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HENRY MCMASTER
ATTORNEY GENERAL

July 24, 2006

The Honorable P. J. Tanner
Sheriff, Beaufort County
P. O. Box 1758
Beaufort, South Carolina 29901

Dear Sheriff Tanner:

In a letter to this office you questioned the jurisdiction of the Town of Bluffton Police Department to enforce traffic regulations on portions of U.S. 278 adjacent to the town boundaries.

Generally, pursuant to S.C. Code Ann. §5-7-110, municipal police officers

> ...shall exercise their powers on all private and public property within the corporate limits of the municipality and on all property owned or controlled by the municipality wheresoever situated;....

S.C. Code Ann. § 5-7-155 states that

> [i]f any portion of a street or highway is within the boundary of a municipality, the right of way of the street or highway not within the municipal boundary but touching the boundary is nevertheless considered to be within the boundary of that municipality for purposes of its police jurisdiction.
> A street or highway which serves as the boundary between municipalities is under the police jurisdiction of both municipalities regardless of the municipality in which the street or highway is located.

Several rules of statutory construction are relevant. 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

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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).

In reviewing your question, I have been in contact with several individuals familiar with the situation in Bluffton. However, this office has not been supplied any maps, plats or copies of annexation ordinances which clearly set forth the exact areas annexed by the town with regard to U.S. 278. The maps which have been forwarded to this office show areas of annexation that appear to go up to the right of way of U.S. 278. At one particular location, it appears that the town annexed areas on both sides of the highway, Sheridan Park and Belfair Town Village, but the map does not specifically show either the highway or highway right of way being annexed at that particular location.

We have been advised that officials with the Town of Bluffton have construed Section 5-7-155 as authorizing municipal law enforcement officials to enforce traffic regulations on U.S. 278. Admittedly, the statute is ambiguous. Moreover, I am unaware of any court decisions in this State which have interpreted such statute as to the situation addressed in your request letter. A definitive response to such question would involve the determination of facts. Prior opinions of this office have repeatedly stated that the investigation and determination of facts "are beyond the scope of an opinion of this office." See: Ops. Atty. Gen. dated January 26, 2006 and November 28, 2005. Also, due to the ambiguous factual situation, this letter should not be interpreted as advising as to the town's jurisdiction at particular locations where there may be relevant factors of which we have not been made aware.

A prior opinion of this office dated October 15, 1996 stated that

> [t]he necessary inference of Section 5-7-155 is that the police jurisdiction over streets or highways would be those streets or highways located in the municipality and those streets or highways touching the municipal boundary, but not those streets otherwise beyond the municipal boundary.

It has been stated that

> [a]s a general rule, a highway, on its inclusion by incorporation or annexation within the boundaries of a municipality, ipso facto becomes a street. A public highway, on its inclusion by incorporation or annexation within municipal boundaries, generally becomes ipso facto a street and subject to municipal control.

64 C.J.S. Municipal Corporations Section 1429. Similarly stated,

> [o]rdinarily the territory annexed to a municipal corporation becomes subject to use for streets and alleys, and the streets, alleys, bridges, highways and other public ways of the annexed territory are acquired by the annexing corporation and become subject to its control.

62 C.J.S. Municipal Corporations Section 70. The State Supreme Court in its decision in Martin et al. v. Saye et al., 147 S.C. 433, 145 S.E.2d 186 at 189 (1928) stated that "[o]n the annexation of territory to a municipality, highways therein become city streets and subject to the control of the municipal authorities."

Consistent with the above, it could be argued that because U.S. 278 appears to be "within" the town limits, particularly at the location where properties on both sides of the highway were annexed into the town, the town would have traffic jurisdiction over at least that portion of the highway bordered on both sides by annexed properties. However, in my opinion, S.C. Code Ann. § 5-7-155 should not be read so broadly. Again, such provision states that "[i]f any portion of a street or highway is within the boundary of a municipality, the right of way of the street or highway not within the municipal boundary but touching the boundary is nevertheless considered to be within the boundary of that municipality for purposes of its police jurisdiction." Therefore, unless a portion of U.S. 278 is clearly within the town's boundaries as a result of the specific annexation of that portion of the highway, then the remaining provision regarding the right of way also being considered as being within the town's boundaries is irrelevant. Of course, inasmuch as I have been informed that there is no adjoining municipality, the remaining portion of Section 5-7-155 which states that "[a] street or highway which serves as the boundary between municipalities is under the police jurisdiction of both municipalities regardless of the municipality in which the street or highway is located" would appear to be irrelevant to the question. Consistent with such, in my opinion, it does not appear that the Town of Bluffton would have jurisdiction as to traffic enforcement on U.S. 278. However, as stated previously, the situation is quite ambiguous. Inasmuch as Section 5-7-155 is subject to possible multiple interpretations, we would advise as a precaution that the Town particularly annex those roads or highways that it desires its law enforcement officers to patrol.

Conclusion

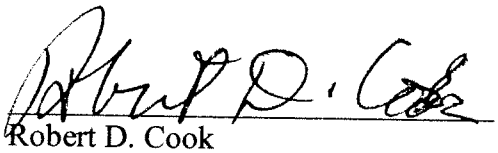
While Section 5-7-155 is ambiguous, and subject to varying interpretations, we do not believe the statute may be read so broadly as to include portions of a highway which have not been specifically annexed pursuant to the recent annexations in Bluffton. The statute expressly states that "[i]f any portion of the street or highway is within the boundary of a municipality, the right of way of the street or highway not within the municipal boundary but touching the boundary is nevertheless considered to be within the boundary of that municipality for purposes of police jurisdiction." As we read this statute, unless a portion of U.S. 278 is clearly within the town's boundaries as a result of the specific annexation of that portion of the highway, the remaining part of the statute regarding the right of way is not relevant in this situation.

While this is our reading of the statute, we can understand and appreciate that the law is less than clear. We do not doubt that the Bluffton police officers are proceeding on the good faith belief that because the highway or its right of way touches the boundaries of the municipality, it is within the town notwithstanding that there may have been no specific annexation of the highway. See, Op. Atty. Gen., October 15, 1996. Nevertheless, in our view, the language of the statute does not appear to permit such a broad reading, and thus the more prudent course would be for the Town of Bluffton to include the highway as part of the annexation so as to remove any doubt or confusion.

Very truly yours,

Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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