



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

June 17, 2002

Chief W. M. Roth
Lexington Police Department
111 Maiden Lane
Lexington, South Carolina 29072

Re: Your Letter of May 22, 2002

Dear Chief Roth:

In your above-referenced letter, you ask this Office for an opinion concerning the legality of public safety checkpoints or roadblocks. You indicate that the Lexington Police Department has received legal challenges to criminal charges which have been made against drivers following stops at safety checkpoints. These challenges have come in the form of motions based on the requirements of Michigan Department of State Police v. Sitz, 496 U.S. 444 (1990). In the motions, it is claimed that Sitz mandates that law enforcement comply with the following criteria in order for a roadblock or safety checkpoint to be valid:

(1) law enforcement agencies must have established written departmental guidelines that explicitly set out procedures directing the officers' conduct at the public safety checkpoint; (2) the site selection for the public safety checkpoint should be chosen based on traffic accidents, number of arrests for traffic violations, and traffic volume; and (3) must notify the public about the public safety checkpoints in the form of press releases, public notices, and media announcements.

Given these challenges, you ask "if the above criteria are mandated by [Michigan Department of State Police v. Sitz] in order to establish a legal public safety checkpoint."

LAW/ANALYSIS

In Michigan Department of State Police v. Sitz, *Id.*, the United States Supreme Court was faced with a challenge to Michigan's highway sobriety checkpoint program based on an alleged violation of the Fourth Amendment to the U.S. Constitution. The Sitz Court recognized that stopping a vehicle at a checkpoint constitutes a "seizure," but held that the Michigan program did not violate the Fourth Amendment. *Id.* The Court applied a balancing test which it previously announced in Brown v. Texas, 443 U.S. 47 (1979). In evaluating the validity of traffic stops not

based on probable cause or reasonable suspicion of criminal activity (i.e. roadblocks or checkpoints), the Court in Brown v. Texas set forth the following three criteria which must be examined: (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. Id. at 50-51. When applying the test, the Court noted that the dominant constitutional concern is that "an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field" Id. The Court also 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." Id. at 51. (Emphasis added).

In Sitz, 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. Id. at 447. The Sitz Court did not, however, endorse the elements of the Michigan plan as the only criteria which would pass constitutional muster. What can be taken from the Sitz decision is that, in order for a roadblock or safety checkpoint to be constitutional, the actions of law enforcement must pass the three-part test established in Brown v. Texas and "... must be carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers." 443 U.S. at 51.

There appears to no authority setting forth a definitive list of elements which must be included in an operational plan for safety checkpoints and roadblocks. While South Carolina Appellate Courts do not appear to have addressed the issue, other state courts have ruled on the constitutionality of checkpoints and provided guidance as to what prerequisites may be required. In State v. Downey, 945 S.W.2d 102 (1997), the Supreme Court of Tennessee addressed the question of appropriate criteria for valid roadblocks and stated that:

A list of relevant factors, obviously, can take any length or form. Not every factor must weigh in favor of the state to uphold a given roadblock, nor is any single one dispositive of the issue. Instead, the overriding question is whether the roadblock was established and operated in a constitutionally reasonable manner that minimized the intrusion on individuals and limited the discretion afforded to officers at the scene.

945 S.W.2d at 109. In State v. Jackson, 764 So.2d 64 (2000), the Louisiana Supreme Court set forth the following guidelines for evaluating whether the checkpoint's intrusiveness will withstand a constitutional challenge under the Fourth Amendment :

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- (1) the location, time and duration of a checkpoint, and other regulations for operation of the checkpoint, preferably in written form, established by supervisory or other administrative personnel rather than the field officers implementing the checkpoint;
- (2) advance warning to the approaching motorist with signs, flares and other indications to warn of the impending stop in a safe manner and to provide notice of its official nature as a police checkpoint;
- (3) detention of the motorist for a minimal length of time; and
- (4) use of a systematic nonrandom criteria for stopping motorists.

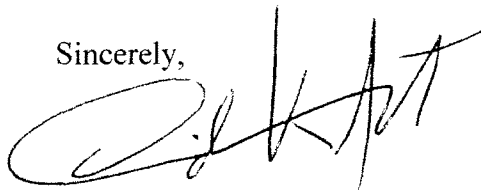
In Sheppard v. Commonwealth, 489 S.E.2d 714 (1997), the Court of Appeals of Virginia held a roadblock to be constitutional which was instituted pursuant to an administrative plan which provided for the location of the site, the length of time the roadblock should last, the number of officers to be present, the officers' attire, emergency lights and flares to be used, location of emergency vehicles on the scene, removal of detained vehicles from traffic, and the number of cars to be stopped. The Court in Sheppard v. Commonwealth found the particular road block in question to be reasonable and constitutionally permissible despite the fact that one element of the plan, that addressing the location of the site, had not been complied with. Id. at 717.

CONCLUSION

Based on the foregoing, it is my opinion that Michigan Department of State Police v. Sitz does not mandate that the specific criteria referenced in your opinion request be complied with in order for law enforcement to implement a valid safety checkpoint or roadblock. It is my opinion, however, that some administrative plan must be in place if law enforcement actions in this regard are to stand on firm constitutional footing. That plan must be capable of satisfying the three-part test set forth in Brown v. Texas, 443 U.S. 47 (1979).

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant
Assistant Attorney General

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