

1973 WL 27717 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 5, 1973

**\*1 In Re: Reckless Driving - - - Acceptance of Lesser Plea**

Honorable George A. Gill, Jr.  
City Recorder  
Box 818  
Rock Hill, South Carolina

Dear Judge Gill:

You have requested the opinion of this Office as to whether or not a traffic court judge may accept a plea to a lesser charge when the original charge made by the prosecuting officer is reckless driving.

As you know, of course, the statutory offense of reckless driving has no lesser, included offenses. Therefore, the person may not be found guilty of any other charge upon a warrant or uniform traffic ticket charging reckless driving.

It is, of course, always the prerogative of the State to withdraw or nol prosse a charge and substitute in lieu thereof another, lesser charge. This authority is entirely that of the prosecuting officer, however, and may not be exercised by the presiding judge, whether he be magistrate, city recorder, county judge or circuit judge. In the circuit courts and county courts, of course, it is entirely within the power of the solicitor to take such action, and in traffic courts when the solicitor does not act, such authority is entirely within the province of the prosecuting traffic officer, who represents the State and the solicitor in such cases.

I note that you stated in your third paragraph that it has been your practice to accept lesser pleas upon the recommendation of the solicitor. The circuit solicitor, of course, has charge of all criminal prosecutions within his district and is empowered to nol prosse charges and to prefer other charges in lieu thereof. The only point that I was attempting to make in my letter to Chief John Hunsucker was that in cases in which the charge of reckless driving is made by uniform traffic ticket, the finding on the charge made by that ticket must be either guilty or not guilty of reckless driving. I did not intend to say or infer that the original charge could not be withdrawn by the prosecuting officer or the circuit solicitor and another charge made in lieu thereof.

Very truly yours,

Joseph C. Coleman  
Deputy Attorney General

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