



ALAN WILSON
ATTORNEY GENERAL

June 15, 2011

The Honorable Bill Taylor
Member, House of Representatives
416 Blatt Building
Columbia, SC 29201

Dear Representative Taylor:

In a letter to this office, you request an opinion regarding the authority of a municipality to substitute a local ordinance summons in lieu of issuing a uniform traffic ticket for a speeding violation. By way of background, you provide us with the following information:

[t]his has been an ongoing practice in New Ellington, SC. When a driver is stopped for speeding the officer offers the violator a choice: accept the Uniform Traffic Citation "with points on your license" or be given a ticket for violating a local ordinance "with no points." It is my understanding that most opt for the local ordinance violation with its \$185 penalty.

Law/Analysis

S.C. Code Ann. §56-7-10 states:

[t]here will be a uniform traffic ticket used by all law enforcement officers in arrests for traffic offenses and for the following additional offenses . . .

No other ticket may be used for these offenses. The service of the uniform traffic ticket shall vest all traffic, recorders', and magistrates' courts with jurisdiction to hear and to dispose of the charge for which the ticket was issued and served. . . . [Emphasis added].

Section 56-7-80 further provides that:

[u]pon adoption of the ordinance summons, any county or municipal law enforcement officer or code enforcement officer is authorized to use an ordinance summons . . . The uniform ordinance summons may not be used to perform a custodial arrest. No county or municipal ordinance which regulates

the use of motor vehicles on the public roads of this State may be enforced using an ordinance summons. [Emphasis added].

This office on prior occasions has addressed the question regarding the use of a uniform ordinance summons in association with municipal ordinance violations dealing with traffic offenses. In an opinion dated November 14, 2006, we discussed whether a municipality is in violation of §56-7-10 if its officers substituted the uniform traffic ticket as prescribed by statute for minor traffic offenses, such as speeding, and instead utilized a “town ticket” when citing the municipality’s “careless operation law,” which carried a higher penalty but no points on the driver’s license. Specifically referring to §56-7-80, we concluded that “a municipality is required to use the uniform traffic ticket when citing for municipal ordinance violations dealing with traffic offenses. . . . It may not use a municipal ordinance summons in such situation.” See also Ops. S.C. Atty. Gen., October 15, 2003 [stating “as to any municipal ordinance pertaining to traffic or motor vehicle offenses . . . such must be cited using a uniform traffic ticket,” and concluding that a municipal ordinance summons ticket may not be used]; November 10, 1972 [relying on similar law preceding §56-7-10, and stating that “every traffic officer of the State and of all cities and counties must use the uniform traffic ticket in every case”].

In another opinion dated December 2, 2008, we addressed the enforcement of a county ordinance that dealt with the transportation of refuse and the manner in which the load transported had been secured. We noted the ordinance was irrelevant to how safely or unsafely a motorist operated the vehicle itself which carried the load, and that the ordinance provision was not a traffic offense. Referring to §56-7-80, we thus concluded that a violation of this transportation of refuse ordinance could be cited using a uniform ordinance summons, and that a uniform traffic ticket was not required.

We also note that, pursuant to §56-7-40:

[a]ny person intentionally violating the provisions of §56-7-10 . . . shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than two hundred fifty dollars nor more than fifteen hundred dollars or imprisoned for not more than six months, or both, for each ticket unaccounted for, or each use of a nonuniform ticket, or each failure to timely forward the Department of Motor Vehicles records copy or audit copy of a ticket. If the failure to account for a ticket, or the use of a nonuniform ticket, or the failure to timely forward the Department records or audit copy of the ticket is inadvertent or unintentional, such misuse shall be triable in magistrate’s court and upon conviction shall be punishable by a fine of not more than one hundred dollars. Any person charged with failing to timely forward the results of the annual inventory shall be tried in magistrate’s court and upon conviction shall be fined not more than one hundred dollars.

In the November 14, 2006, opinion, we addressed whether if a municipality is determined to be in violation of §56-7-10, is it then subject to the penalties set forth in §56-7-40, and if so, is the penalty assessed against the municipality where the violation occurred or the officer who wrote the ticket. We advised that:

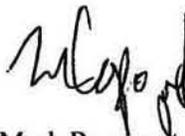
. . . a court has never ruled on such issue. Presumably, both the municipality and its law enforcement officers would have been acting in good faith when a municipal ordinance summons was used in such situation. However, only a court could answer the question with finality. As a result, it is our recommendation that the whole question regarding the municipal offense of careless operation of a vehicle and its ramifications be brought before a court, such as in a declaratory judgment action. Until a court rules, it appears that a municipal careless operation of a vehicle ordinance should be presumed valid and that a municipality and its officers who utilize a municipal ordinance summons in such situation are acting in good faith.

Conclusion

Consistent with §§56-7-10 and 56-7-80, we therefore reaffirm prior opinions of this office advising that a municipality is required to use a uniform traffic ticket when citing for municipal ordinance violations dealing with traffic offenses. It may not use a municipal ordinance summons in such situation.

If you have any further questions, please advise.

Very truly yours,



N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General