

1974 S.C. Op. Atty. Gen. 96 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3733, 1974 WL 21251

Office of the Attorney General

State of South Carolina

Opinion No. 3733

March 12, 1974

***1 In Re: Prosecution for DUI**

Honorable W. A. Hodges
Magistrate
Post Office Box 1033
Hilton Head Island, South Carolina

Dear Judge Hodges:

You state that an arresting officer, through error, summoned a DUI defendant for trial before you on a Sunday by service of a uniform traffic ticket, that the defendant alleges that he appeared on Sunday and that no one was there to try him, and now claims that the State is without authority to prosecute the case for this reason. You inquire whether or not prosecution of the matter may now proceed.

It is the opinion of this Office that the failure of the State to try the defendant on the date placed on the uniform traffic ticket does not end the prosecution and that the case may be called for trial before you at any reasonable time.

It is suggested that you give reasonable notice in writing of a date and time for trial to the attorney for the defendant, if there is one, and to the defendant by mail at his address if you know it, or if you do not know his present whereabouts, by mail to the address on record with the State Highway Department.

After such notice, if the defendant fails to appear, it is my suggestion that he be tried in absence and that you make a finding thereon. Should the validity of this proceeding, in the event you elect to follow it, be questioned by the defendant, this Office will be happy to represent the State in any appeal or other legal proceeding arising out of such trial.

Yours very truly,

Joseph C. Coleman
Deputy Attorney General

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