



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

February 26, 2001

The Honorable Joe Wilson  
Senator, District No. 23  
P.O. Box 142  
Columbia, South Carolina 29202

**RE: Informal Opinion**

Dear Senator Wilson:

By your letter of February 2, 2001, you have requested an opinion of this Office concerning a recent increase in rates for copies of a drivers' records. Specifically, you ask: "I would appreciate your Office issuing an Attorney General's Opinion on whether it is within the Department of Motor Vehicle's authority to raise rates for motor vehicle records from \$2 to \$10."

At the outset, we are informed by the Department of Public Safety's General Counsel that the rate for a copy of a driver's record will only increase from \$2.00 to \$6.00. We are also informed that the Department of Public Safety estimates its actual cost to provide a copy of the record at approximately \$20.00 per record.

"The Department of Motor Vehicles" to which you refer is now a branch of the Department of Public Safety known as the Division of Motor Vehicles. Act No. 181, 1993 Acts and Joint Resolutions restructured State government and established the Department of Public Safety, comprised of the Division of Motor Vehicles, the South Carolina Highway Patrol Division, the South Carolina State Police Division, and the Division of Training and Continuing Education. All divisions of the Department of Public Safety are governed by the provisions of Chapter 6 of Title 25 of the South Carolina Code of Laws. The Department of Public Safety, as an administrative agency of the State, is charged with the following duties and powers:

- (1) carry out highway and other related safety programs;
- (2) license suspensions and revocations, including related administrative hearings;
- (3) title and register motor vehicles; license motor vehicle operator's; administer the collection of license, registration, titling and other fees; *maintain an automated system for the storage and retrieval of all motor vehicle and motor vehicle operator records, including*

- vehicle and registration and operator licensing, violations and accidents;*
- (4) engage in driver training and safety activities;
  - (5) enforce the traffic, motor vehicle, commercial vehicle and related laws;
  - (6) enforce size, weight and safety enforcement statutes relating to commercial motor vehicles;
  - (7) operate a comprehensive law enforcement personnel training program;
  - (8) promulgate such rules and regulations in accordance with the Administrative Procedures Act and Article 7 of this chapter for the administration and enforcement of the powers delegated to the department by law, which shall have the full force and effect of law;
  - (9) operate such programs and disseminate information and material so as to continually improve highway safety;
  - (10) receive and disburse funds and grants, including any donations, contributions, funds, grants, or gifts from private individuals, foundations, agencies, corporations, or the state or federal governments for the purpose of carrying out the programs and objectives of this chapter; and
  - (11) do all other functions and responsibilities as required or provided for by law.

S.C. CODE ANN. § 23-6-30 (emphasis added).

The Department of Public Safety is given broad authority in the provisions above to carry out the duties delegated to it by the General Assembly. The statute gives no express authority to the Department of Public Safety to further delegate its duties to one of its divisions. However, in the absence of implied or express restricting limitations of public policy or express prohibition of law, a governmental body possesses not only such powers as are conferred upon it by the laws under which it operates but also possesses such powers which must be inferred or implied so as to enable the entity to exercise its express powers effectively. See Beard-Laney, Inc., et al. v. Darby, et al., 213 S.C. 380, 49 S.E.2d 564 (1948). See also OP. ATTY. GEN. Nov. 9, 1977. Thus, the Division of Motor Vehicles, operating under the aegis of the Department of Public Safety, can exercise the authority of the Department of Public Safety conferred by Chapter 6 of Title 25.

The statutes specifically authorize the Department of Public Safety to charge a fee for a copy of the records it maintains:

The department may charge and collect fees in accordance with Section 30-4-30 of the Freedom of Information Act for providing copies of registration, title, and driver's license information records maintained by the department.

S.C. CODE ANN. § 23-6-35. This provision was enacted by Act No. 458, 1996 Acts and Joint Resolutions. Also in 1996, S. C. Code Ann. § 56-9-330 was amended to require that "the department, upon request, and the payment of a fee shall furnish any person a certified abstract of the operating record of any person ..." See Act No. 459, §216 1996 Acts and Joint Resolutions. Prior to the

amendment the provision read "payment of a fee of two dollars." The removal of the specific dollar amount from the statute and the authorization in Section 23-6-30 for the Department of Public Safety to charge a fee for the records indicates that the General Assembly anticipated increased costs, but viewed the Department as being better able to assess its costs to provide the copies. However, the Legislature placed a limitation upon the Department's fees by requiring that they conform to the provisions of South Carolina's Freedom of Information Act.

The Freedom of Information Act is codified at S.C. Code Ann. § 30-4-10 *et seq.* Section 30-4-30, the particular provision referenced in Section 23-6-35 reads, in part:

*The public body may establish and collect fees not to exceed the actual cost of searching for or making copies of records. Fees charged by a public body must be uniform for copies of the same record or document. However, members of the General Assembly may receive copies of records or documents at no charge from public bodies when their request relates to their legislative duties. The records must be furnished at the lowest possible cost to the person requesting the records.* Records must be provided in a form that is both convenient and practical for use by the person requesting copies of the records concerned, if it is equally convenient for the public body to provide the records in this form. Documents may be furnished when appropriate without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Fees may not be charged for examination and review to determine if the documents are subject to disclosure. Nothing in this chapter prevents the custodian of the public records from charging a reasonable hourly rate for making records available to the public nor requiring a reasonable deposit of these costs before searching for or making copies of the records.

(Emphasis added).

As the emphasized portions above indicate, the fee charged by Department of Public Safety for copies of records must not exceed the actual cost of searching for and making copies and also must be furnished at the lowest possible cost. The Department of Public Safety advises us that the actual cost to provide a copy of a driver's record is \$20.00 per record. Therefore, the Department would argue that the increase in rates from \$2.00 to \$6.00 is well within the Department's authority because the increased rate is still significantly less than the actual cost involved.

Prior opinions of this Office have consistently advocated practices that encourage the fullest possible access to public records. See OPS. ATTY. GEN. Jan. 24, 1990; Apr. 11, 1988. In accordance with this principle, we would question whether the increase, though less than the actual cost, is also the "lowest possible cost" required by Section 30-4-30. An increase that triples the previous rate concerns us, but many questions of fact must be resolved before any definitive conclusion could be reached. This Office is not authorized to make factual determinations in a legal opinion. See OP.

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ATTY. GEN. Feb. 17, 1999. As we have stated previously:

[b]ecause this Office does not have the authority of a court or other fact-finding body, we are not able, in a legal opinion, to adjudicate or investigate factual questions. Unlike a fact-finding body such as a legislative committee, an administrative agency or a court, we do not possess the necessary fact-finding authority and resources required to adequately determine ... factual questions ....

Id. Thus, a court, as the ultimate finder of fact, must determine whether the increased rate is both equal to or less than the actual cost and is, in fact, the lowest cost possible to provide copies of records. Although we have addressed some potential limitations on the authority of the Division of Motor Vehicles, as an arm of the Department of Public Safety, to increase the rate, only a court could find that the Division exceeded its authority.

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 nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole  
Assistant Attorney General