



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

March 19, 1996

David M. Bridges, Chief of Police
City of Greenville
4 McGee Street
Greenville, South Carolina 29601-2298

Dear Chief Bridges:

You have asked for an opinion regarding the use of photo-radar in South Carolina. You have enclosed several articles relating to the use of photo-radar elsewhere. In your letter, you state:

[a]s the enclosed articles illustrate, the system uses radar to confirm violations and a photograph to identify the vehicle. While it is used extensively overseas, only a handful of communities use it in the United States.

Our concern, and question is whether it is legal to charge the registered owner for the speeding violation. Our City Attorney, Ron McKinney, is of the opinion that it would be similar to a parking ticket. He feels that a municipal ordinance could be enacted to make the owner liable for the offense.

LAW / ANALYSIS

The photo-radar system has been described as follows:

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limitations prescribed in Sec. 56-5-930 [traffic control devices], adopt additional traffic regulations which are not in conflict with the provisions of this chapter.

As we stated in Op. Atty. Gen., Op. No. 88-16 (February 16, 1988), citing 7A Am.Jur.2d, Automobiles and Highway Traffic, § 17,

[m]unicipalities to which the power to regulate the use of their public ways by motor vehicles has been delegated by statute may enact such regulations so long as they are not in conflict with or repugnant to state legislative enactments governing the use of such vehicles, but such regulations are invalid if they are in conflict with statutes relating to the subject. Where the state has retained the power to provide general laws regulating traffic on the highways of the state, legislation enacted pursuant to such right cannot be curtailed, infringed upon, or annulled by local authorities, and where there is conflict between such a state statute and a municipal ordinance, the statute prevails.

My examination of the Code regarding traffic laws indicates that no State law presently regulates photo-radar or photographic vehicle speed detective devices. Presently, in state law, there is no statute which prohibits or attempts to regulate these devices as a tool available to law enforcement to detect speeding. However, as indicated, speeding and unlawful speeds on the highways are regulated by state law. Municipalities are authorized to alter established speed limits within their jurisdiction, subject to approval by the Department of Transportation, see, Section 56-5-1540 (c), and may set the maximum limit for all arterial streets. Section 56-5-1540 (b). Op. Atty. Gen., No. 77-381 (Dec. 2, 1977). Moreover, the offense of speeding in violation of Section 56-5-1520 (d) is generally tried in magistrate's or municipal court.

In an opinion, dated September 27, 1991, we stated as follows:

Article V of the State Constitution vests the judicial power of this State in a unified judicial system. In Article V, Section 26, provision is made for the appointment of magistrates who are deemed to be a part of the unified judicial system. State ex rel. McLeod v. Crowe, 272 S.C. 41, 249 S.E.2d 772 (1978). Pursuant to Article V, Section 4, the Chief Justice is designated as the administrative head of the unified judicial

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system. In Douglas v. McLeod, 277 S.C. 76, 282 S.E.2d 604 (1981) the Supreme Court reiterated that inasmuch as the establishment of a uniform judiciary is mandated pursuant to Article V, statutes "... which extend or perpetuate a nonunified system or which operate so as to postpone or defeat the purpose of Article V must be deemed unconstitutional." 277 S.C. at 78. Also in Douglas, the Court referenced the provisions of Article VIII of the Constitution dealing with local government. Section 14 of such Article states

In enacting provisions required or authorized by this article, general law provisions applicable to the following matters shall not be set aside: ... (4) the structure for and the administration of the State's judicial system; ... (6) the structure and the administration of any governmental service or function, responsibility for which rests with the State government or which requires statewide uniformity.

In Douglas the Court stated that

Paragraph 14 (4 and 6) of Article VIII effectively withdraws administration of the State judicial system from the field of local concern.

As I understand the manner in which photo radar system would work, the owner of the vehicle would be charged with the speeding violation and would be mailed the ticket. In other words, he would get the notice of the charge some time later. Presumably, the owner is then subject to a rebuttable presumption or an inference in magistrate's or municipal court that he violated the speeding statute and may have to rebut such presumption or inference by showing that he was not behind the wheel at the time of the violation, perhaps simply by the fact that it is not his or her picture taken by photo radar as the driver, or otherwise. Of course, such procedures relating to evidence in court with respect to speeding violations as well as the method a ticket for a moving violation is served (here by mail), and the fact that the owner of the vehicle rather than the driver is ticketed for a moving violation would be applicable only in those localities which chose to adopt a photo radar ordinance.

In Op. Atty. Gen., April 18, 1979, we stated:

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counties [or municipalities] are not authorized to enact ordinances which relate to courts included within the unified judicial system. Those courts are to be dealt with by general law

Section 56-5-1520 (e) states that

any citation for violating the speed limits issued by any authorized officer must note on it the rate of speed for which the citation is issued. (emphasis added).

