

1981 WL 158241 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 21, 1981

*1 Mr. L. Edmund Atwater, III
Director
South Carolina Court Administration
P. O. Box 11788
Columbia, South Carolina 29211

Dear Ed:

In a letter to this Office you questioned whether a separate arrest warrant should be issued to charge the offense of failing to appear in response to a uniform traffic citation without having first posted bond or without having been granted a continuance. [Section 56-25-40\(b\)](#), [Code of Laws of South Carolina](#), 1976, as amended, provides a sentence of not more than two hundred dollars or imprisonment for not more than thirty days for such offense. You indicated that some magistrates are imposing the fine portion of the referenced offense at the time they find an individual, tried in his absence, guilty of a separate traffic offense when the individual has failed to respond previously in the manner referenced above.

In the opinion of this Office, [Section 56-25-40\(b\)](#), [supra](#), provides for an offense, separate and distinct, from a particular traffic offense. Therefore, in order to charge a person with the offense specified by such provision, a separate arrest warrant must be issued and a separate criminal proceeding initiated. It is improper to summarily impose pursuant to [Section 56-25-40\(b\)](#), [supra](#), any sentence in addition to the sentence imposed for a traffic offense where the individual who is tried in his absence has neither posted bond nor been granted a continuance.

If there are any questions concerning the above, please contact me.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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