



ALAN WILSON  
ATTORNEY GENERAL

May 29, 2018

The Hon. B. Lee Miller  
Municipal Judge, City of Greenwood  
PO Box 40  
Greenwood, SC 29648

Dear Judge Miller:

We received your opinion request regarding the construction and application of Section 56-25-40(b), which establishes criminal penalties for failure to appear as required by a Uniform Traffic Ticket ("UTT"). The following opinion sets out our understanding of your question and our response.

**Issue:**

Based upon your letter and our follow-up telephone conversation, we understand that your question is whether a warrant may be issued for a violation of Section 56-25-40(b) for failing to appear for a Uniform Traffic Ticket ("Failure to Appear") irrespective of the underlying offense which was charged by the UTT, even though Section 56-25-40(b) is codified within the Nonresident Traffic Violator Compact. We understand that there is no doubt that a warrant may be issued for failure to appear for traffic offense. Your question is whether a warrant may also be issued where the UTT charges other misdemeanor offenses, such as misdemeanor assault.

We understand that your question is focused squarely on this question of law, and accordingly we answer that question in the abstract and defer to your judgement on the application of the law to the facts of any particular case. We also note that our Office has issued several prior opinions regarding Uniform Traffic Tickets, and this opinion should be read in the context of those prior opinions and other applicable South Carolina law. *See, e.g., Op. S.C. Att'y Gen., 2012 WL 1561867 (April 19, 2012) (opining on the reissuance of UTTs in municipal courts to reflect the results of a plea bargain).*

**Law/Analysis:**

It is the opinion of this Office that a court faced with this question would conclude that the definition of the criminal offense of Failure to Appear set out in Section 56-25-40(b) applies with equal force regardless of whether the original offense charged by the Uniform Traffic Ticket was a traffic or a non-traffic offense.

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Section 56-25-40 of the South Carolina Code of Laws states in full:

(a) No person shall be entitled to be released on personal recognizance pursuant to Section 56-25-30 if the officer requires the person to appear before a magistrate, recorder or other judicial officer or if the offense is:

(1) One which would result in the suspension or revocation of a person's license or privilege to drive under the laws of this State;

(2) A violation of Section 56-1-440 prohibiting the operation of a motor vehicle without a valid driver's license;

(3) A violation of a highway weight limitation.

(b) Any person who willfully fails to appear before the court as required by a uniform traffic citation without having posted such bond as may be required by the court or been granted a continuance by the court shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than two hundred dollars or imprisoned not more than thirty days.

S.C. Code Ann. § 56-25-40 (2018). This Section immediately follows Section 56-25-30, which reads in full:

Any law enforcement officer who issues to a person a uniform traffic citation may, in addition to any other action authorized by law and subject to the exceptions noted in this section, allow the person to proceed without first either having to post bond or appear before a magistrate, recorder or other judicial officer if the person accepts the citation. Such acceptance shall constitute the person's recognizance to comply with the terms of the citation.

When issuing a citation for a traffic violation to a nonresident who is licensed by a compact jurisdiction, if the law enforcement officer receives the person's recognizance as above-described, the officer shall not, subject to the exceptions noted below, require the person to post bond but shall allow the person to proceed.

S.C. Code Ann. § 56-25-30 (2018). Each of these code sections are contained in the Chapter 25 of Title 56. That Chapter sets out the statutory provisions enacting the Nonresident Traffic Violator Compacts, and does not set out any statutory definitions for the purposes of that Chapter which would distinguish the terms used from the definitions set out elsewhere in Title 56. *Cf.*

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S.C. Code Ann. § 56-25-10 through -40 (2018) & S.C. Code Ann. § 56-1-10 (2018).<sup>1</sup> Consequently, the term "uniform traffic citation" is not defined in the Chapter, but the term plainly refers to the Uniform Traffic Ticket established by Section 56-7-10. *See* S.C. Code Ann. § 56-7-10(A) & (C) (2018) (providing that "[t]here will be a uniform traffic ticket used by all law enforcement officers in arrests for traffic offenses" and that "[n]o other ticket may be used for these offenses.").