This section clearly anticipates that the officer who observes the violation will state on the ticket the driver's rate of speed. Moreover, the Uniform Traffic Ticket, authorized by Section 56-7-10, typically is the charging document in court for such violation and is generally served upon the individual charged with the violation upon being stopped by the officer.

Furthermore, it has been stated that "[w]ithout express authority the general rules of evidence or procedure may not be changed by ordinance by a municipal corporation." McQuillin, Municipal Corporations, § 27.45.

In People v. Hildebrandt, 308 N.Y. 397, 126 N.E.2d 377 (1955), the Court reviewed a conviction for speeding. There, police officers had used a photographic camera to determine that the driver was speeding. The driver was, however "not identified by the police or arrested at that time and defendant got no notice, till two weeks later that he was charged with the offense." At the trial, there was "simply a showing that the automobile was registered and licensed in the name of a defendant as owner."

The Court of Appeals, New York's highest court refused to sustain the conviction. Noting that there had operated a presumption that the registered owner was the driver of the vehicle, the Court stated:

[f]or the asserted "presumption", which is the sole support of this conviction, there is no statutory authority, which means, at least, that the New York Legislature has not disclosed its awareness of a need for a statutory presumption. We express no advance opinion as to the validity of such a statute, if one should be enacted. Other Legislatures have acted [citations omitted] ... Making rules for traffic control is peculiarly a

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legislative job, and our Legislature has actually provided for other presumptions relating to the use of automobiles

126 N.E.2d 379.

With respect to the argument that registered ownership supports an inference "that this defendant was driving the car ...", the Court said this:

[w]e all know that many a passenger car is customarily driven at various times by various persons, we know that many a person owns more than one passenger automobile, we know that some owners are not licensed operators and we are informed that there are outstanding in this State at least one million more automobile operators licenses than passenger automobile registrations. From all of that it follows, we think, that it is hardly a normal or ready inference or deduction that an automobile which speed along a highway is being driven by its owner, and of no other person. Apparently, the question is a new one, but that is because speeders are usually pursued and arrested after pursuit, whereas this identity question arises because of the use of a photographic speed recorded without pursuit or arrest. The device used may be efficient and scientifically trustworthy, its use make pursuit and immediate arrest inconvenient or unnecessary, and highway safety may be promoted by eliminating such pursuits. But it takes more than a necessity to validate a presumption in a criminal case.

Id. The Court then rejected the idea that a speeding ticket is no different from a parking ticket. Calling parking violations a "special sort" of situation, where "[t]he car is left unattended and there is usually no one present to be arrested", the Court concluded that "it is not unreasonable to charge to the owner an illegal storage of his vehicle in a public street." On the other hand, said the Court, speeding "is personal, individual wrongdoing which can subject the wrongdoer to serious penalties." Id. at 378. Moreover, the Court's cautionary advice, as above stated, with respect to any presumption as to speeding violations is particularly applicable to our situation in light of the United States Supreme Court's prohibition against shifting the burden of proof in criminal cases. See, Sandstrom v. Montana, 442 U.S. 510, 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979); Op. Atty. Gen., February 25, 1991.

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I have no doubt that using the idea of photo radar offers a number of strong advantages for law enforcement. As has been argued elsewhere,

... photo radar saves lives - the accident rate in the city of Paradise Valley, Arizona, decreased forty-six percent in the first year the system was in operation. This method of traffic enforcement is also touted for its objectivity. It does not discriminate based on subjective views As Lt. William Osburn of the National City California Police Department observed: "The camera doesn't care who you are U. S. Public Technologies, Inc. claims their Photo-Cop unit can photograph two vehicles per second while a police officer writes, on the average one ticket every twenty minutes. This high volume of tickets can obviously be a significant source of revenue for the jurisdiction involved. Also, only one officer monitors the unit's operation, potentially allowing a police department to reduce the number of traffic officers assigned to the hazardous duty of stopping vehicles. The risk of injury is virtually eliminated by a photo radar system because officers no longer have to chase, stop and confront the driver of the vehicle on what are often busy streets and highways.

Morris, Id. at 805.

In summary, while no statute absolutely prohibits a municipality's use of photo radar by virtue of an ordinance, the concerns expressed by the Court in Hildebrandt, supra remain. Hildebrandt held that the Legislature was the appropriate authority to authorize the use of a presumption or inference that the owner of the vehicle was the driver and could be charged subject to his showing later that he was not behind the wheel. Moreover, Article V of the Constitution requires that all magistrate and municipal courts must be uniform throughout the State and cannot use procedures required by ordinance on a piecemeal or localized basis. In light of these issues, as well as the constitutional requirements that the burden of proof cannot be shifted, I would advise that the General Assembly would be the more appropriate body to authorize the use of photo radar. While I have no doubt that this may be a valuable tool for law enforcement, it appears that in light of the many issues involved in its use, the General Assembly should clearly authorize its adoption on a unified basis rather than piecemeal.

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This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read 'RDC', with a long horizontal flourish extending to the right.

Robert D. Cook
Assistant Deputy Attorney General

RDC/ph