



ALAN WILSON
ATTORNEY GENERAL

August 14, 2013

Chief Christopher Garner
Pelion Police Department
1010 Main Street
Pelion, South Carolina 29123

Dear Chief Garner:

By your communication dated June 24, 2013, you have asked for the opinion of this Office regarding the interpretation of Section 5-7-110 of the South Carolina Code, which deals with, among other things, the authority of a municipal police force to contract with private businesses to provide police protection beyond a municipality's corporate limits. Specifically, you have asked whether:

[O]ur agency may in fact, contract with a private business; IE, Rawls Farms and Jackson Farms, and others which are privately owned business near the municipal limits of the Town of Pelion. Currently these businesses are beyond the corporate limits of the town; however some of the property from each business falls within [three] miles from the town and some may not.

Continuing, you ask whether "a farm which produces goods to be sold commercially" would qualify as a private business under the statute, and inquire if "all contracts for municipal police protection" must be restricted to properties within three miles of a municipality's corporate limits. Our response follows.

Law/Analysis

Question One

With respect to your first question, whether Section 5-7-110 of the Code¹ permits a municipality's police force to contract with a private business outside of that municipality's

¹ Section 5-7-110 provides:

Any municipality may appoint or elect as many police officers, regular or special, as may be necessary for the proper law enforcement in such municipality and fix their salaries and prescribe their duties.

corporate limits for the purpose of providing police protection, the answer is yes, Section 5-7-110 permits such a practice so long as the municipality files the “legal description of the area to be served” with the proper authorities as detailed in the statute.

Chapter Five, Title Seven of the South Carolina Code generally governs the structure, organization, powers, functions and responsibilities of municipalities. S.C. Code Ann. § 5-7-10 (West 2004). Specifically, Section 5-7-110 of the Code deals with municipal police officers as well as contracting to provide police protection beyond a municipality’s corporate limits stating, in relevant part, that a “municipality may contract with . . . any private business to provide police protection beyond the corporate limits.” Continuing, the statute explains that in the event a municipality provides police protection beyond its’ corporate limits by contract, “the legal description of the area to be served shall be filed with the State Law Enforcement Division, the office of the county sheriff and the Department of Public Safety.” Id.

Understanding this, Section 5-7-110, by its’ terms, clearly permits a municipality’s police force to contract with a private business to provide police protection beyond the municipality’s corporate limits, so long as the municipality files “the legal description of the area to be served” with the State Law Enforcement Division, the office of the county sheriff and the Department of Public Safety. Thus, this Office can confirm that your agency has the authority under Section 5-7-110 of the Code to contract with a private business outside of the town’s corporate limits in order to provide police protection.

Question Two

In your next question, you ask whether “a farm which produces goods to be sold commercially” would qualify as a private business under Section 5-7-110 of the Code. Since neither this Office nor South Carolina’s Courts have previously opined as to what constitutes a “private business” for purposes of Section 5-7-110, we must interpret, within the meaning of the statute, the phrase “private business.”

Police officers shall be vested with all the powers and duties conferred by law upon constables, in addition to the special duties imposed upon them by the municipality.

Any such police officers shall exercise their powers on all private and public property within the corporate limits of the municipality and on all property owned or controlled by the municipality wheresoever situated; provided, that *the municipality may contract with any public utility, agency or with any private business to provide police protection beyond the corporate limits.* Should the municipality provide police protection beyond its corporate limits by contract, the legal description of the area to be served shall be filed with the State Law Enforcement Division, the office of the county sheriff and the Department of Public Safety.

“The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); Mid-State Auto Auction of Lexington, Inc. v. Airman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will” and “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, 148, 694 S.E.2d 525, 530 (2010); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002). When determining the effect of words utilized in a statute, a court looks to the “plain meaning” of the words. City of Rock Hill v. Harris, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011).

