

The State of South Carolina

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Office of the Attorney General

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December 10, 1990

Mr. Jack M. Scoville, Jr.
Post Office Box 1250
Georgetown, South Carolina 29442

Dear Mr. Scoville:

I am writing in response to your recent request for an opinion from this Office. You have asked whether Georgetown County Council has authority, pursuant to S.C. Code §4-9-145, to provide for the position of litter control officer to enforce a county litter ordinance. You have also asked whether the litter control officer may use a county ordinance citation, a copy of which you have provided for our review and approval, if appropriate. You further ask whether a magistrate may refuse to hear cases because the citation form has not been approved by our Office.

As to your questions concerning the use of the proposed county ordinance citation, it is the opinion of this Office that use of the citation would not confer the magistrate or municipal court with jurisdiction in instances of litter violations. This Office has opined that

(w)ith 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.

S.C. Atty. Gen. Op. dated August 14, 1981. See also S.C. Atty. Gen. Ops. dated August 17, 1990; April 27, 1977;

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December 9, 1982. Prior opinions of this Office have determined that an arrest warrant is necessary to vest the magistrate's and municipal courts with jurisdiction except where statutes provide that official summons may be used. Id. See also S.C. Atty. Gen. Op. dated June 11, 1982. S.C. Code §56-7-10 provides for the use of the uniform traffic ticket for violations of S.C. Code §16-11-700 regarding littering. Also, §56-7-15, which became effective June 25, 1990, permits the use of the uniform traffic ticket for any offense including an ordinance violation 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 S.C. Atty. Gen. Op. dated August 17, 1980. Therefore, the uniform arrest warrant should be utilized unless the offense is a violation of S.C. Code Ann. 16-11-700 or was committed in the presence of the law enforcement officer, then use of the uniform traffic ticket would be appropriate pursuant to S.C. Code §§56-7-10 and 56-7-15.

You also ask whether Georgetown County may provide for a litter control officer. S.C. Code §4-9-145 which became effective June 25, 1990, provides that:

(t)he governing body of a county may appoint and commission as many 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, such duties shall not conflict with Section 4-9-30(5) as it relates to the reorganization or restructuring of the sheriff's department or the functions and duties presently being performed by the sheriff. These enforcement officers shall exercise their powers on all private and public property within the county.

The newly enacted statute provides for establishment by the county of litter enforcement officers unless the functions to be performed conflict with the duties presently being provided by the sheriff. S.C. Code §4-9-30(5)

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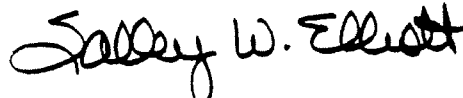
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requires that, if any appropriation regarding police protection would limit or duplicate the duties performed by the sheriff, approval by referendum of the qualified electors is necessary. While it appears that the General Assembly intended that state and local governmental units and agencies assist in the litter control effort, the question of whether a litter control officer in Georgetown County would duplicate functions presently being performed by the sheriff is a factual question which should be resolved by the Georgetown County Council. The determination of factual questions is beyond the purview of a legal opinion. See S.C. Atty. Gen. Op. No. 85-132. I would add, however, that in the event the position of litter control officer is established, the Officer would be required to comply with the training requirements contained in S.C. Code §23-23-40.

I have enclosed copies of the prior opinions discussed and ask that you contact me if I can be of further assistance.

Sincerely yours,



Salley W. Elliott
Assistant Attorney General

klw
Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions