



ALAN WILSON
ATTORNEY GENERAL

January 31, 2019

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P.O. Box 1498
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Dear Ms. Duncan:

We received your letter requesting a legal opinion. The following is this Office's understanding of your questions and our opinion based on that understanding.

Issues (as quoted from your letter):

"As SCDMV has been working toward full implementation of e-citation in South Carolina, several concerns have come to light regarding the assignment or statutory codes to Court Administration's CDR codes. These questions have revolved around one particular statute: S.C. Code § 56-5-1900. ... The case State v. Alston, 422 S.C. 270, 282, 811 S.E.2d 747, 753 (2018) explicitly recognized that S.C. Code § 56-5-1900 "creates two separate offenses as it mandates that: (1) a motorist drive as "nearly as practicable within a single lane"; and (2) if the motorist departs from the lane of travel, it must be done only when it is safe to do so." Thus, it appears there is no question that S.C. Code § 56-5-1900 contains criminal traffic offenses.

S.C. Code § 56-1-720 sets forth the following points schedule: [...]

Emphasis added. It appears to SCDMV that a conviction under S.C. Code § 56-5-1900(a) would constitute a 2 point violation under the category "Shifting lanes without safety precaution" listed in S.C. Code § 56-1-720. Additionally, it appears to SCDMV that a conviction under S.C. Code § 56-5-1900 (b) would constitute a 2 point violation under "Driving in improper lane" listed in S.C. Code § 56-1-720. Further, it appears to SCDMV that a violation of S.C. Code § 56-5-1900(c) would constitute a 4 point violation under "Disobedience of any official traffic control device" listed in S.C. Code § 56-1-720. Finally, it appears to SCDMV that a violation of S.C. Code § 56-5-1900(d) would constitute a 4 point violation under "Passing unlawfully" listed in S.C. Code § 56-1-720. Convictions transmitted to SCDMV through the e-citation system must be transmitted with specific CDR codes to ensure the correct number of points are assigned to that conviction when the conviction is placed on a person's driver record.

Previously, Court Administration assigned S.C. Code § 56-5-1900(d) to CDR code 2514, which was described as "Disregarding traffic-control device prohibiting changing of lanes," but that CDR code was retired in 2010 and no replacement CDR code was generated. Currently, S.C. Code § 56-5-1900, in its entirety, is assigned to CDR code 3043. This means all convictions under S.C. Code § 56-5-1900 transmitted to SCDMV through the e-citation system are recorded as two point violations. Due to the

plain language in S.C. Code § 56-1-720, as discussed above, it is SCDMV's belief that S.C. Code § 56-5-1900(c) & (d) should be extracted from CDR 3043 and added to CDR code 2489. CDR code 2489 is described as "Failure to obey traffic-control devices," and is tied to violations of S.C. Code § 56-5-950.

Taking into consideration the above information, SCDMV asks for an opinion regarding the following questions:

- 1) Do each of the subsections of S.C. Code § 56-5-1900, subsections (a)-(d), constitute a criminal offense?*
- 2) Is SCDMV correct in believing that convictions under S.C. Code § 56-5-1900(a) and (b) constitute two point violations under S.C. Code § 56-1-720?*
- 3) Is SCDMV correct in believing that convictions under S.C. Code § 56-5-1900(c) and (d) constitute four point violations under S.C. Code § 56-1-720?*
- 4) If your answer to #2, above, is yes, do you agree that convictions under S.C. Code § 56-5-1900(a) and (b) may remain under CDR code 3043?*
- 5) If your answer to #3, above, is yes, do you agree that convictions under S.C. Code § 56-5-1900(c) and (d) should be extracted from CDR code 3043 and added to CDR code 2489?"*

Law/Analysis:

South Carolina Code Section 56-5-1900 reads as follows:

Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

(a) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that such movement can be made with safety.

(b) Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when the center lane is clear of traffic within a safe distance or in preparation for making a left turn or where the center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control devices.

(c) Official traffic-control devices may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such device.

