

6997 Liberty



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

October 5, 2000

The Honorable Johnny Mack Brown  
Sheriff, Greenville County  
4 McGee Street  
Greenville, South Carolina 29601

Re: Your Letter of September 13, 2000

Dear Sheriff Brown:

You have requested guidance with reference to S.C. Code Ann. §§ 56-5-5620, 5630, 5640, 5650, 5660, and 5810. Specifically, however, you ask three questions related to the provisions of § 56-5-5810 as follows:

In particular, Section 56-5-5810 defines "abandoned vehicle" ambiguously. Often deputies will make an arrest and tow the offender's vehicle. If the vehicle in question remains on the towing company's property for an extended period of time, does the vehicle then fall within the code's definition of abandoned? Often, arrestees are incarcerated for more than seven days. Is such a vehicle abandoned according to the definition in 56-5-5810 if the arrestee makes no provision for the recovery of his vehicle? Finally, to what extent are we obligated to locate and notify the owners of abandoned vehicles?

Section 56-5-5810(b) defines "abandoned vehicle" as "a vehicle required to be registered in this State if operated on a public highway in this State that is left unattended on a highway for more than forty-eight hours, or a vehicle that has remained on private or other public property for a period of more than seven days without the consent of the owner or person in control of the property."

Your first two questions are similar in nature and relate to vehicles which have been confiscated as the result of arrest and towed by a towing company, presumably to be stored on the property of the towing company. Both questions, I believe, are answered by the same operative language contained in the above cited definition of "abandoned vehicle." In both cases, the vehicles which have been placed on the private property by the towing company cannot be considered to have been left on the property "without the consent of the owner or person in control of the property." Accordingly, it is my opinion that vehicles confiscated, towed and left on towing company property

*Ernest Satter*

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as you have described in your letter cannot be considered "abandoned vehicles" for purposes of S.C. Code Ann. § 56-5-5810. I realize this is a conservative interpretation, however, in light of the potential liability imposed by §56-5-5940 for the seizure, sale or disposal of a vehicle in violation of §§56-5-5810 et seq., I believe it to be appropriate. Additionally, the towing company is not left without recourse. See for example § 29-15-10 which provides for a mechanism by which a storage place, garage or repair shop may sell property which has been left on the premises.

Your third question relates to the obligation to locate and notify the owners of abandoned vehicles prior to the disposal of the vehicle. I assume by your use of the "we" in your question, that you are concerned with the obligations of the Greenville County Sheriff's Office. You indicate that there "seems to be a great deal of confusion surrounding the implementation ..." of the code sections dealing with abandoned cars. Given the state of the statutory provisions in this regard, I can certainly see why.

Prior to June of 1996, the statutes dealing with abandoned cars were clearly bifurcated. Article 40 of the Code was entitled "Disposition of Abandoned Motor Vehicles on Highways" and contained its own definition of "abandoned vehicle." Section 56-5-5610(2) described "abandoned motor vehicle" as a "motor vehicle that is left on any right-of-way or any road or highway in this State for a period of over forty-eight hours." Article 40 also contained provisions mandating the notification of registered owners/lienholders and the sale of the abandoned vehicle. Section 56-5-5630 required the sheriff or chief of police to notify the owner and lienholder, while 56-5-5640 required the sheriff or chief of police to sell an unclaimed abandoned vehicle at public auction.

Prior to June of 1996, Article 41 of the Code was entitled "Disposition of Abandoned and Derelict Motor Vehicles on Public or Private Property" and contained its own definition of "abandoned vehicles." For purposes of Article 41, § 56-5-5810 defined "abandoned vehicle" as a "motor vehicle that is inoperable or is left unattended on public property for more than seventy-two hours, or a motor vehicle that has remained illegally on private or public property for a period of more than seven days without the consent of the owner or person in control of the property." Article 40 also contained its own provisions mandating that notice be sent to owners/lienholders and that the vehicles be disposed of. § 56-5-5850 provided that the Director of the Department of Taxation and Revenue is to notify or cause to be notified owners and lienholders of abandoned vehicles. That section also provided that the vehicle would be sold for recycling or for "such other purposes as the director deems advisable to ensure obtaining the highest possible return from the sale."

