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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

September 15, 2003

The Honorable Hugh K. Leatherman, Sr.
Senatorial District No. 31
111 Gressette Senate Building
Columbia, South Carolina 29202

The Honorable Wallace B. Scarborough
House of Representatives District 115
306-A Blatt Building
Columbia, South Carolina 29211

Dear Senator Leatherman and Representative Scarborough:

You have requested an opinion of this Office regarding the effect of child safety restraint and seatbelt statutes in Articles 47 and 48 of Title 56 of the Code of Laws on the legality of minors who are being transported in the bed of a pickup truck. Senator Leatherman has specifically inquired as to the legality of children under the age of five riding in the bed of a pickup. Representative Scarborough has specifically inquired whether the Articles 47 and 48 apply to cargo areas of pick-up trucks, or only to passenger cars.

Law/Analysis

The issue of the legality of transporting minors in the bed of a pickup truck in relation to the child restraint and seatbelt statutes was addressed in an opinion of this Office issued on August 23, 2001. In that opinion, we advised that transporting any person under the age of seventeen in the cargo area of a pickup truck would appear to be a direct violation of Section 56-5-6520 of the Code of Laws, as amended July 3, 2001. That statute provides that:

> The driver and every occupant of a motor vehicle, when it is being operated on the public streets and highways of this state, must wear a fastened safety belt which complies with all provisions of the Federal law for its use. The driver is charged with the responsibility of requiring each occupant seventeen years of age or younger to wear a safety belt or to be secured in a child restraint system as provided by Article 47 of this chapter. However, a driver is not responsible for an occupant seventeen years of age or younger who has a driver's license, special restricted license, or

> beginner's permit and who is not wearing a safety belt; such occupant is in violation of this article and must be fined in accordance with Section 56-5-6540.

Because the General Assembly in Section 56-5-6510 clearly and expressly includes "truck" in the definition for a motor vehicle, we advised that it would be illegal to transport a minor in the bed of a pickup truck pursuant to Section 56-5-6520. We also advised that the only conceivable exception to this law in Section 56-5-6530 would be item (7). That item provides that Section 56-5-6520 does not apply to "an occupant for which no safety belt is available because all of the belts are being used by the other occupants." Therefore, we advised that it would appear that unless no seat with a seat belt is available in the cab of the truck, an unrestrained minor passenger in the bed of the truck would be illegal. Op. S.C. Atty. Gen. August 23, 2001.

We further concluded in the August 23, 2001 opinion that transporting a child under the age of six in the back of a pickup truck would also specifically violate the "Child Passenger Restraint System" law in Section 56-5-6410. That section generally requires that all passengers in a motor vehicle under the age of six are to be secured in an appropriate child restraint system, and is specific as to the age or weight of the child in determining the appropriate restraint system. S.C. Code Ann. §56-5-6410 (2002). Accordingly, we advised that unless there is an applicable exception, a driver of a pickup truck allowing children under the age of six to ride in the bed of the truck is specifically in violation of Section 56-5-6410, as well as the general seatbelt requirement.

The August 23, 2001 opinion further recognized that Section 56-5-6540 was also changed by the July 3, 2001 amendments, and that subsection (B)(1) now authorizes a law enforcement officer to stop a driver for a violation of the seatbelt and child restraint statutes as a primary violation if it involves a driver or passenger under the age of seventeen. Section 56-5-6540(D) states that, "A citation issued pursuant to a stop made under subsection (B)(1) may be issued without citing any other violation." Accordingly, this Office advises that law enforcement officers in this State are generally authorized to make a traffic stop and issue a citation to the driver whenever he has probable cause, based on his "clear and unobstructed view," of passengers under the age of seventeen that are riding in the bed of a pickup truck. Pursuant to Section 56-5-6520, if the passenger is a minor who has a valid driver's licence or a beginner's permit, then the passenger will receive the citation instead of the driver of the truck.

With this framework in mind, we now turn to legislation enacted in 2002 that deals specifically with the issue of minors riding in the bed of a pickup truck. Section 8 of Act No. 181 of the 2002 Statutes at Large in relevant part adds Section 56-5-3900 to the Code, "so as to provide the conditions upon which a person under fifteen years of age may be transported in the open bed or open cargo area of a pickup truck or trailer." Subsection 56-5-3900(A) provides the general rule for "[t]ransportation of teenagers in open vehicles":

> (A) It is unlawful to transport a person under fifteen years of age in the open bed or open cargo area of a pickup truck or trailer. An open bed or open cargo area is a bed or cargo area without a permanent overhead restraining construction.

It appears to this Office that the general prohibition on minors under the age of fifteen being transported in the bed of a pickup truck is completely consistent with the seatbelt and child safety restraint statutes. However, subsection (B) of Section 56-5-3900 carves out specific exceptions to this general rule. It says that, "[s]ubsection (A) does not apply when:

> (1) an adult is present in the bed or cargo area of the vehicle and is supervising the child;
> (2) the child is secured or restrained by a seatbelt manufactured in compliance with Federal Motor Vehicle Standard No. 208 . . .and a type approved by the Department of Public Safety;
> (3) an emergency situation exists;
> (4) the vehicle is being operated in an organized hayride or a parade pursuant to a valid permit;
> (5) the vehicle is being operated by hunting or in an agricultural enterprise;
> (6) the vehicle is being operated in a county which has no incorporated area with a population greater than three thousand five hundred; or
> (7) the vehicle has a closed metal tailgate and is being operated less than thirty-six miles per hour.