The relevant portion of the statute states, “police officers shall exercise their powers on *all private and public property within the corporate limits of the municipality and on all property owned or controlled by the municipality wheresoever situated*; provided, that the municipality may contract with *any public utility, agency or with any private business* to provide police protection *beyond the corporate limits*.” S.C. Code Ann. § 5-7-110 (emphasis added). Thus as a starting point, the intent of the legislature is clear, Section 5-7-110 generally describes *where* a municipality may exercise its’ police power and, in the case of property which is not owned by the municipality and is located outside of the municipality’s corporate limits, *who* may contract for police protection. It is within this context—determining *who* may contract for police protection in the case of property which is not owned by the municipality and is located outside of the municipality’s corporate limits, that we must determine the plain meaning of the phrase, “private business.”

Black’s Law Dictionary defines “private” as “[r]elating or belonging to an individual, as opposed to the public or the government.” Black’s Law Dictionary (9th ed. 2009). Likewise, Merriam-Webster’s Dictionary defines “private” as “belonging to or concerning an individual person, company, or interest.” Merriam-Webster Online Dictionary ([available at www.merriam-webster.com/dictionary/private](http://www.merriam-webster.com/dictionary/private)). Additionally, Black’s Law Dictionary defines “business” as “a commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain.” Black’s Law Dictionary (9th ed. 2009). Similarly, Merriam-Webster defines “business” as a “commercial or mercantile activity engaged in as a means of livelihood.” Merriam-Webster Online Dictionary ([available at www.merriam-webster.com/dictionary/business](http://www.merriam-webster.com/dictionary/business)). Thus, in the context of the statute the plain meaning of the phrase “private business” means an entity, which is not owned by the public or the government, where one engages in a commercial enterprise. Accordingly, it is the opinion of this Office that for purposes of Section 5-7-110, “a farm which produces goods to be sold commercially” would qualify as a “private business.”

Question Three

In your third question, you ask whether “all contracts for municipal police protection, pertaining to this section” must be restricted to businesses within three miles of a municipality’s corporate limits. While we decline to address whether “all contracts for municipal police protection” under Section 5-7-110’s private business provision are limited to businesses within three miles of a municipality’s corporate limits, we believe that based upon the facts presented here, where “some of the property from each business falls within [three] miles” from the town of Pelion’s corporate limits, the town of Pelion would have *authority to contract* with these businesses for police protection pursuant to the terms of Section 5-7-110. Additionally, as Section 5-7-30 can operate to extend the Pelion Police Department’s *jurisdiction* to areas within three miles of Pelion and “some of the property from each business falls within [three] miles” from Pelion’s corporate limits, we believe Section 5-7-110, which has been held to provide for police *jurisdiction* outside of a municipality’s corporate limits, would allow the Pelion Police Department to uniformly enforce contracts entered into under Section 5-7-110’s private business provision. Understanding this, it is our opinion that the town of Pelion has the *authority* to contract with the private businesses mentioned in your letter for the purpose of providing police protection, and the Pelion Police Department, so long as it files a description of the area to be served with the appropriate authorities, has *jurisdiction* to uniformly enforce contracts with such private businesses on all portions of their property regardless of whether they are within three miles of Pelion’s corporate limits.

A. Authority to Contract

The relevant portion of Section 5-7-110 states, that:

[T]he municipality may contract with. . . any private business to provide police protection beyond the [municipality’s] corporate limits. Should the municipality provide police protection beyond its corporate limits by contract, the legal description of the area to be served shall be filed with the State Law Enforcement Division, the office of the county sheriff and the Department of Public Safety.

S.C. Code Ann. § 5-7-110 (emphasis added).

Here, with the exception of the language requiring that the legal description of the area to be served must be filed with the appropriate authorities, Section 5-7-110, on its’ face, does not contain any express language limiting a municipality’s *authority to contract* with private businesses for purposes of providing police protection. As a result, it appears the town of Pelion has *authority to contract* with the private businesses mentioned in your letter for purposes of providing police protection pursuant to the terms of Section 5-7-110, especially where, as stated in your letter, a portion of each of the private businesses falls within three miles of Pelion’s

corporate limits. Thus, the only remaining question is whether the Pelion Police Department has *jurisdiction* to enforce potential contracts entered into under Section 5-7-110's private business provision, where portions of each business are not within three miles of Pelion's corporate limits.

