



HENRY McMASTER  
ATTORNEY GENERAL

April 1, 2009

The Honorable Darrell Jackson  
Senator, District No. 21  
P. O. Box 142  
Columbia, South Carolina 29202

Dear Senator Jackson:

In a letter to this office you raised several questions regarding the City of Columbia's use of S.C. Code Ann. §§ 56-5-5810 et seq. to tag vehicles as abandoned when these vehicles are parked on the private property of citizens.<sup>1</sup> You referenced that City of Columbia code enforcement officers are going onto private property to tag vehicles as abandoned. The vehicles being tagged as abandoned belong to the owners of the private property or the vehicles are on private property with the consent of the owner or the person in control of the property. You asserted that these code enforcement officers are trespassing and entering the private property without the consent of the owner or the person in control of the property in order to tag the vehicles.

Referencing such, you have raised the following questions:

1. Do Sections 56-5-5810 et seq. give municipal code enforcement officers the authority to tag vehicles on public highways and/or streets as abandoned?
2. Do Sections 56-5-5810 et seq. give municipal code enforcement officers the authority to tag vehicles as abandoned on private property if the vehicles belong to the owner of the private property or if the vehicles are on the private property with the consent of the owner or with the consent of the person in control of the property?

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<sup>1</sup>Section 56-5-5920 states that "[t]he provisions of this article shall not apply to vehicles housed or protected from the elements, those classified as antiques and registered pursuant to Sections 56-3-2210 and 56-3-2220, those exempted from registration pursuant to Section 56-3-120, those vehicles reported as stolen in accordance with Section 56-5-5900, unless any such vehicle presents an immediate safety or health hazard or constitutes a nuisance."

3. Is a vehicle considered abandoned when it is not operated on the public roads of this State and is parked on private property with the consent of the owner or with the consent of the person in control of the property?

4. Pursuant to Sections 56-5-5810 et seq., is a vehicle that is parked on private property a "derelict vehicle" if it is not registered and is not operated on the public roads of this State?

5. Pursuant to Sections 56-5-5810 et seq., does a municipal code enforcement officer have the authority to enter private property without the consent of the owner or the person in control of the property?

For purposes of your questions, Section 56-5-5810 provides the following definitions:

(a) "Officer" means any state, county, or municipal law enforcement officer, including county and municipal code enforcement and sanitation officers.

(b) "Abandoned vehicle" means 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.

(c) "Derelict vehicle" means a vehicle required to be registered in this State if operated on a public highway in this State:

(1) whose certificate of registration has expired and the registered owner no longer resides at the address listed on the last certificate of registration on record with the Department of Motor Vehicles; or

(2) whose motor or other major parts have been removed so as either to render the vehicle inoperable or the operation of which would violate Section 56-5-4410<sup>2</sup>; or

(3) whose manufacturer's serial plates, motor vehicle identification numbers, license number plates, and any other means of identification have been removed so as to nullify efforts to locate or identify the registered owner; or

(4) whose registered owner of record disclaims ownership or releases his rights thereto; or

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<sup>2</sup>S.C. Code Ann. § 56-5-4410 states that it is unlawful to operate an unsafe or improperly equipped vehicle as set forth in such provision.

(5) which is more than eight years old and does not bear a current registration.

Section 56-5-5840 provides that “[a]ll 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.”

Section 56-5-5850 states that

(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 is 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 serves as the only legal notice that the vehicle will be moved to a designated place to be sold if the vehicle is not removed by the owner or person in control of the vehicle. The vehicle must be removed within the following times from the date the tag is placed on the vehicle:

- (1) forty-eight hours if it is located on a highway, or
- (2) seven days if it is located on other public or private property.

Abandoned or derelict vehicles must be disposed of pursuant to Sections 29-15-10 and 56-5-5635.

Section 56-5-5880 provides that

[a]ll officers, employees, and agents of any person under contract with the Department of Public Safety, county, or municipality, are authorized to go on private property for the purposes of enforcing this article. No agent or employee of any federal, state, county, or municipal government or other political subdivision, no person or occupant of the premises from which any derelict or abandoned motor vehicle shall be removed, nor any person or firm contracting for the removal or disposition of any such motor vehicle shall be held criminally or civilly liable in any way arising out of or caused by carrying out or enforcing any provisions of this article unless such person is guilty of willfulness, wantonness, or recklessness.

When interpreting the meaning of a statute, certain basic principles must be observed. 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

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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 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 your first question you asked whether Sections 56-5-5810 et seq. give municipal code enforcement officers the authority to tag vehicles on public highways and/or streets as abandoned? As referenced, by Section 56-5-5810(a), the term "officer" for purposes of such provisions includes municipal code enforcement officers. Therefore, municipal code enforcement officers would be authorized by Section 56-5-5850 to tag vehicles on public highways and/or streets as abandoned.

In your next question you asked whether Sections 56-5-5810 et seq. give municipal code enforcement officers the authority to tag vehicles as abandoned on private property if the vehicles belong to the owner of the private property or if the vehicles are on the private property with the consent of the owner or with the consent of the person in control of the property. Section 56-5-5850(A) plainly states that a vehicle that is left unattended on private property without the consent of the owner or person in control of the property is considered a "derelict or abandoned" vehicle and may be tagged. Therefore, if the vehicle is on the private property with the consent of the owner or consent of the person in control of the property, the vehicle may not be tagged.

In your third question you asked whether a vehicle is considered abandoned when it is not operated on the public roads and is parked on private property with the consent of the owner or with the consent of the person in control of the property. As set forth by Section 56-5-5810(b), an "abandoned vehicle" is defined 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." Therefore, if the vehicle is parked on private property with the consent of the owner or with the consent of the person in control of the property it would not be considered "abandoned."

You next questioned whether pursuant to Sections 56-5-5810 et seq., is a vehicle that is parked on private property a "derelict vehicle" if it is not registered and is not operated on the public roads of this State. While pursuant to Section 56-5-5810(c) referenced above, a vehicle that is not registered and operated on the public roads of this State is included within the definition of a "derelict vehicle", Section 56-5-5840 states that "[a]ll 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." Section 56-5-5850 provides that

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[w]hen 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 is 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. (emphasis added).

Therefore, even if the vehicle meets the definition of a “derelict vehicle” pursuant to Section 56-5-5810(c), if the vehicle is parked on private property with the consent of the owner or with the consent of the person in control of the property, it is not subject to forfeiture.

In your last question you asked whether pursuant to Sections 56-5-5810 et seq., does a municipal code enforcement officer have the authority to enter private property without the consent of the owner or the person in control of the property. Section 56-5-5880 clearly provides that

[a]ll officers, employees, and agents of any person under contract with the Department of Public Safety, county, or municipality, are authorized to go on private property for the purposes of enforcing this article.

Therefore, a municipal code enforcement officer would have the authority to enter private property without the consent of the owner or the person in control of the property to enforce the provisions of Sections 56-5-5810 et seq.

With kind regards, I am,

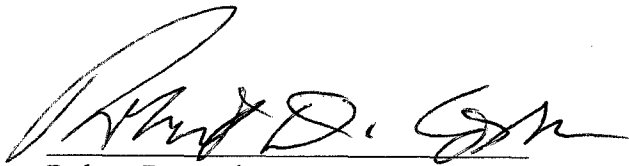
Very truly yours,

Henry McMaster  
Attorney General



By: Charles H. Richardson  
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REVIEWED AND APPROVED BY:



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