violation Arcadia Lakes Town Code § 3-317.

Finally, because the SoundVue device “automatically identifies the offending vehicle and reads the license plate,” we must caution that any presumption or inference that the owner of a vehicle is the driver for purposes of issuing a citation should come from the General Assembly. Article VIII, § 14 of the South Carolina Constitution “requires statewide uniformity of general law provisions regarding criminal laws and the penalties and sanctions for the transgression thereof.” Martin v. Condon, 324 S.C. 183, 478 S.E.2d 272, 274 (1996) (internal quotations omitted). This Office has similarly cautioned that presumptions regarding the use of photo-radar devices need to come from the General Assembly to ensure that the burden of proof is uniform throughout the State.

Article V of the Constitution requires that all magistrate and municipal courts must be uniform throughout the State and cannot use procedures required by an

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ordinance on a piecemeal or localized basis. In light of these issues, as well as the constitutional requirements that the burden of proof cannot be shifted, I would advise that the General Assembly would be the more appropriate body to authorize the use of photo radar.

Op. S.C. Att’y Gen., 2002 WL 31728839 (October 31, 2002). If the Town is considering employing such a presumption in the enforcement of its noise ordinance, this Office again stresses that the General Assembly is the appropriate body to authorize it.

### Conclusion

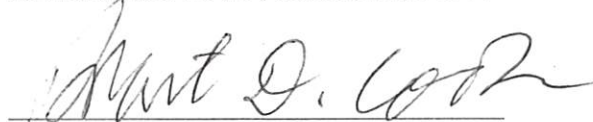
It is this Office’s opinion that a court would hold S.C. Code § 56-7-35(2018) does not prohibit a municipality from using a noise camera to detect violations of its noise ordinance. However, any presumption or inference that the owner of a vehicle is the driver for purposes of issuing a citation should originate from the General Assembly. Article VIII, § 14 of the South Carolina Constitution “requires statewide uniformity of general law provisions regarding criminal laws and the penalties and sanctions for the transgression thereof.” If the Town is considering employing such a presumption in the enforcement of its noise ordinance, this Office again stresses that the General Assembly is the appropriate body to authorize it.

Sincerely,



Matthew Houck  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General