(d) Official traffic-control devices may be installed prohibiting the changing of lanes on sections of roadway and drivers of vehicles shall obey the directions of such devices.

S.C. Code Ann. § 56-5-1900 (1976 Code).

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1) *Do each of the subsections of S.C. Code § 56-5-1900, subsections (a)-(d), constitute a criminal offense?*

This Office has consistently recognized that traffic violations are violations against the policing power of the State. See, e.g., Ops. S.C. Att’y Gen., 2012 WL 4283913 (S.C.A.G. September 12, 2012); 1995 WL 805837 (S.C.A.G. October 25, 1995); 1989 WL 508499 (S.C.A.G. February 3, 1989); 1985 WL 166002 (S.C.A.G. April 5, 1985). We also cite other sources for this principle. See, e.g., Hilton Head Automotive, LLC v. S.C. Dept. of Transportation, 394 S.C. 27, 714 S.E.2d 308 (2011); Office of Legal Counsel, U.S. Department of Justice Opinion, State of Residence Requirements for Firearms Transfers, 2012 WL 602349 (O.L.C. Jan. 30, 2012) (quoting Omnibus Crime Control and Safe Streets Act § 901(a)(1) (codified at 18 U.S.C. § 921 note)); IRS Technical Advice Memorandum, TAM 8830001, 1988 WL 572220 (IRS TAM July 29, 1988); IRS General Counsel Memorandum, GCM 36994, 1977 WL 46138 (IRS GCM February 3, 1977). This Office has consistently opined that “all traffic violations are criminal offenses” unless specifically declared otherwise by the General Assembly, the court, or this Office. See Op. S.C. Att’y Gen., 2009 WL 2844882, 2009 WL 2844883 (S.C.A.G. August 12, 2009); 1967 WL 12371 (S.C.A.G. May 9, 1967). This Office has recognized that traffic violations are criminal offenses despite the fact that most traffic cases are resolved by fines as opposed to incarceration. Op. S.C. Att’y Gen., 1967 WL 12371 (S.C.A.G. May 9, 1967). This Office has previously opined regarding penalties as follows:

In the municipal law of England and America, the words 'penal' and 'penalty' have been used in various senses. Strictly and primarily, they denote punishment, whether corporal or pecuniary, imposed and enforced by the state, for a crime or offense against its laws. The test whether a law is penal, in the strict and primary sense, is whether the wrong sought to be redressed is a wrong to the public, or a wrong to the individual.” Huntington v. Attrill, 146 U. S. 657, 666, 13 Sup. Ct. 224, 227 (36 L. Ed. 1123). “The words 'penal' and 'penalty,' in their strict and primary sense, denote a punishment, whether corporal or pecuniary, imposed and enforced by the state for a crime or offense against its laws.” Plumb v. Griffin, 74 Conn. 132, 134, 50 Atl. 1, 2. The wrong sought to be enforced by this tax is a wrong which has been done the public treasury.

Op. S.C. Att’y Gen., 2014 WL 3414950, at *6 (S.C.A.G. July 3, 2014). The State punishes traffic offenses either corporally or pecuniarily, as the punishment is for a violation against a law passed pursuant to the policing power of the State. Id.; Op. S.C. Att’y Gen., 1967 WL 12371 (S.C.A.G. May 9, 1967). This Office previously stated the following in a 2009 opinion regarding your same question:

A prior opinion of this office dated July 22, 1980 dealt with the question of whether or not traffic offenses are “criminal offenses” for purposes of Section 17-1-40. The opinion stated that

...violations of virtually all of the laws of Title 56 of the South Carolina Code are classified as misdemeanors...It therefore seems clear that traffic violations are criminal offenses within the meaning of § 17-1-40.

