



HENRY McMASTER
ATTORNEY GENERAL

July 9, 2010

The Honorable J. Todd Rutherford
Member, House of Representatives
P. O. Box 11867
Columbia, South Carolina 29211

Dear Representative Rutherford:

In a letter to this office you questioned whether recent legislation, R. 312, prevents the Town of Ridgeland from issuing traffic citations in nonemergency situations using photographic evidence. You stated as follows:

...it has come to my attention that on Tuesday, July 6, 2010, the Town of Ridgeland will begin using video cameras to issue citations at all times along the portion of Interstate 95 that is within the town limits. The Town will either have officers present at the camera locations or will have officers watching the live video feed. By doing so, the Town believes they will get around the specific requirements of subsection (E) and the legislative intent. However, the officers will not personally serve the citations. Instead, the citations will be served in an unknown manner based upon evidence gained from the video cameras.

Referencing such, you have questioned whether such citations will be enforceable given the restrictions of R. 312.

Prior opinions of this office dated March 19, 1996 and October 31, 2002 have dealt with the use of photo-radar in this State. Such opinions concluded that statutory authorization for the use of such would have to be enacted in order to utilize such means for detecting traffic violators. The March, 1996 opinion specifically stated that this office would "...advise that the General Assembly would be the more appropriate body to authorize the use of photo radar."

The use of photographic evidence as a means of enforcing traffic laws was provided for in recently-enacted legislation, R. 312, which became effective June 11, 2010 when signed by the Governor, which states in subsection (E):

[c]itations for violating traffic laws relating to speeding or disregarding traffic control devices based solely on photographic evidence may only be issued for violations that occur while relief from regulations pursuant to 49 C.F.R. 390.22 has been granted due to an emergency. A person who receives a citation for violating traffic laws

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relating to speeding or disregarding traffic control devices based solely on photographic evidence must be served in person with notice of the violation within one hour of the occurrence of the violation. The provisions of this subsection do not apply to toll collection enforcement. (emphasis added).

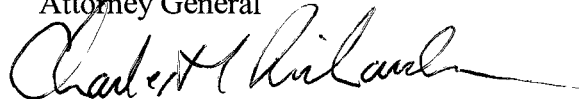
When interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

While R. 312 authorizes the use of “photographic evidence...for violations that occur while relief from regulations pursuant to 49 C.F.R. 390.22 has been granted due to an emergency”, there is no further authorization for the use of photographic or video camera evidence for traffic violators. Therefore, in the opinion of this office, photographic or video camera evidence may not be used in assisting an officer in observing and reviewing a traffic violation except in those limited circumstances set forth by R. 312. Moreover, as specified in R. 312, “[a] person who receives a citation for violating traffic laws relating to speeding or disregarding traffic control devices based solely on photographic evidence must be served in person with notice of the violation within one hour of the occurrence of the violation.” There is no provision for using other means to serve violators in such circumstances.

If there are any questions, please advise.

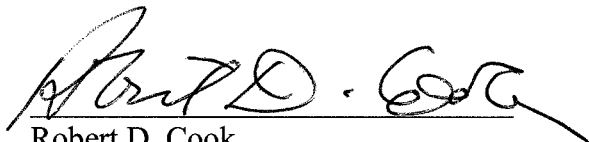
Very truly yours,

Henry McMaster
Attorney General



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Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



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