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October 25, 1991

The Honorable Walter Jones
Chief Judge
Richland County Summary Courts
P. O. Box 192
Columbia, South Carolina 29202

Dear Judge Jones:

In a letter to this Office you questioned the procedure to be followed as to individuals who fail to appear in court for traffic offenses where no bond has been posted, there has been no request for a continuance and no request for a jury trial. You stated that you have followed the procedure whereby the case is called, the citing officer is sworn and testimony is presented relevant to the charge. Following such presentation, a finding is made and where there is a conviction, the process for suspension of the driver's license under the Nonresident Traffic Violators Compact (NRVC) is begun or a bench warrant is issued. 1/

As to the manner of proceeding in a trial in absentia, the South Carolina Bench Book for Magistrates and Municipal Court Judges states at pages III 77-78:

... an accused may be tried in absentia if he has been properly notified as to the time and place of the trial and does not appear at the appointed time ...

1/ Pursuant to Section 56-25-40(b) of the Code:

Any person who willfully fails to appear before the court as required by a uniform traffic citation without having posted such bond as may be required by the court or granted a continuance by the court shall be deemed guilty of a misdemeanor

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When a defendant who has been properly notified does not appear when the trial is scheduled, the magistrate or municipal court judge should call his name, or direct that the constable call his name, three times from the courthouse door. After waiting a reasonable time, the magistrate or municipal court judge may proceed.

A trial in absentia, as a procedural matter, is only slightly different from a trial at which the defendant appears. The complaining citizen or law enforcement officer is placed under oath and allowed to present his evidence. Other witnesses, if any, are permitted to testify under oath. Additionally, the constable is summoned to testify that he called the defendant's name from the courthouse door and that there was no response. In those cases where the magistrate or municipal court judge himself called the defendant's name, he lets the record show that the defendant's name was called and that he did not respond.

When the evidence is complete, the magistrate or municipal court judge makes his findings. If the defendant is acquitted, the proceedings are terminated. If the defendant is found guilty, the magistrate or municipal court judge imposes sentence, according to the penalty allowed for the offense by law. He may use the testimony presented, and any other facts at his disposal, in determining the sentence to be imposed. If the sentence is a fine, the judge may (but does not have to) apply the forfeited bond to the sentence; if the sentence is a jail term, a bench warrant is issued for the arrest of the defendant.

The Bench Book comments that although the foregoing procedure is more complicated than simply declaring that a defendant's bond is forfeited where there is a failure to appear, such method is preferable because it results in a "final

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determination." The Bench Book comments further:

Where there is a forfeiture of bond and, nothing more, the defendant is entitled to a trial at a later date if he demands it.

P. III-79.

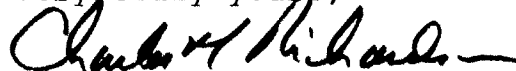
Pursuant to Section 56-25-20 of the Code, when a court in this State notifies the Highway Department that a resident of this State or an individual possessing a South Carolina driver's license has failed to comply with a traffic citation, the individual's driver's license should be suspended. Where a nonresident who is licensed in a compact jurisdiction fails to comply with a citation, the Highway Department is to notify the licensing authority in the compact jurisdiction for appropriate action.

As to a bench warrant, I am enclosing a copy of a prior opinion of this Office dated November 16, 1990 which outlines the situations in which a bench warrant might be issued.

Referencing the above, the better procedure in the circumstances described by you would be to hold a bench trial in the manner set forth in the Bench Book and not simply sign off on a traffic citation. Following a conviction, procedures could be instituted under the NRVC or a bench warrant could be issued where appropriate. Therefore, I believe that a system in traffic cases whereby blanket questions are asked, a stack of citations are held up and a blanket statement by an officer is provided should be avoided.

With kind regards, I am

Very truly yours,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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