



ALAN WILSON
ATTORNEY GENERAL

December 13, 2023

Captain William J. Baird
Clover Police Department
112 Bethel St.
Clover, SC 29710

Dear Captain Baird:

We received your letter requesting an Attorney General's opinion on the applicability of section 56-5-765 of the South Carolina Code (2018) when a state highway patrol officer is involved in a collision while driving his or her personal vehicle. By way of background, you informed us:

[O]ur agency responded to a traffic collision in our jurisdiction involving a small sedan vehicle and a large commercial truck. Our officers responded quickly to the scene of the collision and began completing their duties to investigate the collision, notifying fire and EMS regarding injury complaints, and completing required collision reports. During the investigation, the driver of the vehicle approached a patrol sergeant, identifying herself as an employee of the South Carolina Highway Patrol and requesting that the York County Sheriff's Office complete the collision report due to the law outlining that the Sheriff's Office is to work all collisions for highway patrol employees off-duty and in their personal vehicles and to also include their immediate family members.

We understand you are seeking clarification regarding the application of section 56-5-765(B) "to off-duty personnel in their personal vehicles and to include immediate family members."

Law/Analysis

Section 56-5-765 governs investigations of traffic collisions involving a motor vehicle or motorcycle of a law enforcement agency.

(A) When a motor vehicle or motorcycle of a law enforcement agency, except a motor vehicle or motorcycle of the Department of Public Safety, is involved in a traffic collision that: (1) results in an injury or a death, or (2) involves a privately-owned motor vehicle or motorcycle, regardless of whether another motor vehicle

or motorcycle is involved, the State Highway Patrol must investigate the collision and must file a report with findings on whether the agency motor vehicle or motorcycle was operated properly within the guidelines of appropriate statutes and regulations.

(B) When a motor vehicle or motorcycle of the Department of Public Safety is involved in a traffic collision that: (1) results in an injury or a death, or (2) involves a privately-owned motor vehicle or motorcycle, regardless of whether another motor vehicle or motorcycle is involved, the sheriff of the county in which the collision occurred must investigate the collision, regardless of whether the collision occurred within an incorporated jurisdiction, and must file a report with findings on whether the Department of Public Safety's motor vehicle or motorcycle was operated properly within the guidelines of appropriate statutes and regulations.

(C) A law enforcement department or agency must not investigate a traffic collision in which a motor vehicle, a motorcycle, or an employee of that department or agency is involved that: (1) results in an injury or a death, or (2) involves a privately-owned motor vehicle or motorcycle, regardless of whether another motor vehicle or motorcycle is involved.

(D) A law enforcement agency that has primary responsibility for an investigation involving a motor vehicle, a motorcycle, or an employee of another department or agency, but lacks the expertise to conduct a proper investigation, may request assistance from another agency that has the appropriate expertise, as long as the assisting agency or an employee of the assisting agency is not a subject of the investigation. A request made pursuant to this subsection shall result in a joint investigation conducted by both agencies.

(E) A person who knowingly and wilfully violates the provisions of subsection (C) is subject to punishment as provided for in Section 8-1-80, even if the person's authority extends beyond a single election or judicial district.

(F) An investigation of a traffic collision involving a motor vehicle, a motorcycle, or an employee of a law enforcement agency or department must include a field investigation to identify possible witnesses, including possible witnesses not involved in the traffic collision, but who may have witnessed the traffic collision from a vantage point other than the collision site.

(G) For purposes of this section, "involved in a traffic collision" includes a law enforcement motor vehicle or motorcycle engaged in a pursuit when a traffic collision occurs.

When interpreting a statute, the primary goal is to determine the General Assembly's intent. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature."). "[I]n ascertaining the intent of the [L]egislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole." In re Hosp. Pricing Litig., King v. AnMed Health, 377 S.C. 48, 59, 659 S.E.2d 131, 137 (2008). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "When interpreting a statute, the Court must read the language in a sense which harmonizes with its subject matter and accords with its general purpose." Allen v. S.C. Pub. Emp. Ben. Auth., 411 S.C. 611, 616, 769 S.E.2d 666, 669 (2015). Further, a remedial statute must be broadly construed to effectuate its intended purpose. Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 609, 663 S.E.2d 484, 488 (2008) ("A statute remedial in nature should be liberally construed in order to accomplish the object sought." (quoting Inabinet v. Royal Exchange Assur. of London, 165 S.C. 33, 36, 162 S.E. 599, 600 (1932))).

