

7501 Luluang



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

April 17, 2003

Q.B. Walters, Chief of Police
Branchville Police Department
P.O. Box 85
Branchville, South Carolina 29432

Re: The Use of Radar by Uncertified Officer

Dear Chief Walters:

You have requested an opinion of this Office concerning the use of radar by an officer who is not certified.

The South Carolina Code of Laws does not address the use of radar by uncertified police officers. Additionally, South Carolina Department of Public Safety [DPS] regulations do not specifically address the issue. DPS Regulation 38-011 sets forth the qualifications under which law enforcement officers may be accredited as radar operators, but does not state that officers who are not accredited may not operate radar. However, I have spoken with Randy King, Professional Development Director with DPS, and Mr. King has advised that DPS strongly discourages the use of radar by uncertified law enforcement officers. In fact, DPS has developed a model policy for individual law enforcement agencies to employ in the use of radar. Mr. King advises that DPS is willing to assist agencies such as the Branchville Police Department in establishing the model policy and has provided the name of Larry Spearman as the contact point for DPS in this regard. Mr. Spearman can be reached at (803) 896-7788.

Further, while South Carolina courts have not explicitly taken a stance on the issue of whether unaccredited officers may operate radar devices, case law suggests that certification plays a role in determining whether radar readings will be admitted into evidence. In State v. Brown, 344 S.C. 302, 543 S.E.2d 568 (2000), the South Carolina Court of Appeals held that an admission of a radar reading into evidence was proper. One factor that the court took into account was that the police officer in this case was a certified traffic radar operator. 543 S.E.2d at 571.

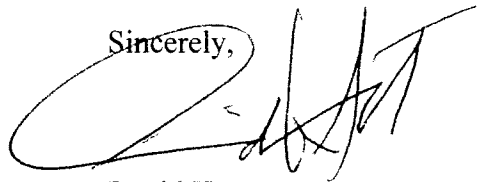
Other courts appear to be split as to whether radar test results measured by uncertified officers can be admitted into evidence. The Indiana Court of Appeals has held that the state is not obligated to show that a radar speed measurement is performed by a certified officer before the measurement can be admitted into evidence. Marlatt v. Indiana, 715 N.E.2d 1001 (1999). The Ohio

Henry McMaster

Chief Walters
Page 2
April 17, 2003

Court of Appeals held in State of Ohio v. Ferrier, 105 Ohio App.3d 124, 663 N.E.2d 729 (1995), that radar evidence was admissible because an experienced radar operator personally observed a new officer handle the radar device and testified that the new officer had "done things properly." Finally, the Court of Appeals of Texas has ruled that testimony that an officer is certified to use a traffic radar device, that the officer tested the device the day of the incident, and that the device used radar waves to measure speed is sufficient for evidentiary purposes. Mills v. State of Texas, 2002 WL 31933030 (2002).

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Avant', written over a large, loopy initial 'D'.

David K. Avant
Assistant Attorney General