As of the date of this opinion, this author's research has not identified any reported South Carolina case where an appellate court of this State squarely ruled on the question presented in your letter. Accordingly, a court faced with this question most likely would rely upon the rules of statutory construction in order to give effect to the intent of the General Assembly in Section 56-25-40(b). As this Office has previously opined:

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *State v. Morgan*, 352 S.C. 359, 574 S.E.2d 203 (Ct. App. 2002) (citing *State v. Baucom*, 340 S.C. 339, 531 S.E.2d 922 (2000)). All rules of statutory interpretation 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 light of the intended purpose of the statute. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999).

*Op. S.C. Att'y Gen.*, 2005 WL 1983358 (July 14, 2005).

Additionally, "[t]he rules of statutory construction developed by our Supreme Court establish that a criminal statute must be strictly construed against the state and any ambiguity or doubt or uncertainty must be resolved in favor of the defendant." *Op. S.C. Att'y Gen.*, 1983 WL 182044 (November 2, 1983) (citing *State v. Germany*, 216 S.C. 182, 57 S.E.2d 165 (1950); *State v. Lewis*, 141 S.C. 483, 86 S.E. 1057 (1927)). However, "it is also a rule that the courts are not to narrow the construction so that offenders may escape." *Op. S.C. Att'y Gen.*, 2006 WL 2382448 (July 14, 2006) (citing *State v. Brown*, 29 S.C.L 129 (1843)). The South Carolina Supreme Court also has held that:

However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning, when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature, or

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<sup>1</sup> Act No. 89, 2017 S.C. Acts \_\_\_\_ (H.3247) made certain amendments to Section 56-1-10 which are effective November 19, 2018 and are not relevant to this opinion.

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would defeat the plain legislative intention; and if possible will construe the statute so as to escape the absurdity and carry the intention into effect.

*State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964) (quoting *Stackhouse v. County Board*, 86 S.C. 419, 68 S.E. 561 (1910).).

The Uniform Traffic Ticket referred to in your question was established by Section 56-7-10 of the South Carolina Code, which provides that such tickets "will be . . . used by all law enforcement officers in arrests for traffic offenses and for the following additional offenses . . . ." S.C. Code Ann. § 56-7-10(A) (2018). Subsection (A) then goes on to list over fifty specific offenses, many of which have no relation to motor vehicles whatsoever, ranging from Indecent Exposure (in violation of Section 16-15-130) to Cock Fighting and Ticket Scalping (in violation of Sections 16-17-650 and -710, respectively). *Id.* Many of the specified offenses appear in Title 16, which addresses crimes and offenses, as opposed to Title 56, which addresses motor vehicles. *Id.* Subsection 56-7-10(B) further expands the use of the Uniform Traffic Ticket by providing: "[i]n addition to the offenses contained in subsection (A), a uniform traffic ticket may be used in an arrest for a misdemeanor offense within the jurisdiction of magistrates court that has been freshly committed or is committed in the presence of a law enforcement officer." S.C. Code Ann. § 56-7-10(B) (2018) (emphasis added). Finally, Subsection 56-7-10(C) provides, in relevant part: "[n]o 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." S.C. Code Ann. § 56-7-10(C) (2018) (emphasis added). In summary, the General Assembly established in Section 56-7-10 that the Uniform Traffic Ticket is used in South Carolina to charge a broad variety of offenses beyond traffic offenses. *See Op. S.C. Att'y Gen.*, 2012 WL 1774919 (May 2, 2012) (discussing at length the application of the UTT to crimes "freshly committed").

Turning to the text of the Nonresident Traffic Vehicle Compact in Chapter 25, we observe that the General Assembly has undertaken to set out different legal consequences for certain UTT-charged offenses in some portions of the Chapter but not in others. For example, Section 56-25-30 provides that law enforcement officers generally may release a person who accepts a uniform traffic citation on personal recognizance. S.C. Code Ann. § 56-25-30 (2018). The General Assembly further provided in the same Section that:

When issuing a citation for a traffic violation to a nonresident who is licensed by a compact jurisdiction, if the law enforcement officer receives the person's recognizance as above-described, the officer shall not, subject to the

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exceptions noted below, require the person to post bond but shall allow the person to proceed.

