



HENRY McMASTER
ATTORNEY GENERAL

June 28, 2010

The Honorable Larry Grooms
Senator, District 37
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator Grooms:

In a letter to this office you indicated that the City of Ridgeland has entered into a contract with iTraffic, a private company that provides photo radar enforcement services. You indicated that it is your understanding that the Ridgeland police department, with the assistance of iTraffic, is issuing a uniform traffic citation by certified mail to suspected speeding violators. You have questioned whether it would be legal for a law enforcement agency to send citations by certified mail.

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 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).

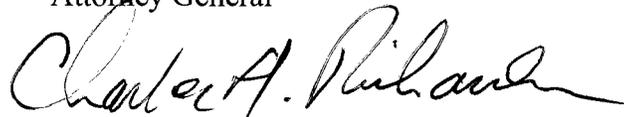
When interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the 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 evidence generally for traffic violators. Therefore, in the opinion of this office, photographic evidence may not be used in assisting an officer in observing and reviewing a traffic violation except in those limited circumstances. 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 use of certified mail in such circumstances.

If there are any questions, please advise.

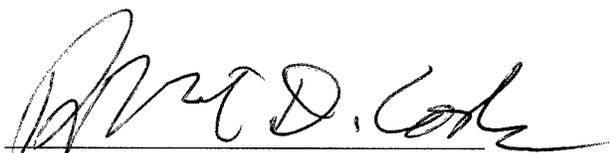
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



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