



Office of the Attorney General

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August 17, 1990

James T. Coursey, Chief of Police  
City of Greenwood  
P. O. Box 40  
Greenwood, South Carolina 29648

Dear Chief Coursey:

Your recent request for an opinion of the Attorney General has been referred to me for response. You have asked the following questions:

1. Can any offense committed in the presence of an officer that is to be tried in Municipal and/or Magistrate's Court be written on a uniform traffic ticket to replace the issuance of arrest warrants?
2. If so, does this include Municipal Ordinances?
3. If a traffic offense under a Municipal Ordinance is written on a uniform traffic ticket, could the Highway department take points for the offense?

It is the Opinion of this Office that an offense, including a municipal ordinance violation, which is committed in the presence of a law enforcement officer and which is within the jurisdiction of magistrate's court and municipal court may be cited on a uniform traffic ticket and that use of the uniform traffic ticket by the officer would confer the court with jurisdiction without the necessity of further obtaining an arrest warrant. It is also the opinion of this Office that the South Carolina Department of Highways and Public Transportation (hereinafter Highway Department) could include in its uniform point system only those offenses against motor vehicle traffic laws or ordinances as contained in S. C. Code § 56-1-740, (1976, as amended), and as determined by the Highway Department.

With regard to municipal court and magistrate's court, it is necessary that a valid charging document be issued and served upon an arrestee or be in possession of a magistrate at trial to confer jurisdiction in order for the court to consider a criminal case.

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S. C. Atty. Gen. Op. dated August 14, 1981. This Office has previously opined that when an arrest occurs without a warrant, it will be necessary for the officer to obtain an arrest warrant to vest the magistrate's court with jurisdiction except in instances where statutes provide that the use of an official summons vests the court with jurisdiction. Id. (Magistrate's Court). See e.g. S. C. Code §§ 56-7-10 (uniform traffic ticket); 50-3-410 (South Carolina Wildlife and Marine Resources Commission summons); and 61-13-836 (South Carolina Alcoholic Beverage Control Commission summons). As also recognized in a prior opinion of this Office dated April 25, 1989, the General Assembly in 1984 amended S. C. Code § 56-7-10 so as to permit the use of the uniform traffic ticket rather than an arrest warrant for specific State statutory offenses which were not traffic related. The opinion determined that the provision did not extend to county and municipal ordinance violations.

However, House Bill 4668/Act 601 which became effective on June 25, 1990 provides:

"Section 56-7-15. The uniform traffic ticket, established under the provisions of Section 56-7-10, 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. A law enforcement agency processing an arrest made pursuant to this section must furnish such information to the State Law Enforcement Division as required in Chapter 3 of Title 23."

It appears from a literal reading of the terms of the statute that the General Assembly has now also provided for the use of the uniform traffic ticket for any offense which falls within the jurisdiction of magistrate's court and municipal court when the offense is committed in the presence of a law enforcement officer. See Duke Power Co. v. S. C. Tax Com'n., 292 S.C. 64, 354 S.E.2d 902 (1987) (When the terms of a particular statute are clear and unambiguous, the literal meaning should be applied). As the statute does not contain limiting language as to the offense to which it applies, it appears that use of the uniform traffic ticket may now be used for municipal ordinance violations if committed in an officer's presence and which are tried in municipal and/or magistrate's court. Although the new statutory provision does not contain specific language to the effect that service of the ticket vests those courts with jurisdiction to hear and dispose of the charge as does S. C. Code Ann. § 56-7-10, the two statutes, when read pari marteria

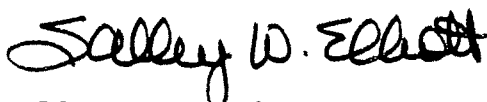
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would indicate that jurisdiction would vest without the necessity of an arrest warrant. See State Farm Mutual Auto. Ins. Co. v. Lindsay, 284 S.C. 472, 328 S.E.2d 80 (S. C. App. 1984) (Statutes in pari materia have to be construed together and reconciled, if possible, so as to render both operative); Fisburne v. Fisburne, 171 S.C. 408, 172 S.E. 426 (1934) (Different statutes in pari materia though enacted at different times, should be construed together as one system and as explanatory of each other); Columbia Gaslight Co. v. Mobley, 139 S.C. 107, 137 S.E. 211 (1927) (Separate statutes relating to the same subject-matter must be construed together and effect given to each). However, further legislative clarification would be advisable. This opinion also does not address the constitutionality of the statute.

Lastly, you ask whether the South Carolina Highway Department could assess "points" for municipal ordinance violations if the offense is cited on a uniform traffic ticket. The General Assembly has established a uniform point system in this State for evaluating the motor vehicle operating record of individuals in order to determine whether the privilege to hold a license should continue. See S. C. Code § 56-1-740. Certain points have been assigned to various violations of motor vehicle traffic laws or ordinances. Id., S. C. Code Ann. § 56-1-740. As to whether the Highway Department may assess "points" against an offender, I refer you to S. C. Code Ann. § 56-1-720 and the Highway Department as the answer would involve a factual determination depending upon the particular violation involved. See S. C. Code Ann. § 56-1-840 (Highway Department is responsible for administering and enforcing uniform point system and may promulgate necessary rules and regulations in order to do so). Factual questions may not be resolved by an opinion of this Office. See S. C. Code § 1-7-110; Ops. Atty. Gen., December 12, 1983 and November 14, 1983.

I hope that I have been sufficiently responsive to your request. If anything further is needed, please advise.

Sincerely,



Salley W. Elliott  
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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