

1982 WL 189500 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 9, 1982

**\*1 Re: Opinion request dated November 18, 1982**

Mr. Charles W. Tarbutton  
Chief of Police  
Campobello Police Department  
Campobello, South Carolina 29322

Dear Sir:

I received your written request for an opinion as dated above.

You described the practice in your Town for the enforcement of traffic violations and other Magistrate level criminal violations. You said the uniform traffic ticket, as established by the General Assembly, is used for all traffic offenses. Criminal offenses within the jurisdiction of a magistrate that fall outside the uniform traffic ticket are written on a Campobello Official Summons and Arrest Report, a copy of which you furnished me. The judge who tries cases in your Town lives some distance away, and travels to town approximately once per month for trials. Because of the distance, he is often unreachable to sign warrants on short notice. The practice is to have him sign warrants just prior to Court.

Given the above circumstances, you presented three question. A fourth question, related to me by telephone, will be disposed of later. The three questions are:

1. What is the status of the Official Summons and Arrest Report, Town of Campobello?
2. Must a warrant be issued for all arrests, or is a traffic citation sufficient to cover charges other than traffic-related ones, such as public drunk, possession of marijuana, etc?
3. If warrants are obtained from a county judge or magistrate, and convictions later secured, are fines sent to the county and, if so, how can they be returned to Campobello?

The uniform traffic ticket was established by the General Assembly in [Section 56-7-10, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended. That section provides in pertinent part:

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, . . .

It is the opinion of this office that the uniform traffic ticket can only be used when charging traffic offenses defined in Title 56 of the 1976 Code. That would include DUI, red light and stop sign offenses and other similar offenses. It would not include offenses defined elsewhere in the Code. Examples of the latter would include disorderly conduct (Section 16-17-530), concealed weapons (Section 16-29-29), possession of illegal whiskey (Section 61-5-20) and possession of less than one ounce of marijuana (Section 44-53-370).

Admittedly, many offenses could have a peripheral relationship to automobiles on the highways. However, using that criteria, there would be no logical way to limit what crimes would constitute 'traffic offenses' within the definition of [Section 56-7-10](#). Thus, the uniform traffic ticket could only be used in charging traffic offenses as contained in Title 56.

\*2 At present, the only permissible documents for bringing charges against an individual in South Carolina are the uniform traffic ticket; the uniform arrest warrant or a variation thereof, which would require a signature by a judge; and uniform tickets authorized for certain wildlife violations. Therefore, the violation of a non-traffic municipal ordinance, or a non-traffic State law, could not be disposed of through Magistrate's Court or Municipal Court using a Town Summons, such as the one you sent me. [Section 22-3-710, CODE OF LAWS OF SOUTH CAROLINA, 1976](#), as amended, provides as follows:

All proceedings before magistrates in criminal cases shall be commenced on information under oath, plainly and substantially setting forth the offense charged, upon which, and only which, shall a warrant of arrest issue.

[Town of Honea Path v. Wright, 194 S.C. 461, 9 S.E.2d 924 \(1940\)](#).

An arrest warrant will have to be used for all non-traffic offenses. I realize this may create a hardship. In addition, the present practice of having the judge sign the warrants immediately prior to trial, while not specifically in violation of law, could create problems of a criminal procedure nature. A defendant has the right to be advised of the charges against him as soon as possible after arrest. In addition, his attorney has the right to be advised in the form of an arrest warrant or uniform traffic ticket, as to the nature of the charges so that he may prepare for trial. Nothing in this letter should be construed as limiting an officer's right to arrest for a crime committed in his presence and later secure an arrest warrant.

Regarding your third question, fines paid as a result of convictions in General Sessions Court generally go to the county treasury, for county use, unless a statute authorizes them to go to a municipality or a particular State agency. For example, certain fines imposed for drug offenses go to the Department of Mental Health, and, in some cases, to a municipality ([see, § 44-53-370\(d\)\(3\) \(i\) and \(ii\), CODE, 1981 \(Cum.Supp.\)](#)). In addition, fines paid in a Magistrate's Court would generally go into the county fund, absent a specific statute providing for them to be sent to the municipality. [Section 56-5-6200, CODE OF LAWS OF SOUTH CAROLINA, 1976](#), as amended, provides:

All fines collected as penalties for violation of this chapter and bond or bail forfeitures shall be paid over by the magistrate or person collecting them to the county treasurer of the county in which such fines and bond or bail forfeitures are collected, except that when such fines or bond or bail forfeitures are collected by municipal police officers and municipal courts the amounts so collected shall be paid over to the city treasurer of the municipality. [Emphasis added.]

Finally, in a telephone conversation you related to me an additional question. Specifically, when an individual is stopped for a traffic violation by one of your officers, assuming the existence of probable cause for the stop, and the defendant has been asked by the officer to exit the car, how far may the officer go in searching the vehicle? There are three areas of the law which may fit the situation you described.

\*3 First, the person who owns or has control of the vehicle may give a free and voluntary consent to conduct the search. At trial, however, the burden would be upon the State to prove that the consent was given freely and voluntarily. An additional problem would be where the consenting individual lacked the legal authority to permit the search.

Second, an officer may seize contraband, stolen property or evidence when he observes these in the performance of his duty. In order for this 'plain view' doctrine to apply, the officer must have a legitimate right to be in the place and position from which he observed the items, the discovery of the items must be inadvertent or unexpected, and the incriminatory nature of the item must be apparent or the officer must have good reason to believe the item incriminating evidence of criminal activity.

Third, an officer could conduct a search of the occupant and the passenger compartment, pursuant to a lawful custodial arrest, supported by probable cause. The search must be contemporaneous with the arrest, and may include the area beneath the

seat and containers in the passenger compartment (e.g., coat pocket, glove box, luggage). [New York v. Belton](#), 453 U.S. 454 (1981). If probable cause existed for the presence of a particular type of contraband, such as drugs, the search could include any compartment within the vehicle that might contain the contraband. [United States v. Ross](#), 102 S.Ct. 2157 (1982). However, an officer would not be allowed to search the interior of the vehicle if no custodial arrest was made and only a citation for a minor traffic offense, such as speeding, was issued.

Sincerely yours,

James G. Bogle  
Assistant Attorney General

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