See also: Ops. dated February 17, 1993 (reference to “...speeding or any other traffic or criminal offense.”); September 27, 1989 (“...generally traffic offenses

should be considered criminal offenses since virtually all traffic provisions in Title 56 are classified as misdemeanors..."); April 16, 1968 ("...violation of a municipal traffic ordinance would, in my opinion, be in the nature of a criminal offense"); May 9, 1967 ("...all traffic violations are criminal offenses."); April 20, 1966 ("whether...(a statute)...creates a criminal offense depends upon whether there is a penalty that is prescribed for its violation. A penal statute is one which imposes punishment..."). Similarly, the State Court of Appeals in State v. Padgett, 354 S.C. 268, 273, 580 S.E.2d 159, 162 (2003) made reference to a motorist "...committing a criminal act, which includes the violation of a traffic law..."

As referenced, provisions of Chapter 5 of Title 56 which establish statutory traffic offenses typically categorize such offenses as misdemeanors. See, e.g., S.C. Code Ann. § 56-5-1520(G) "[a] person violating the speed limits established by this section is guilty of a misdemeanor and, upon conviction for a first offense, must be fined or imprisoned as follows:...(with a maximum penalty)...by a fine of not less than seventy-five dollars nor more than two hundred dollars or imprisoned for not more than thirty days."; S.C. Code Ann. § 56-5-6190 ("[i]t is a misdemeanor for any person to violate any of the provisions of this chapter unless such violation is by this chapter or other law of this State declared to be a felony. Every person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days."

Op. S.C. Att'y Gen., 2009 WL 2844882, at *3 (S.C.A.G. Aug. 12, 2009). As we cite in the 2009 opinion, South Carolina Code § 56-5-6190 specifically states that any violation of Title 56 Chapter 5 is a misdemeanor unless declared to be a felony. S.C. Code Ann. § 56-5-6190. This Office has also previously opined that "an ordinance will be construed as imposing a criminal penalty if it characterizes a violation as a 'misdemeanor,' is punishable by jail time, or imposes a fine which is too severe in comparison to that imposed for a similar State law violation." Op. S.C. Att'y Gen., 2011 WL 5304080, at *14 (S.C.A.G. Oct. 11, 2011). As you note in your request letter, "there is no question that S.C. Code § 56-5-1900 contains criminal traffic offenses" following the holding of the South Carolina Supreme Court in State v. Alston that Section 56-5-1900 creates multiple criminal offenses. State v. Alston, 422 S.C. 270, 282, 811 S.E.2d 747, 753 (2018). See also State v. Vinson, 400 S.C. 347, 354, 734 S.E.2d 182, 185 (Ct. App. 2012) (a tire that crossed into the area between the double yellow lines separating opposing lanes of traffic is a violation of S.C. Code Ann. § 56-5-1900(a)); State v. Clarke, 302 S.C. 423, 424, 396 S.E.2d 827, 827 (1990) ("changing lanes improperly"); Thomasko v. Poole, 349 S.C. 7, 12, 561 S.E.2d 597, 599 (2002) ("Poole has a duty to yield to the favored driver, Thomasko, before switching lanes. S.C. Code Ann. § 56-5-1900 (Supp.2000)"). We understand that the question presented here is whether each of the subsections of § 56-5-1900 constitutes a distinct crime, such that the General Assembly established four separate crimes in that statute. While the Supreme Court in Alston stated that "the text of section 56-5-1900 creates two separate offenses," we believe there are at least four separate criminal offenses, as Alston does not even address "traffic-control devices" which are clearly separate elements of separate crimes pursuant to § 56-5-1900(c)-(d) and were not elements within the facts of the case. State v. Alston, 422 S.C. at 282, 811 S.E.2d at 753 (2018). Thus, we believe a court will determine that violations of South Carolina Code Ann. § 56-5-1900(a)-(d) are criminal offenses unless specifically declared otherwise by law. Furthermore, we also believe a court will find that South Carolina Code Ann. § 56-5-1900(a)-(d)

describes at least four separate crimes, each chargeable within the discretion of the charging officer/prosecutor.

