

1975 WL 29366 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 6, 1975

\*1 Mr. Philip B. Morris  
Executive Director  
South Carolina Safety Council  
523 Palmetto State Life Ins. Bldg.  
Columbia, SC 29201

Dear Mr. Morris:

Mr. McLeod has referred to me your letter of November 21, 1974. In your letter you posed the question of whether the ASAP program, which operates in a small area of the State, is performing a legal and constitutional service offering equal treatment under the law for all licensed drivers in the state! In the case of *State v. Fennell*, our State court ruled that a magistrate or municipal judge must try cases involving a traffic violation upon the charge preferred by the traffic ticket or arrest warrant. As you stated in your letter, the *Fennell* case does not necessarily affect ASAP where an officer agrees to nol pros the DUI charge and institute another charge on a new uniform traffic ticket. Of course, in order for this to be proper, the new offense charged must be a proper one containing all of the necessary elements of the new charge preferred. I can only state that it is neither unconstitutional nor illegal for municipal judges and magistrates to proceed in matters involving traffic violations and DUI cases where the jurisdiction has been properly acquired.

If I can be of further assistance to you in this matter, please let me know.

Very truly yours,

H. Brent Fortson  
Law Clerk

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