



ALAN WILSON
ATTORNEY GENERAL

April 20, 2012

Jeffrey B. Moore, Executive Director
South Carolina Sheriffs' Association
112 Westpark Boulevard
Columbia, SC 29210

Dear Mr. Moore:

We received a letter from you requesting an opinion of this office regarding dealers in precious metals. As you are aware, S.C. Code Ann. §40-54-40 provides, in pertinent part, that:

[e]very dealer shall keep a book in which must be written at the time of any purchase of precious metal or precious or semiprecious stones or gems made from the general public, whether in bulk or manufactured form, the date of purchase, amount of money or other property exchanged for the metal, stones, or gems, the name, sex, race, age, address, and driver's license number of the person selling the items, articles, or things bought, and the number and nature and brand name of the items, articles, or things. Descriptions must include size, weight, patterns, or engraving or any unusual identification marks. If the seller does not have a driver's license, some other positive identification bearing his photograph and an identifying number may be substituted. If the seller cannot produce a driver's license or other positive identification, the dealer may not buy any merchandise from him. Every dealer shall, at the time of purchase, obtain the signature of the seller as part of the recording of the transaction. . . . [Emphasis added].

You question what is considered "other positive identification" for purposes of such provision. You ask, for example, whether a driver's license from a country other than the United States would be considered valid identification for purposes of the provision.

In reviewing §40-54-40, it is imperative that there be compliance with the rules of statutory construction. South Carolina Coastal Conservation League v. South Carolina Dept. of Health and Environmental Control, 390 S.C. 418, 702 S.E.2d 246 (2010). Statutory interpretation is a question of law. City of Newberry v. Newberry Elec. Co-op., Inc., 387 S.C. 254, 692 S.E.2d 510 (2010). The primary rule of statutory construction is to ascertain and give effect to the intent of the Legislature. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000); Mid-State Auto Auction of Lexington, Inc. v. Altaian, 324 S.C. 65, 476 S.E.2d 690 (1996). The best evidence of intent is in the statute itself. Unless there is

something in the statute requiring a different interpretation, the words used in a statute must be given their plain and ordinary meaning. Id.

If the [L]egislature's intent is clearly apparent from the statutory language, a court may not embark upon a search for it outside the statute. When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the [L]egislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning.

While it is true that the purpose of an enactment will prevail over the literal import of the statute, this does not mean that [a] Court can completely rewrite a plain statute.

Hodges, 533 S.E.2d at 582. What the Legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the Legislature. Media General Communications, Inc. v. South Carolina Dept. of Revenue, 388 S.C. 138, 694 S.E.2d 525 (2010); Wade v. State, 348 S.C. 255, 559 S.E.2d 843 (2002); see also Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E. 2d 166, 168 (1966) ["There is no safer nor better rule of interpretation then when language is clear and unambiguous it must be held to mean what it plainly states"].

As referenced, §40-54-40 requires record keeping of all transactions involving the purchase of precious metals, or precious or semiprecious stones or gems. This law discourages the theft of such property by requiring a record of all sales transactions be kept so that sellers can be identified. The statute provides that a purchaser of such property must request a driver's license or some "other positive identification" bearing the seller's photograph and an identifying number. The underlying purpose of this requirement is to also ensure that the purchaser verifies the name and address of the seller of the property.

Section 40-54-40 does not specify what "other positive identification" would be satisfactory. In the absence of legislative clarification of the statute, this office can only suggest what may be considered by a purchaser as other valid identification. Each situation where identification must be obtained by a purchaser would have to be determined on a case-by-case basis as to whether the proffered identification was adequate. This office cannot state categorically what manner of establishing identification would be satisfactory in all instances to avoid a violation of §40-54-40.¹

¹Pursuant to §40-54-80:

[a]ny dealer violating the provisions of [Chapter 54 of Article 40] shall be deemed guilty of a misdemeanor and upon conviction, for a first offense, shall be fined not more than five hundred dollars or imprisoned not more than ninety days, or both. A second offense conviction shall be punishable by a fine of not more than two thousand dollars or imprisonment not more than one year, or both. A third or subsequent offense conviction shall be punishable by a fine of not more than five thousand dollars or imprisonment not more than three years,

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In addition, this opinion should not be construed as commenting upon any particular set of facts. In a previous opinion of this office dated October 31, 1994, we addressed whether a scrap metal dealer could lawfully purchase scrap copper if the identifications of the individual selling the copper was "questionable." Pursuant to §16-17-680, a purchaser of copper (in excess of 10 pounds) was required to obtain and verify the name and address of the seller. We advised that:

[t]o ask whether a particular purchase would be "legal" is to effectively ask whether one would be criminally liable in such a situation. This Office must respectfully decline to undertake an opinion on such issues, as we do not provide advice or an opinion which would subsequently foreclose prosecution in an appropriate case. Even if we were to undertake an opinion, a change in even one or two facts could alter the conclusion as to legality or lack of legality. Thus, we cannot advise you as to the legality of the purchases you have described.

This advice remains valid. See Op. S.C. Atty. Gen., April 29, 2005 ("[b]ecause this Office does not have the authority of a court or other fact-finding body, we are not able in a legal opinion to adjudicate or investigate factual questions").

With those caveats, it would appear that an identification card containing a photograph issued by the Department of Motor Vehicles; a passport; a military identification card containing a photograph issued by the federal government; or a South Carolina voter registration card containing a photograph of the voter pursuant to §7-5-675, could be considered by a purchaser for purposes of §40-54-40. A purchaser might also consider a valid driver's license from another state that contains the licensee's photograph. However, these are only examples to be considered at the discretion of the purchaser, who must comply with the record-keeping requirements of the statute. Because the purchaser must not only obtain the name and address of the seller, but must also verify such, steps other than reviewing a driver's license or other identification may therefore be necessary depending upon the particular circumstances in each case.

In an opinion of this office dated August 15, 2005, we addressed whether a scrap metal company could buy a large amount of metal from an individual who had a picture license issued by a foreign county and who was not a citizen of the United States. Specifically, §16-17-680 provided that it was unlawful to purchase copper wire, copper pipe, copper bars or copper sheeting in excess of ten pounds "from a person who is not a holder of a retail license or an authorized wholesaler or unless the purchaser obtains and can verify the name and address of the seller." Subsection (D) of the statute expressly provided that:

or both. A dealer convicted of a second offense shall be ineligible for a permit to conduct business in precious metals in this State for at least two years and a dealer convicted of a third or subsequent offense shall not be eligible for a permit for a least five years.

[f]or purposes of this section, the only identification acceptable is:

- (1) a valid South Carolina driver's license;
- (2) a South Carolina identification card issued by the Department of Motor Vehicles;
- (3) a valid driver's license from another state that contains the licensee's picture on the face of the license; or
- (4) a valid military identification card.

We concluded the only identifications authorized were the four methods set forth above, and that the purchaser would not be authorized to buy a large amount of scrap metal from an individual whose only identification was a picture license issued by a foreign county.²

By contrast, §40-54-40 simply requires the purchaser to verify the seller's name and address with "other positive identification" bearing a photograph of the seller and an identifying number. The rules of statutory construction dictate that if the Legislature had intended to impose limits on acceptable identifications under this provision, as it did in §16-17-680, then it would have said so. This is a choice which the Legislature freely made and we are constrained to interpret the statute accordingly. Any change in the law must come from the Legislature and not an opinion of this office. See Ops. S.C. Atty. Gen., January 8, 2012; March 29, 2011. Absent such legislation, only a court would be able to determine your question with finality. Ops. S.C. Atty. Gen., January 10, 2012; June 5, 2008.

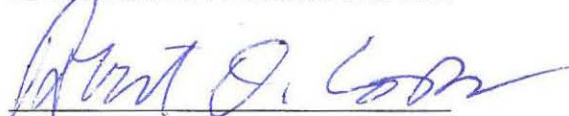
If you have any further questions, please advise.

Very truly yours,



N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

²Section 16-17-680 was amended several times after this opinion was written, and the statute was rewritten in 2011. However, the Legislature kept the language limiting the forms of identification acceptable under the statute. See §16-17-680(H).