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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

October 10, 2000

Amelia R Linder, Assistant County Attorney
Richland County
Post Office Box 192
Columbia, South Carolina 29202

Re: Your Letter of September 15, 2000

Dear Ms. Linder:

In your letter, you indicate that you have been asked by the Richland County Council to obtain an opinion from this Office on the following questions:

- (1) Are County Code Enforcement Officers entitled to use the State Uniform Traffic Ticket under the authority that is given to them pursuant to SC Code Section 4-9-145?
- (2) If the answer is in the affirmative, would a County Code Enforcement Officer then be allowed to enforce any of the state laws, in particular 16-11-700?

Section 4-9-145 allows for counties to appoint and commission code enforcement officers and provides:

The governing body of a county may appoint and commission as many code enforcement officers as may be necessary for the proper security, general welfare, and convenience of the county. These officers are vested with all the powers and duties conferred by law upon constables in addition to duties imposed upon them by the governing body of the county. However, no code enforcement officer commissioned under this section may perform a custodial arrest. These code enforcement officers shall exercise their powers on all private and public property within the county. The governing body of the county may limit the scope of a code enforcement officer's authority or the geographic area for which he is authorized to exercise the authority granted.

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The statutory provisions creating and prescribing the uses of the Uniform Traffic Ticket are contained in S.C. Code Ann. §§ 56-7-10 and 56-7-15.

Section 56-7-10 reads, in pertinent part, that "[t]here will be a uniform traffic ticket used by all law enforcement officers in arrest for traffic offenses" and for certain additional offenses. Two of those additional offenses are Dumping Trash on Highway/Private Property and Littering pursuant to §16-11-700. Section 56-7-15 provides that a uniform traffic ticket may be used by "law enforcement officers 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." Accordingly, if a Code Enforcement Officer has the authority to issue a Uniform Traffic Ticket, he has the authority to issue such for any traffic offense, any offense listed in §56-7-10 or any offense which carries up to 30 days in jail and/or up to a \$500.00 fine. This would include violations of §16-11-700.

As you have pointed out, the key to your question lies in a Code Enforcement Officer's status as a "Law Enforcement Officer." To determine that status, it will be necessary to employ a few basic principles of statutory construction. It will also help to review relevant case law and other opinions on related topics issued by this Office.

The primary goal of statutory interpretation is to ascertain the intent of the general assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). In determining the meaning of one statute, it is proper to consider other statutory provisions relating to the same subject matter. Southern Ry. Co. v. S.C. State Hwy. Dept., 237 S.C. 75, 115 S.E.2d 685 (1960). A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the legislation. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). The statute's words must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or to expand the statutes operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Further, penal statutes must be strictly construed against the State. Commercial Credit Corporation v. Webb, 245 S.C. 53, 138 S.E.2d 647 (1964). In a previous opinion, this Office has opined that the rules of strict construction apply to statutes involving criminal procedure as well. See Atty. Gen. Op. 94-61, (October 18, 1994).

"Law Enforcement Officer" is not defined in Article 7 of Title 56 of S.C. Code Ann. (1976). Neither is the term defined specifically in any other article of Title 56. To find a general definition of "Law Enforcement Officer" within the Code, it is necessary to look to Title 23, Law Enforcement and Public Safety. Section 23-6-400 (D) (1) provides that "'law enforcement officer' means an appointed officer or employee hired by and regularly on the payroll of the State or any of its political subdivisions, who is granted statutory authority to enforce all or some of the criminal, traffic, and penal laws of the State and who possesses, with respect to those laws, the power to effect arrests for offenses committed or alleged to have been committed." The definition is broad with regard to the

potential duties outlined for such an officer but without exception, the officer must have the power to arrest offenders.

The authority to arrest seems to be the linchpin requirement in determining who is considered, in a general sense, a law enforcement officer. In State v. Brant, 278 S.C. 188, 293 S.E.2d 703 (1982), the South Carolina Supreme Court held a security guard to be a law enforcement officer for purposes of S.C. Code Ann. § 16-9-310. In so holding, the Court cited the authority given to SLED licensed security guards in S.C. Code Ann. § 40-17-130:

Any person covered by the provisions of § 40-17-90 or properly registered or licensed under this chapter who is hired or employed to patrol, guard or render a similar service on certain property shall be granted the authority and power which sheriff's have to make arrest, of any persons violating or charged with violating any of the criminal statutes of this State, but shall have such powers of arrest only on the aforementioned property.

This Office has also issued opinions regarding a private security guard's status as a law enforcement officer. Specifically, in an April 30, 1987 opinion, this Office stated that properly licensed private security guards were "law enforcement officers" for the purposes of § 56-7-10, and that they could use uniform traffic tickets to effectuate arrests. This opinion was based on Brant and on the security guard's power of arrest. This authority weighs against a code enforcement officer being considered a law enforcement officer for uniform traffic ticket purposes.

