



ALAN WILSON  
ATTORNEY GENERAL

December 13, 2012

The Honorable David H. Taylor  
Sheriff, Union County  
Union County Sheriff's Office  
P.O. Box 971  
Union, SC 29379

Dear Sheriff Taylor:

In a letter to this Office you have asked our opinion concerning volunteer firemen driving their private vehicles, which are equipped with red lights and sirens, to fire calls. You inform us there have been complaints that some volunteer firemen are driving their private vehicles in a reckless manner while responding to fire calls.<sup>1</sup> You also ask us about civil liability in the event of an accident.

Please be advised that a specific response to your question cannot be provided as to all situations which may arise. We do note, however, that certain statutory exemptions from the laws governing the operation of motor vehicles are provided to the operators of authorized emergency vehicles in this State which have a bearing in determining the liability of volunteer firemen as to situations put forth in your letter.

Pursuant to S.C. Code Ann. §56-5-170(A), "authorized emergency vehicles" are defined as:

. . . public and private vehicles while transporting individuals actually engaged in emergency activities because one or more occupants belong to a fire department, volunteer fire department, police department, sheriff's office, authorized county government litter enforcement office, rescue squad, or volunteer rescue squad . . . [Emphasis added].

Significantly, §56-5-760 provides that operators of authorized emergency vehicles, while responding to emergency calls, are exempted from certain laws governing the operation of motor vehicles in this State under certain circumstances. This provision permits the driver of an authorized emergency vehicle, "when responding to an emergency call or . . . when responding to but not upon returning from a fire alarm . . . [to] . . .":

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<sup>1</sup>For purposes of this opinion, we assume that the volunteer firemen are responding under emergency circumstances.

- (1) park or stand, notwithstanding any other provision of this chapter;
- (2) proceed past a red or stop signal or stop sign but only after slowing down as may be necessary for safe operation;
- (3) exceed the maximum speed limit if he does not endanger life or property;
- (4) disregard regulations governing direction of movement or turning in specified directions.

See also §56-5-950(a) [“The driver of any vehicle shall obey the instructions of any official traffic-control device, applicable thereto placed or held in accordance with the provisions of this chapter, unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter”].

Accordingly, as we have advised in prior opinions of this Office, volunteer firemen driving their own vehicles in a situation so as to bring such vehicle within the definition of an authorized emergency vehicle, *i.e.*, while actually engaged in emergency activities, are exempt from State traffic laws as set forth in §56-5-760 under certain circumstances. See, *e.g.*, Ops. S.C. Atty. Gen., September 4, 1980 (1980 WL 120856); June 11, 1980 (1980 WL 120703); December 7, 1976 (1976 WL 23155).

It is important to note §56-5-760(c) further provides that these exemptions from the State’s traffic laws granted to an authorized emergency vehicle “shall apply only when the vehicle is making use of an audible signal meeting the requirements of Section 56-5-4970 and visual signals meeting the requirements of Section 56-5-4700 of this chapter . . .”<sup>2</sup> See Ops. S.C. Atty. Gen., February 2, 1990 (1990 WL 599174); February 15, 1984 (1984 WL 159825).

With reference to your question concerning civil liability, as is pointed out in the previous opinion of this Office dated December 4, 1980, §56-5-760(D) provides that “[t]he provisions of this section do not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons.” See Lineberger v. City of Greenville, 178 S.C. 47, 182 S.E. 101, 103 (1935) [stating that a police car would not be held to the same degree of care while in actual pursuit of a criminal as when merely cruising around at the time of the accident]. In our opinion dated June 11, 1980, we stated:

[§56-5-760(D)] also provides that its provisions do not relieve the driver of an authorized emergency vehicle from the duty to drive with due care for the safety of all persons nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

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<sup>2</sup>For purposes of this opinion, we further assume that the drivers of such “authorized emergency vehicles” are using the siren and lights as provided for in these statutes.

Such authorized emergency vehicles must, therefore, take into account the safety of the motoring public. Any liability resulting from an accident involving an authorized emergency vehicle and a civilian motorist would, however, depend on an examination of the particular fact situation. Of course, this Office does not conduct fact-finding inquiries in the issuance of a legal opinion. See, e.g., Op. S.C. Atty. Gen., April 16, 1997 (1997 WL 255957).

We refer to the December 7, 1976, opinion, which predates the 1990 legislative amendment to §56-5-760(D).<sup>3</sup> Therein we provided the following guidelines which could be applied by an investigating officer in the event of an accident involving an authorized emergency vehicle and a civilian motorist:

- (1) Was there an emergency?
- (2) Was emergency vehicle displaying light and siren?
- (3) Was operation of emergency vehicle reasonable in view of circumstances then and there existing?
- (4) Was the civilian vehicle in compliance with all traffic laws relating to the presence of emergency vehicles?
- (5) Was the civilian vehicle operated in a reasonable manner in view of the circumstances then and there existing?

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<sup>3</sup>Prior the 1990 amendment, the former version stated its provisions “shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.” [Emphasis added]. Case law interpreting this former version applied a “reckless conduct” standard. See, e.g., Jones v. Way, 278 S.C. 295, 294 S.E.2d 432 (1982). In Jones, a trooper was injured while pursuing a suspect in excess of 100 m.p.h. for traffic violations. The South Carolina Supreme Court stated:

Appellant alleges the patrolman was contributorily negligent during the course of the high speed chase that resulted in his injuries and thus cannot recover from appellant. However, we hold the patrolman's excessive speed cannot be deemed to be negligence per se.

Section 56-5-760, S.C. Code, 1976, explicitly authorizes a police officer using his siren and flashing light to disregard certain traffic regulations and to exceed the maximum speed limits. This section absolves the driver of an authorized emergency vehicle from negligence, and imposes liability only when the conduct becomes reckless.

We advised, however, that:

[t]hese general guidelines are not designed to decide every issue of negligence when an emergency vehicle is involved in an accident. However, the investigating patrolman can use these guidelines as a first step when he begins to investigate an accident between an emergency vehicle and a civilian vehicle.

Additionally, we recognize the day-to-day decisions as to whom to arrest are made primarily by law enforcement officers, and that police officers and agencies are afforded by law broad discretion to carry out their arduous daily tasks of enforcing the law. This being the case, law enforcement officers should evaluate each particular situation as it arises and gauge whether there is a likelihood of a violation of the law. Law enforcement officers should be vigilant to enforce the criminal laws of this State. Op. S.C. Atty. Gen., June 28, 2011 (2011 WL 2648713). This Office further adheres to its long-standing policy that the judgment call as to whether to prosecute a particular individual is warranted or is on sound legal ground in a particular case is a matter within the discretion of the local prosecutor. Id. The prosecutor is the person on the scene who can weigh the strength or weakness of an individual case. Id. Thus, while this office has provided to you the relevant law in this area, we must defer to the ultimate judgment of the law enforcement or prosecutor as to whether or not to prosecute an individual in question in a given case under particular circumstances. Id.

If you have any further questions, please advise.

Very truly yours,



N. Mark Rapoport  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



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