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January 20, 1989

The Honorable Paul M. Burch
Member, House of Representatives
320D Blatt Building
Columbia, South Carolina 29211

Dear Representative Burch:

In a letter to this Office you indicated that you have introduced legislation making the failure to stop for a blue light a felony rather than a misdemeanor. You have asked if the offense of "failure to stop for a blue light" is made a felony rather than a misdemeanor, may a city policeman or a county deputy sheriff pursue a car which fails to stop for its blue light signal as far as necessary outside its jurisdiction in order to apprehend and arrest the car's driver? Does the distinction between felony and misdemeanor affect the ability of a city policeman or deputy sheriff to pursue outside his jurisdiction?

Prior opinions of this Office dated January 28, 1985, March 20, 1985, and July 11, 1986, copies of which are enclosed, have dealt with questions regarding the authority of law enforcement officers to act outside their jurisdiction. In the January 28, 1985 opinion it was stated that pursuant to Section 17-3-40 of the Code:

(i)t is well established that a city police officer has no authority to arrest outside the city limit, unless he is in pursuit, and then he may arrest within a three mile radius of the corporate boundaries.

As to deputy sheriffs the March 20, 1985 opinion stated:

(p)ursuant to Section 23-13-60, Code of Laws of South Carolina, 1976, a deputy sheriff is authorized "for any suspected freshly committed crime, whether upon view or upon prompt information or

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complaint" to "arrest without warrant." Section 17-13-30, Code of Laws of South Carolina, 1976 provides that "the sheriff and deputy sheriffs of this State may arrest without warrant any and all persons who, within their view, violate any of the criminal laws of this State...." In a previous opinion dated June 20, 1984, this Office determined that

"(w)hile the South Carolina Code does not specifically restrict a sheriff to the county in and for which he was elected, such restriction may be fairly implied from other related statutes read in pari materia with statutes on sheriffs and their deputies."

As referenced in the opinions, several statutes authorize law enforcement activity by officers outside their regular jurisdictions in certain instances. See, e.g., Sections 23-1-210, 5-7-120, 8-12-10 et seq., 6-1-20 of the Code. However, as further noted, implicit in any such authorization is the requirement that there be an agreement between the affected jurisdictions.

Concerning the felony-misdemeanor distinction, Section 17-13-10 of the Code states that

(u)pon (a) view of a felony committed, (b) certain information that a felony has been committed or (c) view of a larceny committed, any person may arrest the felon or thief and take him to a judge....

Section 17-13-20 of the Code authorizes the arrest by "any citizen" in the nighttime when a felony has been committed.

As to any assertions that Sections 17-13-10 and 17-13-20 would authorize a law enforcement officer to act outside his jurisdiction and make an arrest for a felony, the January 28, 1985 opinion stated in a footnote that:

"(c)ourts have held that a police officer acting 'under color' of office, but outside his jurisdiction may not make an arrest; in other words, he must be acting as a citizen. A police officer is generally acting under color of his office by '... actually holding himself out as a police officer, either by wearing his uniform or

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in some other manner openly advertising his official position in order to observe the unlawful activity involved...."

Therefore, a law enforcement officer acting outside his regular jurisdiction may not make an arrest as a law enforcement officer but instead must act as a private citizen. However, in wearing his regular uniform he would appear to be acting as a law enforcement officer of his regular department.

Consistent with these opinions, it appears that making an offense a felony would not authorize a law enforcement officer to pursue a car which failed to stop for a blue light as far as necessary outside the officer's jurisdiction in order to arrest the driver. In order to provide for such expanded jurisdiction, consideration may be given to expressly providing for such expanded authority in making arrests for failing to stop for a blue light.

If there is any further questions, please advise.

Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/an

Enclosures

REVIEWED AND APPROVED BY:



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