

December 3, 2007

The Honorable G. T. Ferguson
Magistrate, Abbeville County
P. O. Box 1156
Abbeville, South Carolina 29620

Dear Magistrate Ferguson:

This office has been asked to review the opinion to you dated October 9, 2007 which dealt with S.C. Code Ann. § 56-5-1538. The question had been raised as to whether such provisions apply to a traffic stop with only law enforcement vehicles present and no emergency crews or vehicles present. In particular reference has been made to subsections (F) and (G) of such statute which state

[t]he driver of a vehicle shall ensure that the vehicle is kept under control when approaching or passing an emergency scene or authorized emergency vehicle stopped on or near the right-of-way of a street or highway with emergency lights flashing. The exercise of control required for a driver to comply with this section is that control possible and necessary by the driver to prevent a collision, to prevent injury to persons or property, and to avoid interference with the performance of emergency duties by emergency personnel.

A person driving a vehicle approaching a stationary authorized emergency vehicle that is giving a signal by displaying alternately flashing red, red and white, blue, or red and blue lights, or amber or yellow warning lights shall proceed with due caution, significantly reduce the speed of the vehicle, and

(1) yield the right-of-way by making a lane change into a lane not adjacent to that of the authorized emergency vehicle, if possible with due regard to the safety and traffic conditions, if on a highway having at least four lanes with not less than two lanes proceeding in the same direction as the approaching vehicle; or

(2) maintain a safe speed for road conditions, if changing lanes is impossible or unsafe.

Subsection (H) provides that an individual violating such provisions is “guilty of the misdemeanor of endangering emergency services personnel.” The term “emergency services personnel” is defined

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by subsection (I)(2) as “...fire, police, or emergency medical services personnel (EMS) responding to an emergency incident.” (emphasis added).

Again, the question has been raised as to whether such provisions would make Section 56-5-1538 applicable to a traffic stop with only law enforcement vehicles present. Based upon my review, no courts in this State have construed such provision. Also, based upon our research, at least two authorities have concluded that an ordinary traffic stop does not constitute an “emergency response” See: California Highway Patrol v. Superior Court of Alameda County, 135 Cal.App.4th 488 (Cal.App.1Dist. 2006); Op. Va. Atty. Gen. dated September 23, 2004. However, based upon our further review, it is now our conclusion that Section 56-5-1538 could be read to include traffic stops with only law enforcement vehicles present. Support for such conclusion is found in the title to Act No. 348 of 2002 which states that such is an act

TO AMEND SECTION 56-5-1538, RELATING TO THE MANAGEMENT OF AN EMERGENCY SCENE...TO REQUIRE THE DRIVER OF A VEHICLE WHEN APPROACHING A STATIONARY EMERGENCY VEHICLE TO PROCEED WITH DUE CAUTION AND TO YIELD THE RIGHT-OF-WAY UNDER CERTAIN CONDITIONS....

The term “emergency vehicle” is defined by subsection (I)(1) to include “...any ambulance, police, fire, rescue, recovery, or towing vehicle authorized by this State, county, or municipality to respond to a traffic incident.” (emphasis added). Therefore, traffic stops with only law enforcement vehicles present would be included.

Nevertheless, to resolve any question of ambiguity, it is suggested that legislative clarification be sought to resolve the issue with finality in light of the fact that such provision is a criminal statute.

With kind regards, I am,

Very truly yours,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General