As we have concluded in prior opinions, "[t]he obvious purpose of § 56-5-765 is to avoid conflicts of interest and to insure accountability." Op. S.C. Att'y Gen., 2013 WL 1695521 (S.C.A.G. March 20, 2013) (alteration in original); *see also* Op. S.C. Att'y Gen. 1998 WL 746030 (S.C.A.G. June 18, 1998); Op. S.C. Att'y Gen., 1996 WL 494732 (S.C.A.G. July 10, 1996). In State v. Sheldon, 344 S.C. 340, 543 S.E.2d 585 (Ct. App. 2001), the South Carolina Court of Appeals held section 56-5-765 barred the South Carolina Highway Patrol's Multi-Disciplinary Accident Investigation Team (MAIT) from participating in the investigation of a collision involving an on-duty South Carolina State Trooper who was driving a marked patrol vehicle. The Court of Appeals found section 56-5-765(B) and (C) "clearly prohibits the Highway Patrol from investigating accidents involving its employees." Id. at 343, 543 S.E. 2d at 586.

Turning to subsection (B) of section 56-5-765, we believe a court would find the statute's language clearly and unambiguously limits its application to situations when a Department of Public Safety¹ motor vehicle or motorcycle is involved in a traffic collision.² *See* Sloan, 371 S.C. at 498, 640 S.E.2d at 459 ("When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning."). Subsection (B) provides:

¹ S.C. Code Ann. § 23-6-20(A) (2007) ("The Department of Public Safety is established as an administrative agency of state government which is comprised of a South Carolina Highway Patrol Division, a South Carolina State Police Division, and a Division of Training and Continuing Education.").

² For purposes of this opinion, we assume the collision involving an off-duty Department of Public Safety employee in his or her personal vehicle or an employee's immediate family member resulted in an injury or death or involved a privately-owned motor vehicle or motorcycle.

When a motor vehicle or motorcycle of the Department of Public Safety is involved in a traffic collision that: (1) results in an injury or a death, or (2) involves a privately-owned motor vehicle or motorcycle, regardless of whether another motor vehicle or motorcycle is involved, the sheriff of the county in which the collision occurred must investigate the collision, regardless of whether the collision occurred within an incorporated jurisdiction, and must file a report with findings on whether the Department of Public Safety's motor vehicle or motorcycle was operated properly within the guidelines of appropriate statutes and regulations.

§ 56-5-765(B) (emphases added). The language contained in this subsection expressly states its applicability to traffic collisions involving Department of Public Safety motor vehicles and motorcycles; however, the language is silent as to off-duty Department of Public Safety employees who are operating his or her personal vehicle. It is also silent as to Department of Public Safety employees' immediate family members. In contrast, subsection (C) of section 56-5-765 expressly states its applicability to employees of law enforcement departments or agencies. §56-5-765(C) (“A law enforcement department or agency must not investigate a traffic collision in which a motor vehicle, a motorcycle, or an employee of that department or agency is involved that: (1) results in an injury or a death, or (2) involves a privately-owned motor vehicle or motorcycle, regardless of whether another motor vehicle or motorcycle is involved.” (emphasis added)). Moreover, in Sheldon, the Court of Appeals, citing to section 56-5-765(B), noted that “such collisions involving a vehicle of the Department of Public Safety, including the Highway Patrol, must be investigated by the sheriff's office in the county where the collision occurred.” 344 S.C. at 342-43, 543 S.E.2d at 586 (emphasis added).

Because the language of subsection (B) clearly and unambiguously limits its application to traffic collisions involving Department of Public Safety motor vehicles and motorcycles, we believe a court would decline to extend the application of subsection (B) to an off-duty Department of Public Safety employee or a member of their immediate family who is involved in a traffic collision while driving his or her personal vehicle. See In re Hosp. Pricing Litig., King, 377 S.C. at 59, 659 S.E.2d at 137 (“[I]n ascertaining the intent of the [L]egislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole.”).

We note this Office is unable to issue an advisory opinion to determine facts. As we have stated in prior opinions, “[b]ecause this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions.” Op. S.C. Att'y Gen., 2006 WL 1207271 (S.C.A.G. April 4, 2006) (alteration in original) (quoting Op. S.C. Att'y Gen., 1989 WL 406130 (April 3, 1989)). Therefore, because it would involve a determination of facts, we cannot render an opinion as to which law enforcement department or agency should have conducted the traffic collision investigation in the specific factual scenario described in your letter.

Captain William J. Baird
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Conclusion

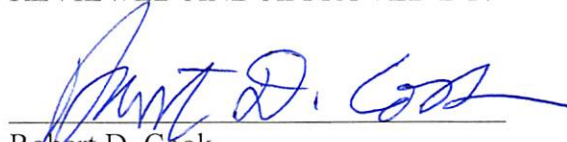
Based on the foregoing, we believe a court would determine subsection (B) of section 56-5-765 is inapplicable when an off-duty Department of Public Safety employee is involved in a traffic collision while driving his or her personal vehicle. We further opine subsection (B) would be inapplicable when a Department of Public Safety employee's immediate family member is involved in a traffic collision while driving his or her personal vehicle. However, we caution that subsection (C) prohibits a law enforcement department or agency from investigating a traffic collision involving a motor vehicle, a motorcycle, or an employee of that department or agency.

Sincerely,



Elizabeth McCann
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General