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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

December 30, 2004

The Honorable Glenn F. McConnell
President *Pro Tempore*
The Senate
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator McConnell:

You have requested an opinion regarding South Carolina's seatbelt law. You reference a recent case in Berkeley regarding violation of the seatbelt statute. By way of background, you state the following:

[i]n that case, I was informed that there was uncontroverted testimony that a seatbelt citation was issued to a defendant at a "driver's license check or registration check" and that there was no other citation issued to the defendant than for failure to wear a seat belt.

You note that current state law prohibits citation for a seatbelt violation without another violation being charged as well. Thus, "[s]ince this problem has occurred and is likely to be encountered again," you request clarification.

Law / Analysis

S.C. Code Ann. Section 56-5-6540 sets forth South Carolina's Safety Belt law. Such statute provides in pertinent part as follows:

... (B) A law enforcement officer must not stop a driver for the violation of this article in the absence of another violation of the motor vehicle laws except as follows:

- (1) when the officer has probable cause for a violation of this article based on his clear an unobstructed view of a driver seventeen years of age or younger or an occupant of the motor vehicle seventeen years of age or younger who is

not wearing a safety belt or is not secured in a child restraint system as required by Article 47; or

- (2) when the stop is made in conjunction with a driver's license check or registration check conducted at a checkpoint established to stop all drivers on a certain road for a period of time.

(C) A citation for a violation of this article, except for a citation issued pursuant to a stop made under subsection (B)(1), must not be issued without citing the violation that initially caused the officer to effect the enforcement stop.

(D) A citation issued pursuant to a stop made under subsection (B)(1) may be issued without citing any other violation. (emphasis added).

In resolving your question of whether citation for another violation is required in order to cite for a violation of the seatbelt law in the license and registration checkpoint situation, a number of principles of statutory construction are pertinent to your inquiry. First and foremost, is the well-recognized rule that the intent of the General Assembly must be given paramount importance. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statutory provision should be given a reasonable and practical construction which is consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). In construing the statute, the words used must be given their plain and ordinary meaning without resort to subtle or forced construction for the purpose of limiting or expanding its operation. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984).

Moreover, what cannot be done directly cannot be accomplished indirectly. Op. S.C. Atty. Gen., July 31, 1990. Finally, the seat belt law is part of a criminal statute. When a statute is penal in nature, it must be construed strictly against the State. Hair v. State, 305 S.C. 77, 406 S.E.2d 332 (1991).

In an earlier opinion, dated November 27, 2000, we construed § 56-5-6540 in the context of the so-called "Click it or Ticket" campaign. There, we referenced an opinion dated October 11, 1990, which had interpreted § 56-5-6540(B) as follows:

[b]ased upon our review of such provision it appears that [two] situations authorize charges for violations of the mandatory seat belt law. One is a stop made in conjunction with a driver's license or registration check at an established checkpoint. The other situation involves citing for a violation of the motor vehicle laws other than a mandatory seat belt law. ...

We reaffirmed the 1990 opinion in the November 27, 2000 opinion. Concluding there that the "Click It or Ticket" campaign did not fit within the exception established by § 56-5-6540 for "the driver's license or registration check at an established checkpoint," we stated the following:

[t]hus, it is clear that the purpose of South Carolina's "Click It or Ticket" campaign is simply to enforce the State's mandatory seat belt law, not to enforce driver's license and registration laws. Governor Hodges, in his Proclamation of November 6, 2000 said that "[t]he goal of the Click It or Ticket campaign is to increase our state's safety belt usage rate to 75 percent." In that same message, the Governor refers to the campaign as a "crackdown on seat belt infractions" The Department of Public Safety refers to the campaign as a "high-visibility enforcement effort to detect violators of South Carolina's seat belt laws." A statewide ad campaign emphasizing the enforcement of the seat belt laws has now been launched. It is our understanding that some police officers are using binoculars to check whether drivers are attempting to buckle their seat belts as they approach the checkpoint. While officers are checking for a driver's license, there is little doubt this is being done simply as an effort to fit within the literal language of the seat belt law

Based upon the foregoing, the "Click It or Ticket" campaign does not meet the statutory requirements of the mandatory seat belt law. The Legislature has clearly written the seat belt law with a purpose of balancing individual liberty with public safety. By making seat belt infractions a secondary violation – subject to citation only upon a violation of some other law, the General Assembly has plainly set limitations so as to guarantee that individual freedom is protected. The only exception is where a stop is made "in conjunction with a driver's license check or registration check conducted at a checkpoint established to stop all drivers on a certain road for a period of time."

