



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

October 4, 2002

James A. Preacher, Jr.  
Chief of Police  
Norway Police Department  
P.O. Box 127  
Norway, S.C. 29113

**Re: Your Letter of August 29, 2002**

Dear Chief Preacher:

In your above referenced letter, you ask for this Office's opinion concerning the following questions:

1. Under S.C. Code §56-5-6110 and §56-5-6120, if a Police Officer issues a State of South Carolina Uniform Traffic Ticket for either code for a violation, must he issue the ticket in person to the violator, or can he give it to the driver or person operating the vehicle to give to the driver?
2. If a Police Officer issues a ticket for S.C. Code §56-5-730 and the subject is convicted/found guilty, how many points are assessed on their driver's license?

**LAW/ANALYSIS**

In reference to your first question, it should be noted that in State v. Leonard, 287 SC 462, 339 S.E.2d 159 (S.C. Ct. App. 1986) the court stated "Section 56-5-6110 does not in itself create a distinct crime; rather, it simply embodies the common-law doctrine of liability as an aider and abetter." Thus, it does not appear that a Police Officer can issue a ticket for a violation of S.C. Code Ann. §56-5-6110 as it is not classified as a distinct crime, but if a ticket is issued for a §56-5-6110 code violation, it would be issued for the underlying offense.

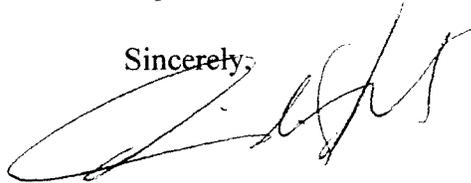
As to issuing a ticket for a violation of S.C. Code Ann. §56-5-6120 and how that ticket is to be served upon the violator, as a general rule, to initiate criminal proceedings, which a traffic

ticket is, personal service is required in some fashion so as to notify the individual of the time and place of the trial. In turning to S.C. Code Ann. §56-7-10 of the Uniform Traffic Ticket Act, the statute states that "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." This statute is silent as to what type of service is required, but other courts have held that when a statute directs service but is silent as to the permissible method of service, personal delivery is the only permissible method of service as to criminal proceedings. See, People of the State of New York v. Turkel, 130 Misc.2d 47, 494 N.Y.S.2d 984 (N.Y. Crim. Ct. 1985). In limiting the method of service in criminal proceedings solely to personal service, the court based its decision on several public policy considerations, namely reducing the possibility of false claims and providing actual notice to the defendant. Furthermore, the court went on to say that "in a criminal action, where the liberty of a defendant is in jeopardy, due process requires that a defendant receive notice of a pending proceeding." Id. at 50, 986. Since S.C. Code Ann. §56-7-10 is silent as to what type of service is required, we believe that due process requires personal service when initiating criminal proceedings against an individual, in this case, a traffic ticket, to provide that person with notice of the offense and the time and place of the trial.

As to your second question, the number of points which are assessed for a particular traffic violation is governed by S.C. Code Ann. §56-1-720. This section established the point system for licensed drivers and provides for a schedule of points for specific violations which will result in suspension of a driver's license for not more than six months if a driver accumulates more than twelve points over a twelve to twenty- four month period. In reference to your specific question as to how many points are assessed for a violation of S.C. Code Ann. §56-5-730, it should be noted that this statute appears to stand for the broad proposition of requiring obedience to traffic laws as the statute mentions no specific offense. As such, in turning to S.C. Code Ann. §56-1-720, there is no corresponding point assessment for a violation of S.C. Code Ann. §56-5-730. Thus, I would suggest that you contact the Department of Public Safety, Division of Motor Vehicles, for a definite answer.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant  
Assistant Attorney General

DKA/jbc