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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

March 1, 1999

John R. Watford, Chief of Police
Town of Jefferson
Post Office Box 306
Jefferson, South Carolina 29718

Re: Informal Opinion

Dear Chief Watford:

You note that your Town Council "is concerned about using spike sticks in a pursuit chase." You indicate that the Council "would like to know what liability is involved in such a chase; who is responsible should an innocent person fall victim to these sticks."

Law / Analysis

Spike sticks are folded metal sticks with hollow needles, or spikes, attached to the rods and a rope at one end. Police officers use these by having one unit ahead of the chase. The officer places the rods on the side of the highway and stretches the rope across the road. Regular traffic can pass over the rope without damage to their vehicles. When the officers involved in the chase radio the officer ahead that the offender is approaching, he quickly pulls the rope and unfolds the folded spiked rods across the highway. The offender runs over this, and the spikes embed in the vehicle's tires. The spikes are hollow so the tires deflate, not blow out.

I am advised that the use of spike sticks by South Carolina law enforcement agencies is not uncommon. The highway patrol uses these devices frequently and several police departments in South Carolina employ them as well. The supervisors are usually equipped with these devices.

With respect to the potential for liability in using stop sticks, of course, it is impossible to adequately address this question in a legal opinion of this Office because legal liability in any given situation will always turn upon the particular facts and circumstances present.

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Certainly, the potential for liability is always present in any law enforcement activity, particularly where high speed chases are involved. Law enforcement officers must inevitably take risks when apprehending dangerous individuals and such risks will necessarily involve danger to themselves and others. Courts will not impose liability, however, where the use of force or devices to apprehend a fleeing individual is deemed objectively "reasonable." I am enclosing a copy of an article written by an attorney who has represented law enforcement officers for over twenty years and who comments as follows about the potential of liability:

[t]he objectively reasonable police officer test is applied to all types of situations. These situations include: roadblocks, stop sticks, or other devices designed to deflate tires, the use of pistols, shotguns, rifles, tear gas, mace or OC spay. This analysis applies to the application of force through the use of open hand control techniques, night sticks, PR 24s, handcuffs, leg shackles, forced entry into a home (kicking the door, with or without a warrant).

Hanna, Jr., "Excessive Use of Force," 590 PLI/Lit. 353, 357 (September 1998).

In addition, there will always be a number of defenses available to the officer, as well as the municipality, such as good faith, proximate cause, immunity, etc. which may foreclose liability altogether. I suggest that you may wish to contact the Criminal Justice Academy as well as the legal counsel's office of the Insurance Reserve Fund (Budget and Control Board) for additional information in this area. I am also enclosing copies of other opinions issued by this Office which address the question of liability generally for your review as well.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

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Enclosures