

March 6, 2008

The Honorable William D. Witherspoon
Member, House of Representatives
411 Blatt Building
Columbia, South Carolina 29211

Dear Representative Witherspoon:

In a letter to this office you questioned the legality of police checkpoints and roadblocks. You also cited an instance in which an elderly woman was unable to locate her insurance and registration cards in a timely manner and was given a ticket. You have requested an opinion regarding these matters.

Enclosed please find copies of prior opinions of this office which have dealt with the question of driver checkpoints or roadblocks. The December, 2004 opinion dealt with the issue of a checkpoint in association with a potential seatbelt violation. That opinion noted that the United States Supreme Court has recognized that non-discretionary license and registration checks are constitutionally valid. See, City of Indianapolis v. Edmond, 531 U.S. 32 (2000) and Delaware v. Prouse, 440 U.S. 648 (1979). The enclosed June 17, 2002 opinion cites the decision of the United States Supreme Court in Brown v. Texas, 443 U.S. 47 which established a balancing test in evaluating the validity of traffic stops not based on probable cause or reasonable suspicion of criminal activity. The Court in Brown set forth the following criteria to be examined in a particular situation:

1. the gravity of the public concerns served by the seizure;
2. the degree to which the seizure advances the public interest; and
3. the severity of the interference with individual liberty.

As noted in the opinion, the Court in Brown stated that

...the Fourth Amendment requires that a seizure [traffic stop] must be based on specific, objective facts indicating that society's legitimate interests require the seizure of the particular individual, or that the seizure must be carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers.

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Id. at 51.

The June, 2002 opinion also cites the decision of the United States Supreme Court in Michigan Department of State Police v. Sitz, 496 U.S. 444 (1990) stating that

...the Court recognized that the State of Michigan had created a comprehensive plan concerning the implementation of their checkpoints. The plan created guidelines governing checkpoint operations, site selection and publicity. Because Michigan law enforcement officers followed the plan which limited their discretion and the detention of motorists at the checkpoints was brief, the Court found the “seizures” to be reasonable under a Fourth Amendment analysis.

The opinion concluded that consistent with the Michigan Department of State Police v. Sitz decision

...some administrative plan must be in place if law enforcement actions...(regarding roadblocks or checkpoints)...are to stand on firm constitutional footing. That plan must be capable of satisfying the three-part test set forth in Brown v. Texas....

I would also reference S.C. Code Ann. § 56-5-2933 which deals with driving with an unlawful alcohol concentration. That provision states that

[i]t is unlawful for a person to drive a motor vehicle within this State while his alcohol concentration is eight one-hundredths of one percent or more. A person who violates the provisions of this section is guilty of the offense of Driving With An Unlawful Alcohol Concentration. A person may be charged for a violation of Section 56-5-2930 but prosecuted pursuant to this section if the original testing of the person's breath or collection of other bodily fluids was performed within two hours of the time of arrest and articulable suspicion existed to justify the traffic stop. This section does not apply to cases arising out of a stop at a traffic roadblock or driver's license checkpoint. (emphasis added).

Also, as to the use of checkpoints or roadblocks to enforce the law on safety belts, S.C. Code Ann. § 56-5-6525 states that

[t]he Department of Public Safety or any other law enforcement agency must not use a "Click It or Ticket" campaign or a similar endeavor of systematic checkpoints or roadblocks as a law enforcement tool where the principal purpose is to detect and issue a ticket to a violator of the provisions of this article on either a primary or secondary basis.

Also with regard to this State's seat belt law, S.C. Code Ann. § 56-5-6540 states

[a] law enforcement officer must not issue a citation to a driver or a passenger for a violation of this article when the stop is made in conjunction with a driver's license check, safety check, or registration check conducted at a checkpoint established to stop all drivers on a certain road for a period of time, except when the driver is cited for violating another motor vehicle law.

As to the issue of the production of registration cards, S.C. Code Ann. § 56-3-1250 states:

The department, upon registering and licensing a vehicle, shall issue to the owner of the vehicle a registration card containing upon the face of the card the date issued, the name and address of the owner, including the county in which the owner resides, the registration and license number assigned to the vehicle, and that other description of the vehicle as may be determined by the department. The registration card must be delivered to the owner. Every registration card must at all times be carried by the person driving or in control of the vehicle, who shall display it upon demand of a police officer or any other person authorized by law to examine registration cards. (emphasis added).

As to the production of an insurance card, S.C. Code Ann. § 56-10-225 states:

(A) A person whose application for registration and licensing of a motor vehicle has been approved by the Department of Motor Vehicles must maintain in the motor vehicle at all times proof that the motor vehicle is an insured vehicle in conformity with the laws of this State and Section 56-10-510.

(B) The owner of a motor vehicle must maintain proof of financial responsibility in the motor vehicle at all times, and it must be displayed upon demand of a police officer or any other person duly authorized by law.

(C) A person who fails to maintain the proof of insurance in his motor vehicle as required by subsection (A) is guilty of a misdemeanor and, upon conviction, is subject to the same punishment as provided by law for failure of the person driving or in control of a motor vehicle to carry the vehicle registration card and to display the registration card upon demand. However, a charge of failing to maintain proof that a motor vehicle is insured must be dismissed if the person provides proof to the court that the motor vehicle was insured on the date of the violation. Upon notice of conviction, the department shall suspend the owner's driver's license until satisfactory proof of insurance is provided. If at any time the department determines that the vehicle was without insurance coverage, the owner's registration and driving privileges will be suspended pursuant to Section 56-10-520. (emphasis added).

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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
Deputy Attorney General