These exceptions at first glance appear to contradict the requirements of the seatbelt and child safety restraint statutes. In order to harmonize these statutes, we must apply a few basic rules of statutory construction. First and foremost, is the cardinal rule that the primary purpose in interpreting statutes is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statute must receive a practical, reasonable, and fair interpretation consonant with the purpose, design and policy of the lawmakers. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1990). However, our Supreme Court has cautioned against an overly literal interpretation of a statute which may not be consistent with legislative intent. In Greenville Baseball, Inc. v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942), the Court recognized that:

> [i]t is a familiar canon of construction that a thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter. It is an old land well established rule that the words ought to be subservient to the intent and not the intent to the words. Id., at 368-369.

Different statutes in pari materia, even if enacted at different times must be construed together as one system and as explanatory of each other. Fishburne v. Fishburne, 171 S.C. 408, 172 S.E. 426 (1934). Further, it is a general rule of interpretation with any statute that the Legislature is presumed to have intended by its action to accomplish something and not to have done a futile thing. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). See also Op. S.C. Atty. Gen., dated May 31, 2002. Finally, more specific and more recent legislation tends to be more controlling with respect to earlier more general legislation. See Yahnis Coastal, Inc. v. Stroh Brewery, 295 S.C. 243, 368 S.E.2d 64 (1988); Criterion Insurance Co. v. Hoffman, 258 S.C. 282, 188 S.E.2d 459 (1972); and Op. S.C. Atty. Gen., dated November 17, 1993.

Applying the general rules of statutory construction, it is the opinion of this Office that the General Assembly intended to carve out exceptions only for children between the ages of six and fifteen in relation to the legality of transporting minors in the open bed of a pickup truck. First, the actual words of the legislation appear to indicate this intent. The heading for Section 8 of Act No. 181 is "**[T]ransportation of teenagers in open vehicles.**" The General Assembly provided that the purpose of adding this section was "to provide the conditions upon which a person under fifteen years of age may be transported in the open bed or open cargo area of a pickup truck or trailer." Statutes at Large, Act No. 181 (2002). It seems apparent from the use of the word "teenagers" that the General Assembly did not intend to cover all children including infants and small children with the exceptions of Section 56-5-3900(B), but only minors in a certain age group.

This Office is also of the opinion that the "Child Safety Restraint System" law, as it was amended in 2001, is too specific as to its application, as well as too recently enacted, to be trumped by the exceptions in Section 56-5-3900(B). It seems apparent that the General Assembly has decided as an important policy matter to make sure that infants and small children under the age of six are properly restrained in a safety device while traveling in a motor vehicle. This is obvious from the fact that the General Assembly has contemplated the proper safety device necessary for each stage of a child's development up until the age of six. Section 56-5-6410 is very specific as to the age or weight of the child in determining the appropriate restraint system. Moreover, "pickup trucks" are listed as one of the vehicles specifically covered in the Child Safety Restraint System statute. Furthermore, there is no language in the pickup exceptions statute that expressly overrides any of the provisions in Section 56-5-6410. Accordingly, this Office advises that, reading Sections 56-5-6410 and 56-5-3900 in pari materia, children under the age of six are not covered by the pickup truck exceptions and are required to be restrained in the proper safety device whenever being transported in a pickup truck.

However, we cannot conclude that the general requirement for the use of seatbelts in Section 56-5-6520 thwarts the effectiveness of the pickup truck exceptions for children between the ages of six and fifteen. Unlike the child restraint statute, the seatbelt statutes are very general in their application. Section 56-5-6520 generally requires every driver and passenger in a motor vehicle to wear a seatbelt. However, there are a number of exceptions to this general requirement in Section

56-5-6530. It seems apparent to this Office that the provisions of Section 56-5-3900 are simply additional exceptions to the general seatbelt requirement, in that they list specific conditions under which a child under fifteen may legally ride in the bed pickup truck without a seatbelt.

Moreover, if the general seatbelt laws were deemed to be the controlling statute in this analysis, then the specific exceptions provided for in Section 56-5-3900(B) would be meaningless for all practical purposes. There would be no conceivable set of conditions in which a person under fifteen years of age could ride in the bed of a pickup truck without violating Section 56-5-6520. We must presume that the General Assembly must have intended by its action to accomplish something and not to have done a futile thing. State ex rel. McLeod v. Montgomery. This Office must therefore conclude that the General Assembly intended for Section 56-5-3900(B) to provide specific exceptions to the general seatbelt requirement in Section 56-5-6520, as well as the general prohibition against minors riding in the bed of a pickup truck in Section 56-5-3900(A). Accordingly, we advise that Section 56-5-3900, which specifically provides the conditions under which a minor may be transported in the bed of an open bed or open cargo area of a pickup truck or trailer, applies only to minors between the ages of six and fifteen.

Conclusion

Based on the foregoing authorities, this Office advises that South Carolina Code Section 56-5-3900, which specifically provides the conditions under which a minor may be transported in the bed of an open bed or open cargo area of a pickup truck or trailer, applies only to minors between the ages of six and fifteen. If a child in this age range is being transported in the bed of a pickup truck and is not covered by any of the exceptions in Subsection 56-5-3900(B), then the driver of the vehicle is in violation of Sections 56-5-3900 and 56-5-6520. This Office further advises that the driver of a pickup truck is in violation of South Carolina Code Section 56-5-6410 if he is transporting children under the age of six that are not restrained in the proper safety device in the passenger compartment of the truck. Law enforcement officers in the state of South Carolina are authorized by South Carolina Code Subsection 56-5-6540(D) to stop a driver and issue a citation if they have probable cause based on their clear and unobstructed view of a violation of the above statutes.

Very truly yours,

Charles H. Richardson
Senior Assistant Attorney General