



HENRY McMASTER
ATTORNEY GENERAL

March 15, 2006

The Honorable B. Lee Miller
Municipal Court Judge
Post Office Box 40
Greenwood, South Carolina 29648

Dear Judge Miller:

In a letter to this office you questioned whether an individual charged with the offense of issuing a fraudulent check or any offense for which a uniform traffic ticket may be utilized is required to be brought in for a booking process whereby photographs and fingerprints are obtained. You indicated that it is your information that SLED mandates that photographs and fingerprints be obtained for such offenses. You further questioned whether if the defendant fails to come in on their own accord, can he be forced to come in and then later released. You also asked whether in circumstances where a defendant is forced to come in, can a resisting arrest charge be brought.

S.C. Code Ann. §§ 56-7-10 et seq. provide for the use of a uniform traffic ticket. Section 56-7-10 states that a uniform traffic ticket may be utilized for traffic offenses and certain other specified offenses. Section 56-7-15 states that

(A) The uniform traffic ticket, established under the provisions of Section 56-7-10, may be used by law enforcement to arrest a person for an offense committed in the presence of a law enforcement officer if the punishment is within the jurisdiction of magistrate's court and municipal court.

Therefore, consistent with such, a uniform traffic ticket may be used for designated offenses in addition to traffic offenses pursuant to Section 56-7-10 and may be used for offenses "committed in the presence of a law enforcement officer" within the jurisdiction of a magistrate or municipal court pursuant to Section 56-7-15. As to the situation you addressed dealing with a fraudulent check, in my opinion, inasmuch as such offense is usually not committed in the presence of an officer and is not one of the designated offenses under Section 56-7-10, a uniform traffic ticket would not typically be used to arrest for that offense.

Request Letter

The Honorable B. Lee Miller

Page 2

March 15, 2006

However, as to offenses for which a uniform traffic ticket may be used, in my opinion, only if a custodial arrest is undertaken would there be the issue of fingerprinting and photographing that individual. For instance, pursuant to S.C. Code Ann. § 56-25-30, "(a)ny law enforcement officer who issues to a person a uniform traffic citation may...allow the person to proceed without first either having to post bond or appear before a magistrate, recorder, or other judicial officer if the person accepts the citation." In those circumstances, there would be no custodial arrest. S.C. Code Ann. § 23-3-120 states that

(A) All law enforcement agencies and court officials must report all criminal data and related information within their respective jurisdictions to the State Law Enforcement Division's Central Record Repository at such times and in such form as the State Law Enforcement Division requires. This information must include criminal data and related information regarding juveniles charged with offenses pursuant to Section 20-7-8510.

(B) A person subjected to a lawful custodial arrest for a state offense must be fingerprinted. Fingerprints taken by a law enforcement agency or detention facility pursuant to this section must be submitted to the State Law Enforcement Division's Central Record Repository within three days, excluding weekends and holidays, for the purposes of identifying record subjects and establishing criminal history record information. (emphasis added).

S.C. Code Ann. § 23-3-130 states that

The State Law-Enforcement Division is authorized to determine the specific information to be supplied by the law-enforcement agencies and court officials pursuant to § 23-3-120, and the methods by which such information shall be compiled, evaluated and disseminated. The State Law Enforcement Division is further authorized to promulgate rules and regulations to carry out the provisions of this article.

I discussed your question with an individual at SLED and was informed that they do not require photographs unless there is a custodial arrest and fingerprinting of an individual. Therefore, for an offense cited by a uniform traffic ticket where there is no custodial arrest, it is my information that a photograph of a defendant is not obtained in such instance. As set forth above, unless there is a custodial arrest, no fingerprinting is required.

Consistent with such, it does not appear that there would be any issue as to a defendant failing to come in on their own accord to be photographed or fingerprinted where the individual is charged using a uniform traffic ticket and there is no custodial arrest. Fingerprinting and photographing the individual would be accomplished only if there is a custodial arrest. If there is a custodial arrest there is no issue of a defendant failing to subsequently come in on his own accord.

The Honorable B. Lee Miller
Page 3
March 15, 2006

If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General