1704 Library

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

January 21, 2004

The Honorable B. Lee Miller
Municipal Court Judge, City of Greenwood
Post Office Box 40
Greenwood, South Carolina 29648-0040

Dear Judge Miller:

In a letter to this office you referenced a situation where the operator of a motor vehicle leaves a highway and travels onto private property thereby damaging personal property, such as a flower garden, porches, or swings. He then leaves the scene of the accident without providing information. Consideration then is given to charging the individual with leaving the scene of an accident. You have questioned whether any State statute addresses such situation.

S.C. Code Ann. Section 56-5-1250 (1991) provides that

> The driver of any vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his name and address and of the registration number of the vehicle he is driving and shall upon request and if available exhibit his driver's license and shall make report of such accident when and as required in Section 56-5-1270.

A prior opinion of this office dated July 17, 1973 stated that the term "fixtures" is defined as "...a chattel attached to realty, becoming accessory to it and part and parcel of it and ordinarily the property of the owner of the land...." In its decision in Planter's Bank v. Lummus Cotton Gin Co., 132 S.C. 16, 23, 128 S.E. 876 (1924), the State Supreme Court indicated that the following elements are necessary for a chattel to be part of the realty:

> (1)Actual or constructive annexation of the chattel to the realty or to something appurtenant thereto; (2) appropriation of the chattel to the use or purpose of that part of the realty with which it is connected; (3) the intention of the party making the annexation to make the chattel a permanent accession to the freehold, this intention being inferred from the nature of the article affixed, the relation and situation of the party making the annexation, the structure and mode of the annexation, and the purpose or use for which the annexation has been made.

Request Letter

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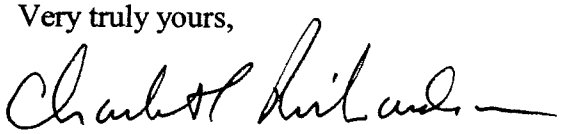
Another opinion dated June 7, 1965 defined "fixtures" as "...that which has become attached to the realty so as to be considered part of it."

For an item damaged to be considered to be within the purview of Section 56-5-1250 it must come within the definition of a "fixture" as defined above and be "adjacent to a highway". Such would be a factual determination made on a case by case basis. I would refer you to the definitions set forth above to consider in making such a determination.

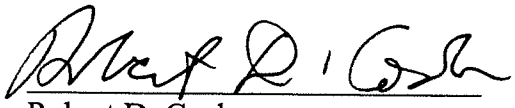
With kind regards, I am,

Very truly yours,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General