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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

November 27, 2000

The Honorable Glenn F. McConnell
Member, South Carolina Senate
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator McConnell:

You have expressed concern about the so-called "Click It or Ticket" program which has been initiated by the Department of Public Safety. You have stated the following:

I recall the debate on the seat belts being secondary versus primary enforcement and the law passed by the General Assembly only permitted secondary enforcement when a person was breaking the law. I would appreciate it if you could look at the current statute and tell me if it is legal for policemen/patrolmen to stop drivers because they are not wearing their seat belts and fine them. Can they stop them at a road block and check for seat belts and fine them or stop them at a drivers license check for car registration and charge them for failure to wear a seat belt even those they have their license and registration?

Law/Analysis

It is our opinion that the "Click It or Ticket" enforcement effort is inconsistent with South Carolina's seat belt law. An enforcement campaign whose principal purpose is to detect and ticket seat belt violations is not permitted under current state law. The reasons for this conclusion are more fully set forth below.

S.C. Code Ann Section 56-5-6540 establishes the penalties for violation of South Carolina's mandatory seat belt law set forth in Section 56-5-6520. Section 56-5-6540 (B) specifies the boundaries within which the General Assembly sought to have the seat belt law enforced. Such Section provides as follows:

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- (B) A law enforcement officer may not stop a driver for a violation of this article *in the absence of another violation of the motor vehicle laws except when the stop is made in conjunction with a driver's license check or registration check conducted at a checkpoint established to stop all drivers on a certain road for a period of time*. A citation for a violation of this article must not be issued without citing the violation that initially caused the officer to effect the enforcement stop. (Emphasis added).

In an earlier opinion, dated October 11, 1990, this Office construed Section 56-5-6540 (B). There, we stated the following:

[b]ased upon our review of such provision it appears that the situations authorize charges for violations of the mandatory seat belt law. *One is a stop made in conjunction with a driver's license or registration check at an established checkpoint*. The other situation involves citing for a violation of the motor vehicle laws other than a mandatory seat belt law. (Emphasis added).

Your question assumes that no other violation is cited as part of the "Click It or Ticket" campaign. Thus, the issue here is whether the "Click It or Ticket" campaign is "a stop made in conjunction with a driver's license or registration check at an established checkpoint."

A brief examination of the "Click It or Ticket" campaign is helpful. United States Secretary of Transportation Rodney E. Slater announced on October 31, 2000 a nationwide program for increasing seat belt use to 36 states. The Secretary announced \$47.3 million in grants to 36 states for this purpose, stating that "[f]unds provided as seat belt use incentive grants support a variety of state programs ranging from encouraging seat belt use and special traffic enforcement programs to highway construction activities." This past week, Secretary Slater announced a nationwide zero tolerance program to be conducted over the Thanksgiving holidays and carried out by more than 9,000 police agencies all over the United States. That program is aimed at enforcement of the various states' laws against drunk driving and the requirements for seat belt usage.

Clearly, therefore, other programs similar to "Click It or Ticket" are being implemented in other states. For example, information from the Department of Public Safety's Web Site (http://www.scdps.org/click_it_or_ticket/faq.html) states the following:

The Click It or Tickets campaign has been conducted in several other states, including North Carolina, which saw its seat belt usage rate increase from about 63 percent to 80 percent during the 1993 campaign. *However, this is the first time this aggressive enforcement*

campaign has been conducted in a state with a secondary enforcement law. (Emphasis added).

Thus, it is clear that the purpose of South Carolina's "Click It or Ticket" campaign is simply to enforce the States's mandatory seat belt law, not to enforce driver's license and registration laws. Governor Hodges, in his Proclamation of November 6, 2000, said that "[t]he goal of the Click It or Ticket campaign is to increase our state's safety belt usage rate to 75 percent." In that same message, the Governor refers to the campaign as a "crackdown on seat belt infractions" . . . The Department of Public Safety refers to the campaign as a "high-visibility enforcement effort to detect violators of South Carolina's seat belt laws." A statewide ad campaign emphasizing the enforcement of the seat belt laws has now been launched. It is our understanding that some police officers are using binoculars to check whether drivers are attempting to buckle their seat belts as they approach the checkpoint. While officers are checking for a driver's license, there is little doubt this is being done simply as an effort to fit within the literal language of the seat belt law.

In addressing your question, a number of fundamental principles of statutory construction must be considered. First and foremost, is the well-recognized rule that the intent of the General Assembly must be given paramount importance. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statutory provision should be given a reasonable and practical construction which is consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Comm., 273 S. C. 269, 255 S.E.2d 837 (1979). In construing the statute, the words used must be given their plain and ordinary meaning without resort to subtle or forced construction for the purpose of limiting or expanding its operation. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984).

Also, what cannot be done directly, cannot be done indirectly either. Op. Attv. Gen., July 31, 1990. Finally, and perhaps most importantly, Section 56-5-6540 (B) is part of a criminal statute. When a statute is penal in nature, it must be construed strictly against the state and in favor of the defendant. Hair v. State, 305 S.C. 77, 406 S.E.2d 332 (1991).

Based upon the foregoing, the "Click It or Ticket" campaign does not meet the statutory requirements of the mandatory seat belt law. The Legislature has clearly written the seat belt law with a purpose of balancing individual liberty with public safety. By making seat belt infractions a secondary violation – subject to citation only upon a violation of some other law, the General Assembly has plainly set limitations so as to guarantee that individual freedom is protected. The only exception is where a stop is made "in conjunction with a driver's license check or registration check conducted at a checkpoint established to stop all drivers on a certain road for a period of time."

In this instance, "Click It or Ticket" is not designed to enforce drivers's license checks or registration checks. While a driver's license is being checked, such is being done simply as an attempt to comply with the seat belt law requirements, virtually as an afterthought to enforcement of the seat belt law. The obvious primary purpose of the campaign – as stated by the Governor, DPS and the ad program – is to enforce the secondary seat belt law. The General Assembly did not permit

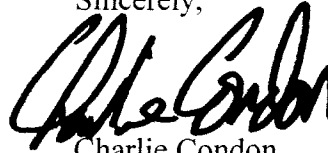
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a program such as "Click It or Ticket" when it wrote the seat belt law. Any effort to enforce the seat belt law primarily, as opposed to secondarily, is simply a circumvention of the law.

Sincerely,

A handwritten signature in black ink, appearing to read "Charlie Condon", written in a cursive style.

Charlie Condon
Attorney General

CC/ph