

1980 WL 120688 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 28, 1980

*1 A. G. Hess
Chief of Police
Post Office Box 1059
Columbia, SC 29202

Dear Chief Hess:

You have asked the advice of this office as to whether the City of Columbia could authorize, by ordinance, police cadets, between the ages of 18 and 20 years of age, to detain motorists and issue traffic tickets for minor traffic violations. It is my understanding that a special cadet force would be created, a basic training program provided by the City, and that such cadets would be under the direct supervision of an experienced law enforcement officer. Furthermore, these cadets would not be delegated the power to arrest, but could detain motorists for the purpose of issuing traffic summonses for violations committed in their presence.

This inquiry presents an extremely close question involving the City's authority to enforce criminal laws when limited by manpower and budget constraints. The issue is whether the proposed ordinance is inconsistent or in conflict with the general laws of this State in violation of [Code of Laws of South Carolina § 5-7-30 \(Cum. Supp. 1979\)](#). It is my opinion that such an ordinance would conflict with [Code of Laws of South Carolina § 23-23-40 \(Cum. Supp. 1979\)](#).

The mere issuance of a uniform traffic ticket does not rise to the level of an arrest even though to effectuate the issuance of the summons one must necessarily detain the motorist. Atty. Gen. Op. No. 4343 of 1975-76, p. 169.

[Code of Laws of South Carolina § 23-23-40 \(Cum. Supp. 1979\)](#), provides in pertinent part:

No law-enforcement officer, employed or appointed on or after January 1, 1972, by any public law-enforcement agency in this State shall be empowered or authorized to enforce the laws or ordinances of this State or any political subdivision thereof unless he has, within one year after his date of appointment, successfully completed the minimum basic training requirements established pursuant to this article. Should any such person fail to successfully complete such basic training requirements within one year from his date of employment, he shall not perform any of the duties of a law enforcement officer involving control or direction of members of the public or exercising the power of arrest until he has successfully completed such basic training requirements. (emphasis added.)

Code of Laws § 23-23-50(B)(7) requires that candidates for certification of the basic training requirements be at least 21 years of age.

Clearly, it was the intent of the General Assembly that law-enforcement officers must complete the basic training course offered by the Criminal Justice Academy and that such officers be at least 21 years of age within one year of their employment. If the officer fails to meet these requirements, he would be prohibited from performing 'any of the duties of a law enforcement officer involving control or direction of members of the public or exercising the power of arrest . . .' (emphasis added).

*2 It may be argued that these requirements are inapplicable to the program under consideration because the cadets, by definition, are not 'law-enforcement officers.' [Code of Laws of South Carolina § 23-23-10\(D\)\(1\)](#) states:

Whenever used in this article, and for the purpose of this article, unless the context clearly denotes otherwise: (1) The term 'law-enforcement officer' shall mean an appointed officer or employee hired by and regularly on the payroll of the State or

any of its political subdivisions, who is granted statutory authority to enforce all or some of the criminal, traffic, and penal laws of the State and who possesses, with respect to those laws, the power to effect arrests for offenses committed or alleged to have been committed.

Since under the proposed program the cadets would not have the power to arrest, the question is whether § 23-23-40 has any application in this case. In interpreting legislation, the primary goal is to ascertain and give effect to the intention of the General Assembly. [Belk vs. Nationwide Mutual Insurance Company](#), 271 S.C. 24, 244 S.E.2d 744 (1978). It is the opinion of this office that the intent of [Code of Laws of South Carolina § 23-23-10](#) et. seq. is to ensure that individuals controlling or directing members of the public or exercising the power of arrest have the proper training and maturity. The standard of training is the basic training course offered by the Criminal Justice Academy and the standard of maturity is the age limit of 21 years. The argument that the cadet does not fall within the definition of a law-enforcement officer is unpersuading for two reasons.

The first and foremost reason is that such an interpretation would frustrate the overall intent of the General Assembly, by allowing cadets to detain, i.e., control and direct members of the public, without meeting the basic training or age requirements specified. The real purpose and intent of the legislature is held to prevail over the literal import of the words used. [Cunnels vs. American Liberty Insurance Company](#), 257 S.C. 242, 161 S.E.2d 822 (1968).

The second reason for rejecting this argument is that it is unclear whether the General Assembly in enacting § 23-23-40 meant to include only those individuals empowered to make arrests. [Section 23-23-10](#) which defines the term 'law enforcement officer' specifically allows the term to acquire a meaning as the context of the statute dictates. Since the power to arrest is distinguished from the ability to detain by the use of the word or in § 23-23-40 it is the opinion of this office that cadets are to be included within the meaning of that term.

In summary, it is the opinion of this office that the City cannot enact an ordinance authorizing police cadets under the age of 21 to detain motorists in order to effectuate the issuance of traffic summonses. I trust this answers your inquiry.

Very truly yours,

Richard D. Bybee
Assistant Attorney General.

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