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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

August 1, 2000

John W. Tate, General Counsel
Lexington County Sheriff's Department
P.O. Box 639
Lexington, South Carolina 29071

Re: Informal Opinion

Dear Mr. Tate,

Thank you for your letter of March 10, 2000, requesting an opinion of this Office. You ask about the proper procedure when ejecting a tenant pursuant to the Manufactured Home Park Tenancy Act.

By way of background you provide the following information:

The Lexington County Sheriff's Department serves civil process for the Magistrates Courts in Lexington County. Confusion has arisen over the service of process and subsequent actions when proceeding under the Manufactured Home Park Tenancy Act.... Most of these inquiries center around situations in which the mobile home park owns the lot, the tenant owns the trailer (which may or may not be financed), and the tenant fails to pay lot rent. ... Specifically, at what, if any, point may the personal property of the tenant, and more important, the tenant, be "set out" and/or physically ejected by deputies ...?

The Manufactured Home Park Tenancy Act ("MHPTA"), codified at S.C. Code Ann. § 27-47-10 et seq., regulates the renting or leasing of residential lots in manufactured home parks with five or more lots. When not inconsistent with the Act, the provisions of the Residential Landlord and Tenant Act, codified at S.C. Code Ann. § 27-40-10 et seq., also apply to the tenancies. See South Carolina Code Ann. § 27-47-110. The MHPTA provides for eviction, notice, and sale of the manufactured home, if left on the lot following the eviction. S.C. Code Ann. § 27-47-530 reads:

- (A) An owner may evict a resident for one or more of the following reasons:
- (1) failure to comply with local, state, or federal laws governing manufactured homes after he receives written notice of noncompliance and has had a reasonable opportunity to remedy the violation;

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- (2) engaging in repeated conduct that interferes with the quiet enjoyment of the park by other residents;
- (3) noncompliance with a provision of the rental agreement or park regulations and failure to remedy the violation within fourteen days after written notice by the owner. If the remedy requires longer than fourteen days, the owner may allow the resident in good faith to extend the time to a specified date;
- (4) not paying rent within five days of its due date;
- (5) noncompliance with a law or a provision in the rental agreement or park regulations affecting the health, safety, or welfare of other residents in the park or affecting the physical condition of the park;
- (6) wilfully and knowingly making a false or misleading statement in the rental agreement or application;
- (7) taking of the park or the part of it affecting the resident's lot by eminent domain;
- (8) other reason sufficient under common law.

(B) Notwithstanding Section 27-37-100, a writ of ejectment may not issue until ten days after a verdict for the plaintiff except for eviction pursuant to subsection (A)(5).

(C) If a manufactured home remains on the lot twenty days after the resident has been evicted, the procedure in Section 29-15-10 may be commenced in order to sell the home in a commercially reasonable sale at public auction. The manufactured home owner or resident is not prohibited from moving the home before the day of the sale; however, he must pay any filing fee or advertising costs incurred for initiating the procedure in Section 29-15-10.

The timing of the ejectment is, for the most part, delineated in the statute. Suppose that on Day 1, the tenant fails to pay rent. Under (A)(3) above, the landlord must wait five days to have grounds for eviction. After the five days (Day 6), the landlord may pursue a judgment against the tenant for eviction. If the landlord wins, he must wait ten more days after the judgment for the writ of eviction. After Day 16, the landlord may receive a writ of ejectment against the tenant and the sheriff may execute the writ in accordance with S.C. Code Ann. § 27-37-160, which provides a twenty four hour notice to vacate after the posting of the writ before the sheriff may forcefully enter and remove the tenant (Day 17).

You ask if on Day 17, the sheriff may forcefully enter a tenant owned mobile home and eject him, along with his personal items, or if the landlord must wait for twenty more days to commence a sale at public auction of the stored property under part (C) above.

First and foremost, in interpreting a statute, the primary purpose is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). An enactment should be given a reasonable and practical construction, consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). Words used therein

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should be given their plain and ordinary meaning. First South Sav. Bank v. Gold Coast Associates, 301 S.C. 158, 390 S.E.2d 486 (Ct. App. 1990).

Furthermore, a court will reject the meaning of the words of a statute which will lead to absurd consequences. Robson v. Cantwell, 143 S.C. 104, 141 S.E. 180 (1928). While the plain meaning and literal language rule normally is applicable, the real purpose and intent of the lawmakers will prevail over the literal import of the words. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). The context of the statute must be examined as part of the process of determining the intent of the General Assembly. Hancock v. Southern Cotton Oil Co., 211 S.C. 432, 45 S.E.2d 850 (1948). The Court must presume that the Legislature intended by its action to accomplish something and not do a futile thing. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964).

The statute allows for a reasonable series of steps procedurally to afford the tenant several opportunities to vacate voluntarily: five days from nonpayment of the rent, ten days before the writ of ejectment is issued, and then twenty-four hours notice before he is physically set out of the mobile home. The plain meaning of S.C. Code Ann. § 27-47-530(C), which says "twenty days after the resident has been evicted," suggests the tenant has been physically evicted before the commencement of the sale. The twenty days enumerated in part (C) appears only to provide the tenant or the landlord the opportunity to arrange for the removal of the mobile home. During those twenty days, the landlord may not prohibit the tenant from moving the home, but the tenant is not entitled to live in the home beyond his ejectment from the lot.

As for the personal property of the tenant, because the tenant, not the landlord, owns the mobile home, the landlord is not entitled to remove the tenant's property from inside the home. The landlord may arrange for the removal of the entire home from the property, as the home deprives the landlord of compensated use of the lot, and the landlord may remove the tenant, unlawfully trespassing on the property after his ejectment. The statute does not contemplate, however, that the landlord enter the mobile home before the twenty day period and remove the tenant's personal property but allow the home to remain. It would lead to an absurd result if the landlord could set out the tenant's property because the landlord is no more damaged by the tenant's personal property inside the home than the presence of the home itself.

Thus, in response to your inquires, it is the opinion of this Office that the sheriff may serve notice of and execute the writ of ejectment in the customary manner, see S.C. Code Ann. § 27-37-160, using the least destructive means possible to enter the home and remove the tenant, but not the tenant's remaining personal property. The landlord may arrange to remove the home entirely from the lot following the tenants's ejectment. Similarly, the tenant may remove the home on his own accord in the following twenty days. After that twentieth day, the landlord is entitled to begin procedures for selling the home at public auction to recover his lien for storage pursuant to S.C. Code Ann. § 29-15-10.

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This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General not officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. D. Cook', written in a cursive style.

Robert D. Cook
Assistant Deputy Attorney General