To ensure that vehicles abandoned on public roads and those abandoned on other public or private property were disposed of in separate fashion, Article 41 contained a written proviso. Prior to June of 1996, Section 56-5-5840 provided as follows:

All abandoned and derelict motor vehicles shall be subject to removal from public or private property and disposed of in accordance with the provisions of this article; *provided*, that all abandoned motor vehicles left on any right-of-way of any road, street

or highway for a period of over forty-eight hours shall be removed and disposed of as provided for in §§ 56-5-5610 to 56-5-5680.

As of June 5, 1996, however, several amendments became effective which resulted in an apparent alteration in the way abandoned vehicles are to be disposed of. Initially, §56-5-5610 of Article 40 was repealed. § 56-5-5810(b) of Article 41 was amended to include in its definition of abandoned vehicle those vehicles which are "left unattended on a highway for more than forty-eight hours ..." Section 56-5-5850 was also amended with reference to the responsibility to notify owners/lienholders and to dispose of the vehicles. § 56-5-5850 now provides in pertinent part:

(a) When any vehicle is left unattended on a highway or on other public or private property without the consent of the owner or person in control of the property, an officer may place a colored tag on the vehicle which shall be notice to the owner, the person in possession of the vehicle or any lienholder that it may be considered to be derelict or abandoned and is subject to forfeiture to the State.

(b) The colored tag shall serve as the only legal notice that, if the vehicle is not removed within:

(1) forty-eight hours if located on a highway, or

(2) seven days if located on other public or private property from the date of the tag, it will be removed to a designated place to be sold. After the vehicle is removed, the political subdivision employing the officer who affixed the colored tag shall notify in writing by registered or certified mail, return receipt requested, the person in whose name the vehicle was last registered and any lienholder of record. Notification shall include that the vehicle is being held, designating the place where it is being held, and that if it is not redeemed within thirty days from the date of the notice by paying all cost of removal and storage, it shall be sold for recycling purposes or for such other purposes as the political subdivision deems advisable to ensure obtaining the highest possible return from the sale. The proceeds of the sale shall be deposited in the general fund of the political subdivision.

(c) If the identity of the last registered owner cannot be determined or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identification and addresses of any lienholders, notice by one

publication in a newspaper of general circulation in the area where the vehicle was located shall be sufficient to meet all requirements of notice pursuant to this article. The notice of publication may contain multiple listings of vehicles. Twenty days after date of publication an advertised vehicle may be sold.

(d) Any notice sent by mail or any newspaper notice published under the provisions of this section shall contain the following if it is obtainable: the year, make, model, and serial number of the motor vehicle. It shall also set forth where the vehicle is being held; inform the owner and any lienholders of the right to reclaim the vehicle within thirty days after the date of the notice upon payment of all towing, preservation, and storage charges resulting from placing the vehicle in custody; include the date, time, and place of the proposed sale; the name, address and telephone number of the person responsible for the sale; and state that the failure of the owner or lienholders to exercise their right to reclaim the vehicle within the time provided is a waiver by the owner and all lienholders of all right, title, and interest in the vehicle and consent to the sale of the vehicle.

Further, § 56-5-5840 was amended to read only that "All abandoned and derelict vehicles shall be subject to removal from public or private property and disposed of in accordance with the provisions of this article." This section's proviso ensuring that vehicles abandoned on highways, roads and right-of-ways would be disposed of as provided in §§ 56-5-5610 to 56-5-5680 (Article 40) was deleted.

