

1980 WL 120733 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 20, 1980

*1 T. H. Rawl, Jr., Esquire
Rawl, Pucell & Harman
Attorneys at Law
P. O. Box 846
Lexington, SC 29072

Dear Mr. Rawl:

In a letter to this office you indicated that the Lexington County Sheriff questioned whether a deputy sheriff could issue a ticket, a copy of which was attached to your letter and titled 'Lexington County Department of Public Works—Official Summons and Arrest Report, 'to an alleged violator of the Lexington County Solid Waste Ordinance. The ticket would be used to notify an alleged violator of the time his case would be heard by a magistrate. You indicated that it was proposed that if the violator did not appear at the designated time, arrest warrant would be procured.

A valid charging paper is essential for a magistrate to have jurisdiction to consider a criminal case. [Section 22-3-710, Code of Laws of South Carolina](#), 1976, states:

'(a)ll proceedings before magistrates in criminal cases shall be commenced on information under oath, plainly and substantially setting forth the offense charged, upon which, and only which, shall a warrant of arrest issue.'

This office in a previous opinion, 1970 Op. Att'y Gen. No. 3845, p. 77, held that:

'where an arrest has been made without a warrant, the obtaining of an arrest warrant is necessary to vest a magistrate's court with jurisdiction over the offense as charged—exception in case of an official summons.'

Examples of such official summonses previously recognized are the uniform traffic ticket, as provided by [Section 56-7-10, Code of Laws of South Carolina](#), 1976, the official summons of the South Carolina Wildlife and Marine Resources Commission, as provided by [Section 50-3-410, Code of Laws of South Carolina](#), 1976, and the official summons of the South Carolina Alcoholic Beverage Control Commission, as provided by Section 61-13-836, Code of Laws of South Carolina, 1976, as amended. Such sections specifically provide that service of such summonses vest a magistrate's court with jurisdiction to hear and dispose of the charge for which the summons was issued.

As to whether the referenced 'Lexington County Department of Public Works Official Summons and Arrest Report' would constitute a valid charging paper so as to confer upon a magistrate jurisdiction to consider the case for which the summons was issued, your attention is directed to [Section 44-67-50, Code of Laws of South Carolina](#), 1976, as amended. Such section, which is taken from the comprehensive 'Litter Control Act of 1978,' states that the Commissioner of the South Carolina Department of Health and Environmental Control:

'... may designate trained employees of the department to be vested with police powers to enforce and administer the provisions of this chapter and all rules and regulations adopted thereunder. The commissioner shall also have authority to contract with other state and local governmental agencies having law enforcement capabilities for services and personnel reasonably necessary to carry out the enforcement provisions of this chapter. In addition, state highway patrol officers, wildlife officers, fire marshals and police officers, and those employees of the Department of Health and Environmental Control and the Parks, Recreation and Tourism Department vested with police powers all shall enforce the provisions of this chapter and all rules and regulations

adopted thereunder and are hereby empowered to issue citations to or arrest, without warrant, persons violating any provision of this chapter or any of the rules and regulations adopted hereunder. All of the foregoing enforcement officers may serve and execute all warrants, citations and other process issued to enforce the provisions of this chapter.'

*2 As is evident, specific authority is provided for the issuance of summonses and the authority to arrest without warrant individuals violating the Litter Control Act or such rules and regulations adopted pursuant to such Act.

As you are aware, authority for the Lexington County Solid Waste Ordinance, which provides for the green box system, is found in sections now codified as [Section 44-55-1210 et seq., Code of Laws of South Carolina](#), 1976. Review of such sections does not indicate any specific authorization for the issuance of summonses to cite a violation of an ordinance adopted pursuant to such authority. However, it appears that the authorization included in [Section 44-67-50, supra](#), to issue summonses may be construed to allow for the use of summonses to cite for violations of the Lexington County Solid Waste Ordinance. Such authority may be implied from the language of [Section 44-67-20, Code of Laws of South Carolina](#), 1976, which states that the intent of the Litter Control Act of 1978:

'... is to supplement and to coordinate existing litter and open dump control, prevention and elimination efforts and not terminate existing efforts, nor, except as specifically stated, repeal or affect any law or regulation governing or prohibiting litter or the control and disposition of solid waste.' (Emphasis added.)

Referencing such provision, in the opinion of this office, [Section 44-67-50, supra](#), may be interpreted to permit summonses in the form such as the proposed Lexington County Department of Public Works Official Summons and Arrest Report to be issued for violations of the Lexington County Solid Waste Ordinance. The service of such a summons would vest a magistrate's court with jurisdiction to hear and dispose of the charge for which the summons was issued.

Your attention is also directed to [Section 16-11-710, Code of Laws of South Carolina](#), 1976, which provides that:

'(w)hen any person is charged with a violation of 16-11-700 or any county ordinance relating to litter control, any officer authorized to enforce such law or ordinance may accept a cash bond in lieu of requiring an immediate cash appearance. Such bond shall not exceed the maximum fine provided for a conviction of the offense charged and may be forfeited to the court by the enforcement officer if the person charged fails to appear in court.' (Emphasis added.)

Therefore, an individual charged with violating the reference Lexington County ordinance may post bond with the officer citing the violation which bond could later be forfeited if the individual fails to appear. However, as to those instances where the individual cited for an offense does not appear pursuant to the notice provided by the citation, and who has further failed to post bond with the court prior to the time set for trial, an arrest warrant should be issued. Upon arrest, the person could be brought before the court, bond could be set, and a new trial date also set.

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

Sincerely,

Charles H. Richardson
Assistant Attorney General

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