*Id.* (emphasis added). Thus we observe that the General Assembly undertook in Section 56-25-30 to distinguish between general cases where a UTT is issued to any person, and the specific case of a UTT for a traffic violation to certain nonresidents. Moreover, those provisions are expressly subject to Section 56-25-40(a) which establishes that "[n]o person shall be entitled to be released on personal recognizance" if the offense fits one of three specific scenarios. S.C. Code Ann. § 56-25-40(a) (2018). In summary, we observe that the General Assembly is able and ready to distinguish between the legal effect of a UTT issued for any crime generally and a UTT issued certain specific crimes where the General Assembly intends to established appropriate legal consequences in various circumstances. This includes categorically distinguishing citations for traffic violations from citations generally in Section 56-25-30.

By contrast, in Section 56-25-40(b) the General Assembly makes no distinction between citations for traffic violations from citations for other offenses. Instead, the statute simply provides that "[a]ny person who willfully fails to appear before the court as required by a uniform traffic citation . . . shall be deemed guilty of a misdemeanor." As noted above, a straightforward reading of the term "uniform traffic citation" plainly refers to the Uniform Traffic Ticket established by Section 56-7-10, which is used for numerous non-traffic offenses. *See* S.C. Code Ann. § 56-7-10 (2018) (discussed *supra*). Where the General Assembly has undertaken to distinguish traffic offenses from other offenses charged by a UTT elsewhere in the NTVL, but has not chosen to do so in Section 56-25-40(b), we believe that a court would conclude that the Legislature unambiguously intended that no such distinction be made for the purposes of the offense of Failure to Appear.

While our Office has not opined on this question directly in the past, we note that this result is consistent with a prior opinion of this Office which concluded that the definition of offense of Failure to Appear in Section 56-25-40(b) applies both to nonresident drivers and the South Carolina drivers, despite being found in the Nonresident Traffic Violators Compact chapter. *Cf. Op. S.C. Att'y Gen.*, 2010 WL 1808727 (April 22, 2010). We also note that the conclusion avoids the absurd result that a defendant might be guilty of a crime for failing to appear on a relatively minor traffic offense, but not for a more serious non-traffic offense such as misdemeanor assault. *See State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964). In any event, we believe that the language employed by the General Assembly plainly and unambiguously defines the offense of Failure to Appear in Section 56-25-40(b) such that it is irrelevant whether the original offense was a traffic-related.


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**Conclusion:**

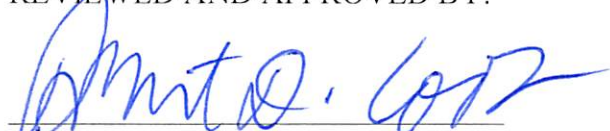
Accordingly, it is the opinion of this Office that a court most likely would conclude that the definition of the criminal offense of Failure to Appear set out in Section 56-25-40(b) plainly and unambiguously applies with equal force regardless of whether the original offense charged by the Uniform Traffic Ticket was a traffic or a non-traffic offense.

We reiterate that our Office has issued several prior opinions regarding Uniform Traffic Tickets, and this opinion should be read in the context of those prior opinions and other applicable South Carolina law. *See, e.g., Op. S.C. Att'y Gen.*, 2012 WL 1561867 (April 19, 2012) (opining on the reissuance of UTTs in municipal courts to reflect the results of a plea bargain). Finally, we note that this opinion should not be seen as a comment on any particular criminal proceeding, and we defer to your judgement as a neutral judicial officer regarding the application of the law to the facts of any particular case.

Sincerely,

  
\_\_\_\_\_  
David S. Jones  
Assistant Attorney General

REVIEWED AND APPROVED BY:

  
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Robert D. Cook  
Solicitor General