

6516 Liberty



The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES M. CONDON  
ATTORNEY GENERAL

June 18, 1998

Lieutenant Thomas A. Honan  
Office of Professional Standards  
Charleston County Sheriff's Office  
3505 Pinehaven Drive  
Charleston Heights, South Carolina 29405

**Re: Informal Opinion**

Dear Lieutenant Honan:

You are seeking an opinion and clarification of the provisions of S.C. Code Ann. Sec. 56-5-765. You wish to know whether the term "employee" as employed in Subsection (C) applies to sworn law enforcement personnel only, or whether such term is applicable to all employees of the agency, regardless of the job duties or certification. In addition, you inquire whether or not the opinion on "motor pool vehicles not used for policing purposes" (1994 Op. Atty. Gen. No. 94-64, p. 139) would also apply to local law enforcement agencies, within Subsection (A) of § 56-5-765.

**Law / Analysis**

Section 56-5-765 provides as follows:

(A) When a motor vehicle or motorcycle of a law enforcement agency, except a motor vehicle or motorcycle operated by the South Carolina Department of Public Safety, is involved in a traffic collision that results in any injury or death, or involves a privately-owned motor vehicle or motorcycle, regardless of whether another motor vehicle or motorcycle is involved, the State Highway Patrol shall investigate the collision and file a report with findings on

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whether the agency motor vehicle or motorcycle was operated properly within the guidelines or appropriate statutes and regulations.

(B) When a motor vehicle or motorcycle of the Department of Public Safety is involved in a traffic collision that results in an injury or death, or involves a privately-owned motor vehicle or motorcycle, regardless of whether another motor vehicle or motorcycle is involved, the sheriff of the county in which the collision occurred shall investigate the collision, regardless of whether the collision occurred within an incorporated jurisdiction, and file a report with findings on whether the department's motor vehicle or motorcycle was operated properly within the guidelines of appropriate statutes and regulations.

(C) A law enforcement department or agency may not investigate collisions in which a vehicle or an employee of that department or agency is involved that results in an injury or a death, or involves a privately-owned motor vehicle or motorcycle, regardless of whether another motor vehicle or motorcycle is involved.

The cardinal principle of statutory construction is to effectuate legislative intent. Merchants Mut. Ins. Co. v. South Carolina Second Injury Fund, 277 S.C. 604, 291 S.E.2d 667 (1992). The language of a statute must be construed in light of the intended purpose. Moreover, a remedial statute, such as § 56-5-765, must be broadly construed in order to effectuate its purpose. South Carolina Dept. of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978).

In an Informal Opinion, dated July 10, 1996, we addressed the purpose and impact of § 56-5-765. There, we spoke to the issue of whether the Charleston Police Department could "work an employee's accident when they are not operating their own private vehicle but one that belongs to another person when there is no reported injury or death." We concluded therein that "[t]he obvious purpose of § 56-5-765 is to avoid conflicts of interest and to insure accountability." See, Op. Atty. Gen., July 19, 1995 (Informal Op.). We found that Op. Atty. Gen., Op. No. 94-64 (October 26, 1994) did not construe § 56-5-765(C) as being limited to the situation where an employee of a law enforcement agency was driving his own vehicle. In this regard, we stated the following:

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[n]otwithstanding the fact that this Opinion [No. 94-64] only addressed the situation where an employee of a law enforcement vehicle was driving his own vehicle, the Opinion is by no means limited to such situation. The Opinion specifically recognizes that "there is no qualification or limitation placed upon the word 'vehicle' in Subsection (C), or upon 'employee.'" In amending the statute by 1995 Act No. 138, the General Assembly gave no indication whatever that an employee of a law enforcement agency driving another's vehicle and involved in a collision would not be covered by Section 56-5-765(C). The same conflict of interest would be involved with a law enforcement agency's investigation of its employee's collision regardless of whether that employee was driving his own vehicle or that of another. Accordingly, I would advise that, in view of Section 56-5-765's broad remedial purpose, the situation which you reference would be covered by Section 56-5-765(C).

As stated in these previous opinions, there is no qualification or limitation placed upon the word "employee" in the statute. Typically, an "employee" is distinguished from an "officer" in many contexts. See e.g., State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980); Op. Atty. Gen., September 28, 1992; 63A Am.Jur.2d, Public Officers and Employees, §§ 1. In an Opinion of September 28, 1992, however, we recognized that public office is "'in a sense an employment, and is very often referred to as such.'" We observed (quoting 63A Am.Jur.2d Public Officers and Employers, § 12) that

"[a]lthough every public office may be an employment, every public office is not an office ..." ... Public employment may be described as "a position in the public service which lacks sufficient ... characteristics to make it an office."

In other words, while every governmental employment does not constitute an office, all offices constitute public "employment." The term "employee" may thus be used generically to encompass both officers and employees not simply "employees" in a technical sense as contrasted with "officers." Such usage in this manner by the Legislature is not at all unusual. See, e.g. § 8-23-60 ("employee" defined for purposes of Deferred Compensation program as "any person whether appointed or elected providing services for the State or any political subdivision thereof for which compensation is paid on a regular basis.")).

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An out-of-state decision, Teamsters Food Processing Employees, et al. v. City of Moses Lake, 70 Wash. App. 404, 853 P.2d 951 (1993) is instructive in this regard. There, the issue addressed by the Court was whether the local civil service ordinance applied to non-commissioned positions in the police department or only to commissioned police officers. The local union contended that the pertinent state statute required that a local Ordinance must cover all employees, including non-commissioned positions. On the other hand, the Town argued that the statute was substantially complied with because it covered all employees who were performing traditional "police" functions.

The Court embraced the broader construction. Based upon the purpose of the statute, "to establish an orderly system of personnel administration based upon merit principles of appointment, promotion and discipline," the Court concluded that the Town, "by segregating commissioned and noncommissioned personnel, did not substantially accomplish the purpose of" the statute. 853 P.2d at 952.

Likewise, it is my opinion that § 56-5-765 should be construed as encompassing all police department employees. In order to effectuate the statute's purpose of eliminating conflicts of interest, the statute should be viewed as all-encompassing. It would make little sense to read § 56-5-765 in such a cramped manner as limited only to police officers rather than all personnel in the police department.

Your second question is whether the interpretation of § 56-5-765 in Op. Atty. Gen., Op. No. 94-64, which concluded that police motor pool vehicles not used for policing purposes, were "motor vehicles" within the meaning of the statute was also applicable to local "motor pool" vehicles. In that Opinion, we concluded:

Subsection (B) [of § 56-5-765] addresses situations where motor vehicles or motorcycles of the Department of Public Safety are involved in traffic collisions, and directs that the sheriff of the county in which the collision occurred investigate, and not the State Highway Patrol. Giving the statute what appears to be its plain meaning and noting that it does not set any qualifications on motor vehicle or motorcycles of the Department of Public Safety, I believe the logical intent is that any motor pool vehicles not used for policing purposes or emergency vehicles would be covered; any traffic collision involving such vehicles would have to be investigated by the sheriff of the county where the collision occurred.

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The same reasoning would apply to local law enforcement as well. I see no basis for imposing any limitation upon the term "motor vehicle." Thus, in my judgment, § 56-5-765(C) of the statute would include local motor pool vehicles not used for policing or emergencies. Again, the purpose behind the statute is to guard against conflicts of interest; the construction which best effectuates that purpose is a broad one which does not limit the statute's reach either to certain police vehicles or only police officers in the truest sense of the word.

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 questions 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 am

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General

RDC/an