The Legislature did not repeal Article 40 in its entirety, however. While expressly repealing § 56-5-5610, which provided the operative definition of abandoned vehicles left on highways, roads and right-of-ways, the Legislature left in tact §§ 56-5-5630 and 5640. Section 56-5-5630 requires the sheriff or chief of police to notify by "registered or certified mail, return receipt requested the last known registered owner of the vehicle and all lienholders of record that the vehicle has been taken into custody" or if the owner and lienholders cannot be determined, to serve "notice by one publication in one newspaper of general circulation in the area where the motor vehicle was abandoned ..." Section 56-5-5640 provides that "[i]f an abandoned vehicle has not been reclaimed as provided in § 56-5-5630, the sheriff or chief of police shall sell the abandoned vehicle at a public auction."

Based on the current state of the law as outlined above, the answer to your question lies in the interpretation of two conflicting statutes - Article 41 and what is left of Article 40. In determining which of these Articles is controlling, rules of statutory construction must be analyzed. The primary goal is to ascertain the intent of the General Assembly in enacting legislation. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Further, even though the Legislature may not expressly provide for repeal of certain statutes, such can be accomplished by implication. Repeal by implication is not favored under the law, In the Interest of Shaw, 274 S.C. 534, 265 S.E.2d 522

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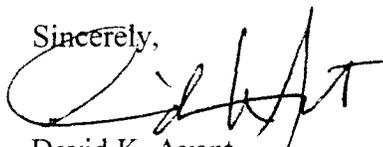
(1980), however, "where two legislative acts are repugnant to, or in conflict with, each other, the one last passed, being the latest expression of the legislative will, will, although it contains no repealing clause, govern, control or prevail, so as to supersede and impliedly repeal the earlier act to the extent of the repugnancy." City of Newberry v. Public Service Commission of South Carolina, 287 S.C. 404, 339 S.E.2d 124 (1986). The Court in City of Newberry v. PSC, also stated that "[t]he case law of this State is clear that when there is a conflict between statutory provisions, the later enacted legislation prevails." *supra* at 126. Moreover, "[w]here the later of two acts covers the whole subject matter of the earlier one, not purporting to amend it, and plainly shows that it was intended to be a substitute for the earlier act, such later act will operate as a repeal of the earlier one, though the two are not repugnant." Independence Ins. Co. v. Independent Life and Acc. Ins. Co., 218 S.C. 22, 61 S.E.2d 399 (1950).

Based on the foregoing, it is my opinion that the June 1996 amendments to Article 41 act as an implied repealer of Article 40. This opinion is based on a number of factors. First, the Legislature repealed the definitional section of Article 40 and included a clause which covered the same subject matter (vehicles abandoned on highways) in the definitional section of Article 41. Second, the proviso contained in § 56-5-5840 of Article 41 which ensured that vehicles abandoned on highways, roads, and right-of-ways would be disposed of in accordance with §§ 56-5-5630 and 5640 was deleted. Now, § 56-5-5840 provides that all vehicles abandoned on public and private property shall be disposed of pursuant to the provisions of Article 41, not §§ 56-5-5630 and 5640. I believe that the General Assembly's intent to make Article 41 a comprehensive set of procedures for the removal and disposition of abandoned vehicles, wherever they may be, is clear.

Accordingly, to determine the obligation of the Greenville County Sheriff's Office to locate and notify owners of abandoned vehicles, one must look exclusively to Article 41. Section 56-5-5850(b)(2) provides that "[a]fter the vehicle is removed, the political subdivision employing the officer who affixed the colored tag shall notify in writing by registered or certified mail, return receipt requested, the person in whose name the vehicle was registered and any lienholder of record." The obligation is on the "political subdivision," not the sheriff or chief of police specifically. Had the Legislature intended to place the burden directly on the sheriff, it is apparent that they would have indicated such in the language of the statute. It is now left to the governing body of the particular political subdivision (county council or city council) to determine who shall notify owners and lienholders pursuant to § 56-5-5850.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant  
Assistant Attorney General

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