

1973 WL 26970 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 15, 1973

***1 In re: Drunk Driving-Prosecutions—Necessity for Arrest Warrant**

Honorable L. L. Lower
Chief of Police
Lancaster Police Department
Lancaster, South Carolina 29720

Dear Chief Lower:

You have inquired whether or not it is necessary that an arrest warrant be obtained before a drunk driving case can be disposed of in municipal court or magistrate's court.

Section 46-871, 1962 Code of Laws, as amended, reads:

‘There shall be one uniform traffic ticket used by all law-enforcement officers in the State, counties and municipalities having traffic jurisdiction, the service of which shall vest all traffic courts with jurisdiction to hear and dispose of the charge for which such ticket was issued and served, . . .’

In view of the provisions of this statute, the issuance and service of a uniform traffic ticket empowers a magistrate or municipal judge to dispose of the case without the issuance of an arrest warrant.

You inquired further whether or not it is necessary that an arrest warrant be issued to dispose of a misdemeanor violation when the offense was committed in the officer's presence. I shall assume that you are speaking of violations other than traffic offenses in which the uniform traffic ticket is issued.

In answer to your second question, a criminal offense—except traffic offenses in which uniform traffic tickets are issued and served—may not be disposed of by a magistrate's court or municipal court unless and until an arrest warrant has been issued and either served upon the defendant or is in the possession of the trial judge when the trial is held. The arrest warrant is the legal paper that bestows upon the trial judge the power to do anything with regard to the case.

More specifically, it is not lawful to dispose of such cases by forfeiture of bail bond or otherwise without the issuance of an arrest warrant.

Very truly yours,

Joseph C. Coleman
Deputy Attorney General

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