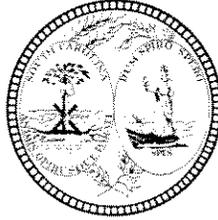


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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

September 25, 1996

The Honorable Williford L. Faile
Sheriff, Lancaster County
Post Office Box 908
Lancaster, South Carolina 29721

Re: Informal Opinion

Dear Sheriff Faile:

You reference in your recent letter the statute prohibiting Domestic Abuse, S.C. Code Ann. Sec. 20-4-100. Particularly, you cite Section 20-4-100 which deals with the duties of a law enforcement officer in domestic abuse cases. You state that

[i]n an attempt to properly interpret this particular section of our laws, I noticed that the first paragraph states protective measures that the officer **MUST** take but under subsection "B", it appears that the Officer has some discretion in whether or not to accompany an abused person to his or her place of residence to allow for the removal of clothing, medication or other personal items.

I would appreciate any expeditious assistance you may be able to offer in order to rectify this confusion.

LAW / ANALYSIS

Section 20-4-10 et seq. is known as the "Protection from Domestic Abuse Act." The Act is specified to be "in addition to other civil and criminal remedies." See, e.g. Section 16-25-10 et seq. [criminal penalties for criminal domestic violence]. The Act creates an action known as a "Petition for an Order of Protection" in cases of abuse to a family or household member. While violation of an Order of Protection is a crime,

Re: 10-15-96

Op. Atty. Gen., N. 88-83 (October 31, 1988), the Order of Protection procedure is a "civil proceeding," 1984 Op. Atty. Gen. 273. Section 20-4-50 provides for an emergency hearing upon such petition and, where appropriate, the issuance of an order of protection. The contents of an Order of Protection is specified in Section 20-4-60. Such Order is "to protect the petitioner or the abused person or persons on whose behalf the petition was filed and may include temporarily enjoining the respondent from abusing or threatening to abuse or molesting the petitioner and temporarily enjoining the respondent from communicating, threatening to communicate with the petitioner or entering the petitioner's place of residence, employment, education or location as the court may order. The Order of Protection must be for a fixed time, not to exceed one year, but may be extended by order of the court.

Section 20-4-100 deals with the responsibilities of a law enforcement officer responding to a domestic abuse incident. That Section provides:

[t]he primary duty of a law enforcement officer when responding to a domestic abuse incident is to enforce the laws allegedly violated and to protect the abused person if facts are found which substantiate the complaint. In such incidents, the law enforcement officer must take the following protective measures:

- (a) Notify the abused person of the right to initiate criminal proceedings and to seek an order of protection under this chapter.
- (b) Advise the parties of the importance of preserving evidence. To provide protection to the petitioner and any minor children, the officer may offer or arrange to provide transportation of the abused person to a hospital for treatment of injuries or to a place of shelter or safety and to accompany the abused person to his or her residence to allow for the removal of clothing, medication, and such personal property as is reasonably necessary.

A number of well-recognized principles of statutory construction are applicable here. First and foremost, in interpreting a statute, the primary purpose is to ascertain the intent of the legislature. State v. Martin, 293 S.C. 46, 258 S.E.2d 697 (1987). A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the

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purpose, design, and policy of lawmakers. Browning v. Hartvigsen, 414 S.E.2d 115 (S.C. 1992). Words used in the legislation must be given their plain meaning. Bohlen v. Allen, 228 S.C. 135, 89 S.E.2d 99 (1955). A remedial statute should be liberally construed in order to effectuate its purpose. S.C. Dept. of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978).

In Turner v. City of North Charleston, 675 F.Supp. 314 (D.S.C. 1987), Judge Blatt described Section 20-4-100 as follows:

[p]ursuant to S.C. Code Ann. 20-4-100, generally, the law enforcement officer must notify the abused person of the right to initiate criminal proceedings and to seek an order of protection, and the officer must advise the parties of preserving evidence. Additionally, the officer may offer or arrange to provide transportation of the abused person to a hospital or to a place of shelter.

675 F.Supp. at 318.

I do not believe that there is a conflict within Section 20-4-100. In construing statutory language, a statute must be read as a whole, not provisions thereof in isolation, its sections must be construed together with one another and each section given effect. Higgins v. State, 415 S.E.2d 799 (S.C. 1992).

It is true that the second sentence of subsection (b) states that the officer "may offer or arrange to provide transportation of the abused person to a hospital for treatment of injuries or to a place of shelter or safety and to accompany the abused person to his or her residence to allow for the removal of clothing, medication, and such personal property as is reasonable necessary." And it is likewise true that the use of the word "may" typically imposes a discretionary duty rather than a mandatory one. Op. Atty. Gen., Op. No. 94-13 (February 1, 1994).

However, our Court has cautioned that legislative intent is controlling in the use of such terms and that "may" should be read as "shall" when the intent of the General Assembly so requires. Here, subparagraph (b) is but a part of the larger introductory clause, "[i]n such incidents [of alleged domestic abuse], the law enforcement officer must take the following protective measures: ... (b) ... [t]o provide protection to the petitioner and any minor children, the officer may" (emphasis added). This whole sentence must also be read together with the preceding statement that "[t]he primary duty of a law enforcement officer when responding to a domestic abuse incident is to enforce the laws

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allegedly violated and to protect the abused person if facts are found to substantiate the complaint ...". (emphasis added). When so read in its entirety, it can readily be seen that the determination of whether transportation of the petitioner or minor children to a hospital, place of shelter or the accompaniment of the abused person to his or her residence is needed, is one the officer must perform. The actual performance of such transportation or the accompaniment of the abused person may be necessary in some circumstances, but not in others, depending upon the particular facts involved. The officer on the scene, however, has a duty to make that assessment.

The difference here is one between an officer's duty to exercise discretion and the actual exercise of such discretion. The law in this instance makes it mandatory upon the officer to assess the situation and determine if transportation or accompaniment is needed, but gives the officer the discretion to use his judgment depending upon the actual factual situation. It would make no sense to require transportation or accompaniment where such is plainly not necessary, but likewise it cannot be said that the officer can ignore his duty to transport or accompany where the facts plainly require such duty to be done. See, State ex rel Fouche v. Verner, 30 S.C. 277, 279 (1889) [writ of mandamus will compel an officer to exercise his discretion, but will not guide the exercise of his judgment.] The officer must employ a common sense assessment of the situation, but may not fail to determine if transportation or accompaniment is called for in the particular situation. A good rule of thumb is if there is any doubt about whether the officer should transport or accompany the abused person, do so.

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/ph