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SPRINGFIELD

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FILE NO. 82-016

CRIMINAL LAW AND PROCEDURE:
Authority to Terminate
Prosecution of Traffic Offenses

Honorable Don W. Weber
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103 Purcell Street, 3rd Floor
Edwardsville, Illinois 62025

Dear Mr. Weber:

I have your letter in which you inquire concerning the legality of the practice commonly known as "ticket pulling". Specifically, you ask whether a peace officer or any other public official or employee is authorized to unilaterally dispose of a traffic citation alleging a violation of State statute or municipal ordinance after an arrest has been made and a citation issued. For the reasons hereinafter stated, it is my opinion that the issuance of a Uniform Citation and

PROXY

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Complaint is the commencement of prosecution for the traffic offense charged therein, and that no person other than the appropriate State's Attorney or municipal attorney, the court, or in certain specified cases the clerk of the circuit court, is authorized to either dismiss the charge or otherwise terminate prosecution prior to trial.

Peace officers are authorized to arrest a person without a warrant when they have reasonable grounds to believe the person is committing, or has committed, an offense, including an ordinance violation. (People v. Edge (1950), 406 Ill. 490, 497; People v. Perry (1975), 27 Ill. App. 3d 230, 233, 239; Ill. Rev. Stat. 1981, ch. 38, par. 107-2.) The procedures contained in Supreme Court Rules 501 through 556 (87 Ill. 2d R.501-556) govern generally process and proceedings subsequent to arrest in traffic cases and other cases to which the rules specifically apply. (See, Order implementing Supreme Court Rules 501 through 556, entered October 26, 1967 (36 Ill. 2d 193a).) A "traffic offense" for purposes of the application of Rules 501 through 556 includes cases charging a violation of a statute, ordinance, or regulation pertaining to the operation and use of motor vehicles, with certain enumerated exceptions. (87 Ill. 2d R. 501(f).)

Pursuant to Supreme Court Rule 552 (87 Ill. 2d R.552), a peace officer who arrests a person for a traffic offense and

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issues a Uniform Citation and Complaint, is required to complete and transmit the requisite portions of the Uniform Citation and Complaint to the clerk of the circuit court within 48 hours of the arrest. When issuing a Uniform Citation and Complaint, the arresting officer is required to set a date for the accused's appearance in court in accordance with Rules 504 and 505 (87 Ill. 2d 504, 505). In order to secure his release from custody, a person arrested for a traffic offense and personally issued a Uniform Citation and Complaint is required to post bail or bond in the amount and manner specified in Rules 526 and 553 (87 Ill. 2d R. 526, 553), unless he demands instead to be taken before the nearest and most accessible judge of the circuit for a hearing. (Ill. Rev. Stat. 1981, ch. 16, par. 83.) If the arresting officer or any other person authorized by law lets the accused to bail, he is required to forward the bail to the clerk of the circuit court within 48 hours of receipt or within the time set for the accused's appearance in court, whichever is earlier. (87 Ill. 2d. R. 553; Ill. Rev. Stat. 1981, ch. 16, par. 81.)

A Uniform Citation and Complaint serves as both a complaint and a summons. (Village of Hoffman Estates v. Sychalski (1975), 33 Ill. App. 3d 83, 84-5.) The issuance of a Uniform Citation and Complaint alleging a traffic offense constitutes the initiation of the prosecution for the offense in

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the circuit court. The power to dismiss or otherwise terminate criminal or quasi-criminal proceedings prior to trial rests solely in the discretion of the appropriate prosecuting officer, either the State's Attorney or the municipal attorney, or in the court. (See, People v. Guido (1973), 11 Ill. App. 3d 1067, 1069; Flynn v. City of Springfield (1905), 120 Ill. App. 266, 269-70.) No peace officer or other public official or employee is authorized to terminate such proceedings by "pulling" the citation either before or after its transmittal to the clerk of the circuit court. The clerk of the circuit court may, however, dispose of traffic cases upon a written plea of guilty where provided by Supreme Court Rules 529 and 555. (87 Ill. 2d R. 529, 555.)

In People v. Thoms (1977), 50 Ill. App. 3d 398, the court upheld the conviction for official misconduct of a chief of police who refused to forward to the clerk of the circuit court traffic citations issued by a police officer under his supervision. The court held that, pursuant to Supreme Court Rules, the duties of a peace officer to forward traffic citations to the circuit court, and to collect bond before permitting release from custody after arrest, are mandatory, and failure to perform these duties is a palpable omission. The defendant's act of "pulling" traffic citations issued by an officer under his command constituted an improper use of the

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defendant's supervisory authority to terminate the proceedings initiated against the accused, even though the duties imposed by Supreme Court Rule were not specifically imposed upon the defendant. (50 Ill. App. 3d 398, 402.) In my opinion, the holding of the court in People v. Thoms would apply equally to any other public official or public employee who improperly uses the apparent authority of his office or employment to terminate proceedings instituted by the issuance of a Uniform Citation and Complaint.

In conclusion, it is my opinion that the issuance of a Uniform Citation and Complaint charging a traffic offense constitutes the initiation of the prosecution of the charge alleged therein. Therefore, no person other than the appropriate prosecuting attorney, the court, or the clerk of the circuit court acting pursuant to Supreme Court Rule 529, is authorized to either dismiss or otherwise dispose of the citation prior to trial. A public official or public employee who improperly uses the authority of his office of employment to terminate proceedings instituted by the issuance of a Uniform Citation and Complaint may be subject to criminal prosecution.

Very truly yours,


ATTORNEY GENERAL