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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

September 27, 2000

Jeffrey B. Moore, Executive Director
South Carolina Sheriffs' Association
P. o. Box 21428
Columbia, South Carolina 29221-1428

Re: Your letter of July 10, 2000

Dear Mr. Moore:

In your letter, you present the following questions with reference to the sale of forfeited (DUI, DUS and drug confiscated) vehicles:

Can a sheriff or chief of police contract with an auction house to sell the forfeited vehicles, and would such a contract causing the sale of the vehicles satisfy the statutory requirement that the sheriff or chief of police are to auction said vehicles?

As for those vehicles confiscated and forfeited as the result of a conviction for DUI or DUS, S.C. Code § 56-5-6240 sets forth the procedures to be followed for disposition. When a vehicle has a fair market value of \$500 or more, "the sheriff or chief of police (in the jurisdiction of confiscation) shall sell the vehicle at public auction". The statute does not, as you have noted, provide any further guidance as to how the Sheriff's Office or Chief of Police is to satisfy their requirement to sell the vehicle at public auction.

Similarly, for property seized by a local law enforcement agency pursuant to a controlled substance violation which is ordered to be sold by the court, § 44-53-530(c) provides that "the judge shall order [the property] sold at public auction by the seizing agency as provided by law." Again, no specific direction as to how the "seizing agency" is to satisfy their requirement to sell the property at public auction.

When interpreting the meaning of a statute, a few basic principles must be observed. The primary goal is to ascertain the intent the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The statute's words must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or to expand the statutes

Robert C. Dennis

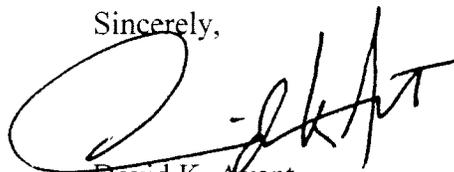
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As indicated above, I have researched some laws and opinions from neighboring states. Two states, Louisiana and Mississippi, provide authority which could lead to divergent conclusions in interpreting our statutes in question. The Legislature in Louisiana in dealing with the sale at auction of surplus government property, has made a specific statutory provision allowing for the unit of government to employ a qualified licensed auctioneer to handle the sale. The implication to be drawn is that, without the specific provision, the use of independent auctioneers would not be proper. Mississippi, on-the-other-hand, has a statutory provision relating to the sell of surplus property by junior and community colleges. The statute allows for the sale of such property by the board of trustees at public auction, but is silent as to who is to conduct the auction. The Mississippi Attorney General's Office has opined that, even though silent on the issue, the statute would allow for the board of trustees to hire an auction firm or auctioneer to conduct the actual sale. The Mississippi statute, however, does not contain language such as "must" or "shall" which would indicate some mandatory requirement on the part of the board of trustees referenced in the statute. (I have attached copies of the referenced Louisiana statute [LSA 49:125] and Mississippi Attorney General's Opinion for your perusal).

In conclusion, the ultimate answer to your query is unclear. However, given the language of the statutes in question, the provisions of the regulations related to such auctions by public authority and auctions pursuant to judicial order, and the general tenets of statutory interpretation, I would lean towards an interpretation that would not allow for the use of auction houses to sell forfeited vehicles. This is particularly true with reference to the sale of vehicles confiscated and forfeited pursuant to section 56-5-6240. If your association feels that a legitimate governmental purpose could be served by and local procurement laws would allow for the hiring of auction houses to preform the required sales, perhaps an effort at having appropriate legislation drafted and introduced would be the best course of action. If you have any questions, or I can be of any further assistance, please do not hesitate to contact me.

This letter is an informal opinion only. It has been written by a designated Assistant 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 and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant
Assistant Attorney General

DKA/an
Enclosures