

1983 WL 181701 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 5, 1983

*1 The Honorable Thomas P. Lowndes, Jr.
Judge of Municipal Court
Town of Mount Pleasant
Post Office Box 296
Mount Pleasant, South Carolina 29464

Dear Judge Lowndes:

In a letter to this office, you referenced [§ 56-5-740, Code of Laws of South Carolina](#), 1976, as amended, and questioned whether the directions of a particular school crossing guard as described in your letter fell within the authority of such guards as provided by such section. You further generally questioned what constitutes lawful orders or directions of a school guard.

[Section 56-5-740](#), *supra*, provides that:

‘[n]o person shall willfully fail or refuse to comply with any lawful order or direction of any police officer, fireman, or uniformed adult school crossing guard invested by law with authority to direct, control or regulate traffic.’

In [State v. Pascale](#), 86 R.I. 182, 134 A.2d 149 (1957) a conviction of an individual, charged with refusing to comply with the direction of a police officer, pursuant to a statute which was identical to [§ 56-5-740](#), *supra*, except for the reference to individuals other than police officers in such statute, was reversed. The individual, who desired to turn left at an intersection, was signaled by an officer to proceed straight ahead. He refused to comply with the direction and was arrested. The court determined that in the absence of a showing that state or local legislation made it unlawful to turn left at the particular intersection, or that the officer was especially vested with authority to so direct the driver so as to refrain him from doing what was otherwise lawful, the conviction must be reversed. The court stated:

‘a police officer is vested by law with authority to direct, control and regulate traffic only to the extent that he has the duty and responsibility to execute and enforce traffic regulations duly enacted and promulgated by a proper legislative body, state or local. Under our system of government, he cannot legislate himself no matter how worthy his motives may be.’ (Emphasis added) [134 A.2d 149 at 152-153](#).

However, such case also stressed that pursuant to a particular statute, local authorities were generally empowered to regulate traffic on streets and highways under their jurisdiction by means of police officers. Therefore, the police in the situation referenced in [Pascale](#) were generally vested with overall authority to direct and regulate traffic.

As to the particular situation referenced in your letter, it appears that a citation was issued to the driver after she failed to pull over to the side of a highway for purposes of being instructed by a school crossing guard not to stop and let her children out in the middle of a highway as she had done. As to your question of whether or not the crossing guard's directions, as described, fall within the wording of the statute which refers to a ‘lawful order or direction’ of a school guard, in keeping with [Pascale](#), for such directions to have been ‘lawful’, authority must exist making it unlawful to refuse to comply with such particular demand by the guard or the guard must have special authority to make such demand. I suggest that you discuss the question of the existence of such authority in your particular case with your city attorney. I am generally unfamiliar with any state statute giving a school crossing guard the authority to cause drivers to stop for purposes of being instructed where children are to be let out of cars.

*2 As to your more general question of what constitutes lawful orders or directions of a school guard, again, in keeping with Pascale, there must be some specific authority duly enacted which may be relied upon as the basis for such order or direction or the guard must be especially vested with authority to require an individual to refrain from doing what is otherwise lawful. As to the latter part of such statement, I am generally unfamiliar with any state statutes vesting school crossing guards with such authority or, in fact, any authority to direct, control, or regulate traffic.

As is apparent, the above discussion deals basically with an interpretation by a Rhode Island court of a statute almost identical to § 56-5-740, supra. I am unfamiliar with any court decisions in this State interpreting the referenced statute. I am enclosing a copy of an article in Volume 10 of the South Carolina Law Review at pages 722-724 which also discusses the Pascale decision insofar as it relates to police officers directing traffic. After reviewing this letter and the enclosure, I suggest that you discuss your particular situation with your city attorney especially with regard to any municipal ordinances which may be relevant to your questions.

With best wishes, I remain

Sincerely,

Charles H. Richardson
Assistant Attorney General

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