- 2) *Is SCDMV correct in believing that convictions under S.C. Code § 56-5-1900(a) and (b) constitute two point violations under S.C. Code §56-1-720?*

South Carolina Code Ann. § 56-1-720 reads as follows:

There is established a point system for the evaluation of the operating record of persons to whom a license to operate motor vehicles has been granted and for the determination of the continuing qualifications of these persons for the privileges granted by the license to operate motor vehicles. The system shall have as its basic element a graduated scale of points assigning relative values to the various violations in accordance with the following schedule:

VIOLATION	POINTS
Reckless driving	6
Passing stopped school bus	6
Hit-and-run, property damages only	6
Driving too fast for conditions, or speeding:	
(1) No more than 10 m.p.h. above the posted limits	2
(2) More than 10 m.p.h. but less than 25 m.p.h. above the posted limits	4
(3) 25 m.p.h. or above the posted limits	6
Disobedience of any official traffic control device	4
Disobedience to officer directing traffic	4
Failing to yield right-of-way	4
Driving on wrong side of road	4
Passing unlawfully	4
Turning unlawfully	4
Driving through or within safety zone	4
Shifting lanes without safety precaution	2
Improper dangerous parking	2
Following too closely	4
Failing to dim lights	2
Operating with improper lights	2
Operating with improper brakes	4
Operating a vehicle in unsafe condition	2
Driving in improper lane	2
Improper backing	2
Endangerment of a highway worker, no injury	2
Endangerment of a highway worker, injury results	4

Credits

HISTORY: 1962 Code § 46-196; 1955 (49) 249; 1962 (52) 1976; 1966 (54) 2383; 1970 (56) 2383; 1988 Act No. 532, § 7; 2017 Act No. 81 (H.4033), §§ 2, 5.A, eff May 19, 2017.

S.C. Code Ann. § 56-1-720. Regarding charging decisions, this Office has previously opined that:

[W]e recognize the day-to-day decisions as to whom to charge with a crime are made primarily by law enforcement officers, and that police officers and agencies are afforded by law broad discretion to carry out their arduous daily tasks of enforcing the law. Op. S.C. Att’y Gen., 2013 WL 650579 (Feb. 11, 2013). In addition, law enforcement officers should evaluate each particular situation as it arises and gauge whether there is a likelihood of a violation of the law. Id. at *3 (citing Op. S.C. Att’y Gen., 2011 WL 4592377 (Sept. 22, 2011)). This office adheres to its long standing policy that the judgment call as to whether prosecution of a particular individual is warranted or legally sound in a particular case is a matter within the discretion of the local prosecutor. Id.

Op. S.C. Att’y Gen., 2014 WL 6893894, at *11 (S.C.A.G. Nov. 25, 2014); see also Op. S.C. Att’y Gen., 2015 WL 9406833 (S.C.A.G. December 11, 2015) (quoting Order in Hammond v. S.C. Attorney General Alan Wilson, et al., No. 2015-001842 (October 12, 2015) (quoting Young v. U.S. ex rel. Vuitton et Fils S.A., 481 U.S. 787 (1987)) (“[a] prosecutor exercises considerable discretion in matters such as the determination of which persons should be targets of investigation, what methods of investigation should be used, what information will be sought as evidence, which persons should be charged with what offenses, which persons should be utilized as witnesses, whether to enter into plea bargains and the terms on which they will be established, and whether any individuals should be granted immunity. These decisions, critical to the conduct of a prosecution, are all made outside the supervision of the court.”)); Op. S.C. Att’y Gen., 1995 WL 803700 (S.C.A.G. August 14, 1995). Thus, where there is discretion within the law for the charge, the prosecutor retains such discretion. Moreover, South Carolina Jurisprudence states that:

A motorist's breach of the dividing lines does not necessarily equate to a violation of the statute requiring motorists to drive as nearly as practicable within single lane. S.C. Code Ann. § 56-5-1900. State v. Alston, 811 S.E.2d 747 (S.C. 2018).

