

1972 S.C. Op. Atty. Gen. 68 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3269, 1972 WL 21430

Office of the Attorney General

State of South Carolina

Opinion No. 3269

March 1, 1972

**\*1** The issuance of a traffic summons by a law enforcement officer is sufficient to confer jurisdiction upon the magistrate where the patrolman either takes the accused before a magistrate or incarcerates him and an arrest warrant need not be obtained.

Magistrate

Spartanburg County

You have requested that we advise you further as to whether or not a patrolman must obtain an arrest warrant in order to confer jurisdiction upon a magistrate where the patrolman either takes the accused before a magistrate or incarcerates him. The question was discussed at length in an opinion from this office, Opinion No. 2130, 1966 Op. Atty. Gen. 254, a copy of which is enclosed.

Section 43–111 of the South Carolina Code of Laws provides that in all criminal proceedings before magistrates, cases shall be commenced on information, under oath, which plainly and substantially sets forth the offense charged. In 1947, the Legislature passed § 46–855 which was viewed by Circuit Judge G. Duncan Bellinger as creating an exception to Section 43–111. A copy of his December 17, 1948, opinion in the case of *South Carolina Highway Department v. William Boyce Thomas* is enclosed. Section 46–855 provided at that time for the issuance of an arrest warrant only where the defendant was either immediately brought before the magistrate or incarcerated. In all other cases of violation of traffic law, the service on the defendant of an official summons conferred jurisdiction upon the judicial officer to hear the matter.

“... The summons duly served as herein provided shall give the judicial officer jurisdiction to dispose of the matter....”

Judge Bellinger determined that there was nothing in the Constitution of 1895 or the Acts of 1947, permitting the commencement of a prosecution for violation of any laws required by statute to be enforced by the South Carolina Highway Patrol, which required the summons to be sworn to. *State v. Thomas*, *supra*.

Circuit Judge G. Badger Baker addressed himself to the question of the requirement of the issuance of a warrant prior to the commencement of prosecution, in the case of *The State Highway Department v. Allen Whittington Owens*, Circuit Court, April 16, 1951, a copy of which is enclosed. Judge Baker cited the case of [Town of Honea Path v. Wright 194 S.C. 461, 9 S.E.2d 925](#) as holding that the provisions of Section 930 of the 1942 South Carolina Code of Laws, presently Section 43–111, did not dispense in all cases with the very process which gives the magistrates jurisdiction, the issuance of a warrant. In discussing the holding that the Legislative intent behind Section 930 was to provide tangible evidence that the accused was fully informed of the nature of the charges against him, Judge Baker stated:

“It will be noted the Court has ruled it is the process of the issuance of the warrant which gives the judicial officer jurisdiction to try the defendant for the offense complained of. The Constitution of 1895 does not contain anything that requires all prosecutions to be commenced by the issuance of a warrant, but does state that the accused shall be fully informed of the nature and cause of the accusation, this being found in Article I, Section 18.

\*2 The Summons issued by the arresting patrolman complies with the Constitution since it fully informs the accused of the nature and cause of the accusation. The requirement for the issuance of a warrant is statutory and it, of course, is within the power of the Legislature to amend this jurisdictional procedure in toto or in part. This is what the General Assembly has done by the passage of Act No. 175. Jurisdiction of the offense was already in the Court of Magistrate and now the Magistrate has been given 'jurisdiction to dispose of the matter' by due service of the summons."

On June 2, 1971, the General Assembly of the State of South Carolina enacted the following statute:

There shall be one uniform ticket used by all law enforcement officers ....., 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 .... 57 Stat.Act No. 353 at 474 (1971).

Act No. 353 clearly prescribes the use of the uniform ticket by all law enforcement officers, and vests the judicial officer with the necessary jurisdiction to dispose of the case.

Where the terms of a statute are clear and not ambiguous, the statute's terms must be applied according to their literal meaning. [Home Building and Loan Association v. City of Spartanburg](#), 185 S.C. 312, 194 S.E. 139.

You have also inquired as to whether this act repeals that part of Section 43–111 insofar as it relates to traffic offenses covered by the uniform traffic ticket. It is well settled that repeal by implication is not favored in the law and should not be construed as being a repeal unless no other reasonable construction can be applied. [Lewis v. Gaddy](#), 254 S.C. 66, 173 S.E.2d 376. The above case, however, in upholding a ruling of repeal by implication provided:

"All rules of statutory construction are subservient to the one that Legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose. See cases collected in West's South Carolina Digest, Statutes, Key No. 181.

In accordance with the last mentioned rule of construction, if the legislative intent is expressed in clear and unambiguous language, there is no room for construction and no need for resort to the other rules of construction above mentioned."

In view of the reasoning in *Lewis v. Gaddy*, supra, and the clear, unambiguous language of Act No. 353, it is the opinion of this office that the uniform traffic ticket may be served upon an arrestee by any law enforcement officer, State or local, and such service confers upon the magistrate the power to entertain the criminal action without the issuance of a warrant.

It is the further opinion of this office that the Act provides that the issuance of the summons is sufficient to confer jurisdiction upon the magistrate in all traffic cases, including those where the arrestee is brought before the magistrate or is incarcerated at the time of the offense.

\*3 G.W. Thomason  
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