In this instance, "Click It or Ticket" is not designed to enforce driver's license checks or registration checks. While a driver's license is being checked, such is being done simply as an attempt to comply with the seat belt law. The obvious primary purpose of the campaign – as stated by the Governor, DPS and the ad program – is to enforce the secondary seat belt law. The General Assembly did not permit a program such as "Click It or Ticket" when it wrote the seat belt law. Any effort to enforce the seat belt law primarily, as opposed to secondarily, is simply a circumvention of the law. (emphasis added).

It is evident from the foregoing discussion, that we have consistently construed § 56-5-6540 as providing an exception to the general statutory prohibition against citation for a primary violation of the seatbelt law "where a stop is made 'in conjunction with a driver's license check or registration check conducted at a checkpoint established to stop all drivers on a certain road for a period of

time.” We have expressed this opinion for more than fourteen years, consistently concluding that a primary seatbelt violation may be cited at a stop resulting from a legitimate license or registration checkpoint.¹ It is well recognized that the absence of any legislative amendment following the issuance of an opinion of the Attorney General strongly suggests that the views expressed therein were consistent with the intent of the Legislature. Scheff v. Township of Maple Shade, 149 N.J.Super. 448, 374 A.2d 43 (1977). The fact that the Legislature has not altered the seatbelt law in light of our 1990 and 2000 opinions is a strong indication of the correctness of our conclusion that legitimate license and registration checkpoints are an exception to the statute’s general requirement that only secondary violations thereof may be charged.

It is true that § 56-5-6540(D) expressly authorizes seatbelt citations “without citing any other violation” for violations “pursuant to a stop made under subsection (B)(1).” [child restraint violations]. From this, it could plausibly be deduced that (B)(1) [child restraint] violations were the sole exception to the general prohibition against charging a seatbelt violation without some other traffic violation being charged. See, Hodges v. Rainey, 341 S.C. 79, 533 S.E. 2d 578 (2000) [“to express or include one thing implies the exclusion of another.”] Moreover, § 56-5-6540(C) forbids a seatbelt citation, except for a stop made for a violation of the child restraint laws, “without citing the violation that initially caused the officer to effect the enforcement stop.” Thus, it could be plausibly argued that even though legitimate license and registration checks authorize a “stop” of a vehicle, no primary citation made pursuant to such a stop could be issued for a seatbelt violation. In other words, it could be argued that the citation of some other violation would still be necessary to issue a seatbelt citation even at a legitimate checkpoint for license and registration inspection. See, Op. Miss. Atty. Gen., Op. No. 1999-0453 (September 3, 1999) [no seatbelt citation without citation of some other violation even at license and registration checks].

However, any statute, even those with criminal penalties, must be interpreted with common sense to avoid unreasonable consequences. U.S. v. Rippetoe, 178 F.2d 735 (4th Cir. 1949). Here, to give undue weight to Subsection (D) would virtually negate Subsection (B)(2). A “stop” could be made for a license or registration check, yet no ticket could be written for a seatbelt violation in plain view of the officer conducting such check unless another violation was first cited. Such a reading would seemingly be completely inconsistent with the purpose of § 56-5-6540 (B)(2). Moreover, as noted, such an interpretation would be at odds with this Office’s opinions spanning more than fourteen years as well as the longstanding enforcement practices of law enforcement agencies in this State. See, Op. S.C. Atty. Gen., October 11, 1990 [driver may be charged with seatbelt violation “when stopped at an established checkpoint in circumstances where the driver is not cited for any other traffic violation.”]; Op. S.C. Atty. Gen., November 6, 1991 [same].

¹ The United States Supreme Court has recognized that such non-discretionary license and registration checks are constitutionally valid. See, City of Indianapolis v. Edmond, 531 U.S. 32 (2000); Delaware v. Prouse, 440 U.S. 648 (1979).

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Conclusion

Your letter does not indicate whether the license and registration check involved was legitimate, aimed truly at checking for licenses and registration, or was more along the lines of the "Click It or Ticket" campaign, which had, as its primary purpose, enforcement of the seatbelt law. In any event, if the license and registration check is indeed a legitimate one, i.e. "conducted at a checkpoint established to stop all drivers on a certain road for a period of time," and is not a pretense for issuing seatbelt citations, then no other citation is required to issue a ticket for a seatbelt violation. We have consistently concluded that a legitimate license and registration checkpoint is an exception to the seatbelt law's general requirement that a seatbelt violation is secondary in nature.

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

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