

The State of South Carolina



Office of the Attorney General

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January 18, 1988

Osborne L. Morris
Chief of Police
Moncks Corner Police Department
118 Carolina Avenue
Moncks Corner, South Carolina 29461

Dear Chief Morris:

In a letter to this Office you questioned whether law enforcement officers may issue a traffic summons as a result of investigating a traffic accident on private property which has not been posted pursuant to Section 23-1-15 of the Code so as to bring such lot under police jurisdiction. In raising your question you made particular reference to Section 56-5-20 of the Code which states in part:

(t)he provision of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways, except:

(2) that the provisions of Articles 9 and 23 shall apply upon highways and elsewhere throughout the State. (emphasis added.)

You particularly noted the use of the term "elsewhere" in raising the question stated above. Article 9 of Chapter 5 of Title 56 sets forth the duties of a driver involved in an accident, such as making certain required reports. Article 23 of Chapter 5 of Title 56 establishes the offenses of reckless driving, reckless homicide, and driving under the influence.

This Office in prior opinions has stated that the issue of whether particular property is public or private is irrelevant to certain traffic offenses. As noted in an opinion of this Office dated May 31, 1983 the driving under the influence statute "... applies to driving any vehicle 'within the State' and not just public highways." In another opinion of this Office, 1969 Op. Atty. Gen. No. 2634, p. 39, it was recognized that an

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individual could violate Section 56-5-2920 of the Code by recklessly driving an automobile on private property. The opinion further stated that

one may commit a traffic offense on private property unless one's presence on a public highway is made an element of the offense by the statute which creates it.

An opinion dated April 23, 1971 recognized that the offenses of speeding and driving without a driver's license are offenses only if committed on a public street or highway. Furthermore, in an opinion dated February 14, 1962 specific reference was made to the provision in Section 56-5-20 highlighted above which presently states that Articles 9 and 23 "shall apply upon highways and elsewhere."^{1/} Noting the fact that the offenses of reckless driving and driving under the influence were contained in one of the reference Articles, the opinion concluded that charges for such offenses could be made when such offenses were committed on private property. As to your question concerning the use of the uniform traffic ticket, Section 56-7-10 of the Code states that "(t)here will be a uniform traffic ticket used by all law enforcement officers in arrests for traffic offenses...."

Consistent with the above, an individual could be charged with a traffic offense which occurred on private property even if the property has not been posted pursuant to Section 23-1-15 of the Code unless one's presence on a public highway or street is made an element of the offense. The offenses of reckless homicide, reckless driving, and driving under the influence, all of which are included in Article 23 of Chapter 5 of Title 56, the Article specifically referenced in Section 56-5-20 noted by you, are examples of such offenses which may be committed on private property. As noted, the provisions of Article 9 of Chapter 5 of Title 56, also referenced in Section 56-5-20, deal mainly with responsibilities and duties of drivers involved in traffic accidents. Criminal penalties are imposed for noncompliance with certain provisions. It would appear that the provisions of Article 9 would be applicable regardless of whether the accident occurred on the public highway or street or on private property. As to any of the offenses included in Article 9 or 23 the question of whether a traffic summons, as opposed to an

^{1/} In the 1962 opinion these articles were referred to as Articles 4 and 5.

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arrest warrant, is used to cite a violation would depend on the individual circumstances with which an investigating officer is dealing.

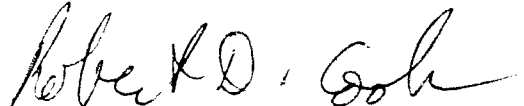
If there is anything further, please advise.

Sincerely,


Charles H. Richardson
Assistant Attorney General

CHR/rhm

REVIEWED AND APPROVED BY:



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