

1982 WL 189391 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 3, 1982

***1** H. Lee Smith

Staff Attorney

South Carolina Court Administration

South Carolina Supreme Court

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Dear Mr. Smith:

Attorney General McLeod has referred your letter of June 23, 1982, to me for reply. I initially want to apologize for the delay in getting this opinion to you, but the questions posed in your letter required considerable research.

As I understand it, your first question asks whether or not the uniform traffic ticket as described in Section 56-7-10, et seq. is the proper charging paper for what you describe as 'any traffic-related offenses not described in Title 56,' and you give as examples of these offenses the crimes of disorderly conduct, concealed weapon, and illegal whiskey.

Section 56-7-10 provides in pertinent part:

There shall be a uniform traffic ticket used by all law enforcement officers in arrest for traffic offenses . . . the service of the uniform traffic ticket shall vest all traffic courts with jurisdiction to hear and to dispose of the charge for which such ticket was issued and served . . .

In order to answer your question, the term 'traffic offenses' as used in that statute must be defined. I see no way that this term can be so broadly defined so as to include the crimes you have mentioned, and it is the opinion of this office that the uniform traffic ticket can only be used when charging traffic offenses that are defined or described in Title 56, and particularly those found in Chapter 5 of Title 56.

My reasoning for this opinion is that although the three offenses you have listed may have some relationship to traffic or motor vehicles, this is not their primary function. The statute dealing with disorderly conduct (Section 16-17-530) is found in the chapter of Title 16 dealing with 'Offenses Against Public Policy'; the statute dealing with concealed weapons (Section 16-29-29) is found in the chapter of Title 16 dealing with 'Offenses Involving Weapons'; and the statute dealing with illegal whiskey (Section 61-5-20) is found in the chapter of Title 61 dealing with 'Regulation of Transportation, Possession, Consumption and Sale of Alcoholic Beverages.' Admittedly, these crimes do have some peripheral relationship to automobiles or the highways, but using that criteria, there is no logical way to limit what crimes would constitute 'traffic offenses.' I would call your attention to the following statutes, all of which have a similar connection to automobiles or the highways, but few of which could be called 'traffic offenses' even under a strained interpretation of that phrase: 16-11-140; 16-11-370; 16-11-755; 16-11-760; 16-13-50; 16-13-160; 16-13-190; 16-13-200; 16-13-420; 16-17-680; 16-21-40; 16-21-50; 16-21-60; 16-21-80; 16-21-90; and 16-21-100. This list simply emphasizes the difficulty in deciding what crimes are 'traffic offenses' if the determining factor is whether or not the crime has a 'relationship' to automobiles or the highways.

***2** Thus, to repeat, it is the opinion of this office that any crimes other than those listed in Chapter 5 of Title 56 would have to be ultimately disposed of by way of an arrest warrant under the provisions of Section 22-3-720. This, of course, should not be

interpreted as restricting or in any way changing the law concerning a law enforcement officer's ability to arrest an individual in certain situations for crimes committed in the officer's presence, and later securing an arrest warrant.

As I understand your second question, you want to know which municipal ordinances, if any, may be charged on the uniform traffic ticket without later resorting to the issuance of an arrest warrant. The violation of any traffic regulation of any municipality that has been lawfully promulgated pursuant to Section 56-5-30 and which regulates the conduct of traffic, as opposed to individuals, may be properly charged on a uniform traffic ticket. I realize this may often be a difficult distinction to make since the conduct of individuals directly affects the conduct of traffic. However, in the example cited in your letter, a parking meter ordinance would clearly be a traffic regulation as it is designed to directly control or regulate traffic, and a violation of such an ordinance could properly be charged on the uniform traffic ticket. On the other hand, an ordinance prohibiting an open beer in an automobile only incidentally involves traffic and is more designed to govern the activity of individuals. This may appear to be a distinction without a difference and as a practical matter, it may be very difficult for anyone to make this distinction. I would only advise that law enforcement officers should obtain an arrest warrant in addition to uniform traffic ticket in instances which are unclear.

Your third question asks what penalty or charge might properly be brought against a judge who improperly disposes of a case using a uniform traffic ticket. You will note that Section 56-7-40 prohibits the intentional violation of Section 56-7-10, and does provide for penalties. In addition, Section 8-1-80, involving misconduct in office, could also probably be used. However, I would advise caution in utilizing any type of criminal sanction in this regard as there remains considerable confusion in this area of the law.

I hope this opinion has been of some assistance to you, and if you have any questions, or if you are in need of any additional information, please do not hesitate to give me a call.

With best personal regards, I am
Yours very truly,

John M. Barton
Assistant Attorney General

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