



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
 ATTORNEY GENERAL

August 31, 2004

George L. Schroeder, Director
 Legislative Audit Council
 1331 Elmwood Avenue, Suite 315
 Columbia, South Carolina 29201

Dear Mr. Schroeder:

In a letter to this office you referenced that when a law enforcement officer completes a citation, he fills in the charge and the code section number. The charge is a description of the offense and the code section number is the statute that the person is charged with violating. You asked whether in circumstances where the wrong section number is cited on the citation, can a magistrate dismiss the charge if the defendant points out the incorrect code citation even if the description of the offense is correct.

A prior opinion of this office dated June 24, 1963 dealt with the question as to whether a summons issued by the State Highway Patrol is void if the wrong section of the Code is set forth on the summons. The opinion states:

All that is required in a warrant or summons ticket is that the charge against the defendant be plainly and substantially set forth. Section 43-112...(now Section 22-3-720)...permits amendment of the information at any time before trial. Even in the most serious cases in General Sessions Court, the law permits amendment of the indictment before trial...It is the opinion of this office that the summons in question may be amended before trial by the Patrolman to show the correct statute, and that the matter may be disposed of by the Magistrate.

Such opinion has been cited in a subsequent opinion of this office dated October 24, 1995.

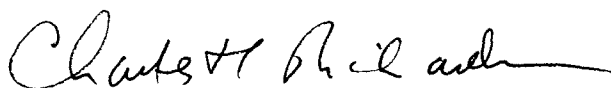
Consistent with the prior opinion of this office, in circumstances where the wrong code section is cited on a citation, opportunity should be given before trial for an amendment of the citation to conform to the correct description of the offense as set forth on the citation.

Mr. Schroeder
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In circumstances where the error is known to the parties, a magistrate would be incorrect in dismissing the case without providing the opportunity to amend the citation.

With kind regards, I am,

Very truly yours,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General