31 S.C. Jur. Automobiles and Other Motor Vehicles § 135. Therefore, unless the law specifically states what the point violations are for violations of South Carolina Code Ann. § 56-5-1900(a)-(d), we leave the charging discretion within the purview of the prosecutor, and our answer to your question is No. This Office believes each separate crime in South Carolina Code Ann. § 56-5-1900(a) and South Carolina Code Ann. § 56-5-1900(b) may constitute two (2) or greater point violations, depending on the discretion of the prosecutor to determine the charge in South Carolina Code Ann. § 56-1-720 unless specified otherwise in the law. As stated above, we believe a court will find that South Carolina Code Ann. § 56-5-1900(a)-(d) describes at least four separate crimes, each chargeable within the discretion of the charging officer/prosecutor.

3) *Is SCDMV correct in believing that convictions under S.C. Code §56-5-1900(c) and (d) constitute four point violations under S.C. Code §56-1-720?*

No. Please see our answer to Question Number 2. This Office believes for each separate crime in South Carolina Code Ann. § 56-5-1900(c) and South Carolina Code Ann. § 56-5-1900(d) may constitute two (2) or greater point violations, depending on the discretion of the charging officer/prosecutor to determine the charge in South Carolina Code Ann. § 56-1-720 unless specified otherwise in the law.

- 4) *If your answer to #2, above, is yes, do you agree that convictions under S.C. Code §56-5-1900(a) and (b) may remain under CDR code 3043?*

Our answer was “No” to Question Number 2. Again, we leave the charging discretion within the purview of the prosecutor. Please refer to our answer to Question Number 2. Thus, CDR code 3043 may apply but does not necessarily apply to violations of each separate crime in South Carolina Code Ann. § 56-5-1900(a) and South Carolina Code Ann. § 56-5-1900(b). In response to this question, we reiterate our conclusions above that the General Assembly intended the various offenses described in Section 56-5-1900 would result in two-point penalties in some instances and other penalties in other instances. We defer to South Carolina Court Administration on the questions regarding the specific assignment of CDR codes for purposes of this opinion.

- 5) *If your answer to #3, above, is yes, do you agree that convictions under S.C. Code §56-5-1900(c) and (d) should be extracted from CDR code 3043 and added to CDR code 2489?*

Our answer was “No” to Question Number 3. Again, we leave the charging discretion within the purview of the charging officer/prosecutor. Please refer to our answers to Questions Number 2-4. Thus, CDR code 3043 may apply but does not necessarily apply to violations of each separate crime in South Carolina Code Ann. § 56-5-1900(a)-(d). We defer to South Carolina Court Administration on the questions regarding the specific assignment of CDR codes for purposes of this opinion.

Conclusion:

Based on all of the above reasons and sources, this Office believe a court will determine that violations of South Carolina Code Ann. § 56-5-1900(a)-(d) are each separate criminal offenses unless specifically declared otherwise by law and that charging decisions are within the purview of the charging officer/prosecutor, whether that is the law enforcement officer making a charging decision or the Solicitor. Op. S.C. Att’y Gen., 1995 WL 803700 (S.C.A.G. August 14, 1995). We believe a court will find that the charging officer/prosecutor has discretion to determine what charge and the equivalent points in South Carolina Code Ann. § 56-1-720 apply to an incident for each violation of South Carolina Code Ann. § 56-5-1900(a)-(d) unless specified otherwise by law. We defer to South Carolina Court Administration on the questions regarding the specific assignment of CDR codes for purposes of this opinion. Moreover, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. This opinion is not an attempt to comment on any pending litigation or criminal proceeding. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. This opinion only addresses some of the sources in the subject area, but we can address other authority or additional questions in a follow-up opinion. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code Ann. § 15-53-20. If it is later determined otherwise, or if you have any additional questions or related issues, please let us know.

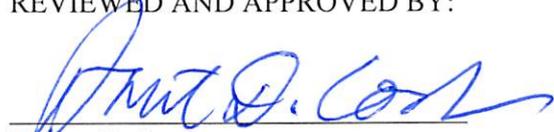
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Sincerely,



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