B. Jurisdiction to Enforce the Contract

In State v. Harris, 299 S.C. 157, 382 S.E.2d 925 (1989) our Supreme Court explained, “[t]he jurisdiction of a municipal police officer, *absent statutory authority*, generally does not extend beyond the territorial limits of the municipality.” 299 S.C. at 159, 382 S.E.2d at 926 (emphasis added). However, there are a variety of statutes which allow for expanded jurisdiction of law enforcement officers outside of their regular jurisdictions.² Indeed, Section 5-7-30 of the Code allows for the expansion of a municipal police force's jurisdiction to areas within three miles of a municipality's corporate limits, so long as an agreement exists between the appropriate governing bodies and such an agreement includes the boundaries of the expanded jurisdictional area. S.C. Code Ann. § 5-7-30 (West 2012). In particular, the statute states in relevant part that a municipality has:

[T]he authority to provide police protection in contiguous municipalities and in unincorporated areas located not more than three miles from the municipal limits upon the request and agreement of the governing body of such contiguous municipality or the county, including agreement as to the boundaries of such police jurisdictional areas, in which case the municipal law enforcement officers shall have the full jurisdiction, authority, rights, privileges, and immunities. . . which they have in the municipality, including the authority to make arrests, and to execute criminal process within the extended jurisdictional area; provided, however, that this shall not extend the effect of the laws of the municipality beyond its corporate boundaries[.]

S.C. Code Ann. § 5-7-30 (West Supp. 2012) (emphasis added). Additionally, the Harris Court, in a footnote, identified Section 5-7-110 of the Code as a statute extending a municipal police officer's jurisdiction. 299 S.C. at 159 n.1, 382 S.E.2d at 926 n.1.

Thus, assuming the town of Pelion has entered into an agreement to provide police protection to the “contiguous municipalities” and “unincorporated areas” within “three miles from the municipal limits” and such an agreement includes the boundaries of the expanded “police jurisdictional areas,” as detailed in Section 5-7-30, the Pelion Police Department would

² See e.g. S.C. Code Ann. § 23-1-210 (West 2007) (temporary transfer of law enforcement officer to work in another municipality or county); S.C. Code Ann. § 23-1-215 (West 2007) (agreements authorized between multiple law enforcement agencies for purpose of criminal investigation); S.C. Code Ann. § 5-7-120 (West 2004) (municipalities authorized to send law enforcement officer to other political subdivisions upon request in emergency situations); S.C. Code Ann. § 17-13-45 (West 2003) (references the response of a law enforcement officer to a distress call or request for assistance in an adjacent jurisdiction).

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have jurisdiction to enforce the law within three miles of its corporate limits. Additionally, since the Harris Court determined Section 5-7-110 operates to expand jurisdiction, the Pelion Police Department would have jurisdiction to enforce the contracts entered into under 5-7-110's private business provision, regardless of location, so long as the town files a description of the area to be served with the appropriate county and state law enforcement agencies.

Conclusion

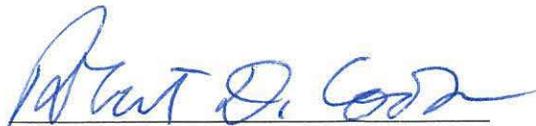
In conclusion, it is this Office's opinion that Section 5-7-110, by its terms, permits a municipal police force to contract with a private business outside of that municipality's corporate limits for the purpose of providing police protection so long as a description of the area to be served is filed with the appropriate county and state law enforcement agencies. Additionally, it seems "a farm which produces goods to be sold commercially" would qualify as a private business under the plain meaning of Section 5-7-110. Finally, assuming the appropriate agreements are in place for expanded jurisdiction under Section 5-7-30, it appears that based on the facts in your letter, the town of Pelion has both the authority to contract and jurisdiction to enforce contracts entered into under Section 5-7-110's private business provision, regardless of whether the private business is located within three miles of the municipality's corporate limits, so long as a description of the area to be served is filed with the appropriate county and state law enforcement agencies.

Sincerely,



Brendan McDonald
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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