On-the-other hand, as you have pointed out, this Office has opined that Code Enforcement Officers would be allowed to utilize a flashing or oscillating blue light on their vehicles as their vehicles were used primarily for law enforcement purposes under S.C. Code Ann. § 56-5-4700. See Atty. Gen. Op. No. 93-58. Further, in an April 24, 1997 opinion we stated that "[a] court could conclude that [Code Enforcement] officers are 'regular, salaried law enforcement officers' [and therefore] could be deemed exempt from the concealable weapons law pursuant to [16-23-20(1)]."

While there seems to be conflicting authority, it is my opinion that given the specific proscriptions of § 4-9-145, §56-7-10 and other related statutes, Code Enforcement Officers are not "law enforcement officers" for the purposes of issuing uniform traffic tickets.

Section 4-9-145 mandates that no code enforcement officer may perform a custodial arrest. Enacted the same legislative session (1992), § 56-7-80 provides for counties and municipalities to adopt and use ordinance summons for the enforcement of ordinances by law enforcement and code enforcement officers. A uniform ordinance summons may not be used to perform a custodial arrest. The ordinance summons gives the code enforcement officer an alternative method for enforcing ordinances and gives the magistrate's court jurisdiction over the matter without the code enforcement officer having to resort to the use of a ticket or arrest warrant. Had the legislature intended the code

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enforcement officer to use uniform traffic tickets, the enactment of §56-7-80 would have been unnecessary. Also, a county's ability to authorize code enforcement officers to issue uniform traffic tickets may be impacted by other provisions in the Code. In particular, § 4-9-33 provides in pertinent part that:

A referendum must be held to approve the creation of a county police department prior to the implementation of an ordinance adopted by a county council which would duplicate or replace the law enforcement functions of a sheriff. As used in this section, the term law enforcement means those activities and duties which require the exercise of custodial arrest authority by a sheriff or his duly appointed and sworn deputy or the performance of duties conferred by state law upon a sheriff and those activities incidental to the performance of law enforcement duties.

Nothing in this section shall be construed as a limitation on the authority of a county council to provide litter control and animal control, to appoint and commission code enforcement officers as provided for in Section 4-9-145, to provide other services not directly related to law enforcement, to exercise the powers conferred by general law upon counties to protect the public health, safety, and general welfare of the community, or to adopt capital and operating budgets for the operation of the county as provided for in Section 4-9-140.

It seems that allowing a county to authorize code enforcement officers to issue uniform traffic tickets may violate the provisions of § 4-9-33. Such authority would, in essence, give officers with county wide jurisdiction police and law enforcement powers which duplicate the law enforcement functions which have been bestowed upon the county sheriffs by the laws of this State.

It seems clear that for the purposes of 56-7-10, the Legislature intended "law enforcement officer" to include only those officers with custodial arrest powers. While § 56-25-30 provides for a law enforcement officer to allow a person served with a uniform traffic citation to proceed without being placed in custody, such action is purely discretionary. Section 56-25-40 indicates that an officer may require a "person to appear before a magistrate, recorder or other judicial officer." Further, § 56-25-40 makes it mandatory that certain offenders be subjected to custodial arrests. That section requires that persons committing offenses "which would result in the suspension or revocation of a person's license or privilege to drive ... [that constitute a] violation of § 56-1-440 prohibiting the operation of a motor vehicle without a valid drivers license [or] a violation of a highway weight limitation" be taken before a magistrate, etc. Such offenses which would require a custodial arrest and could be charged by uniform traffic ticket include DUI, DUS, failure to stop for a blue light, simple possession of marijuana and driving without a license.

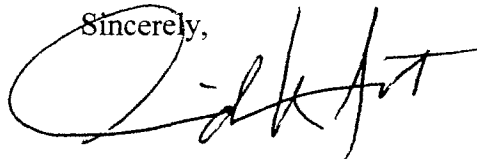
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Finally, § 23-6-430 provides that, unless certified as qualified by the Department of Public Safety (with a one-year grace period), no person may perform any of the duties of a law enforcement officer involving control or direction of members of the public or exercising the power arrest. Without the power to perform custodial arrest, code enforcement officers can not be considered "law enforcement officers" for purposes of mandatory training required pursuant to §§23-6-400 *et seq.* and would, therefore, not be capable of receiving such certification from the Department of Public Safety. Accordingly they would be incapable of legitimately issuing uniform traffic tickets.

Based on the foregoing, it is my opinion that county code enforcement are not "entitled to use the State Uniform Traffic Ticket under the authority that is given to them pursuant to SC Code Section 4-9-145." Accordingly, code enforcement officers would not be allowed to enforce any of the state laws including § 16-11-700.

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,

A handwritten signature in black ink, appearing to read "D. K. Avant", written over the word "Sincerely,".

David K. Avant
Assistant Attorney General

DKA/an