



ALAN WILSON
ATTORNEY GENERAL

May 9, 2022

The Honorable Micah Caskey
PO Box 5875
West Columbia, SC 29171

Dear Representative Caskey:

You have requested an opinion of this Office regarding whether the purchase of small amounts of nonferrous metals for a hobby requires a permit as a secondary metals recycler pursuant to section 16-17-680 of the South Carolina Code of Laws. Specifically, you state the following:

I respectfully request an opinion concerning the applicability of S.C. Code § 16-17-680 to purchases of small amounts of nonferrous metals for hobby-related activities (e.g., casting bullets for muzzle-loading rifle, casting artwork). Specifically, does a hobbyist constitute a “secondary metals recycler” as defined in subsection (A)(4) such that he or she is required, among other things, to obtain a permit to purchase nonferrous metals? Concerns have been raised by constituents who believe hobby-related purchases of nonferrous metals should not subject them to such requirements, but remain concerned about the possibility of criminal prosecution under the statute if authorities disagree.

LAW/ANALYSIS

Section 16-17-680 provides:

(A) For purposes of this section:

...

(3) “Nonferrous metals” means metals not containing significant quantities of iron or steel, including, but not limited to, copper wire, cooper clad steel wire, copper pipe, copper bars, copper sheeting, aluminum other than aluminum cans, a product that is a mixture of aluminum and copper, catalytic converters, lead-acid

batteries, steel propane gas tanks, and stainless steel beer kegs or containers.

(4) “Secondary metals recycler” means a person or entity who is engaged, from a fixed site or otherwise, in the business of paying compensation for nonferrous metals that have served their original economic purpose, whether or not the person is engaged in the business of performing the manufacturing process by which nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value.

(B)(1) A secondary metals recycler shall obtain a permit to purchase nonferrous metals . . .

(C)(1) A person or entity who wants to transport or sell nonferrous metals to a secondary metals recycler shall obtain a permit to transport and sell the nonferrous metals . . .

(D)(1) It is unlawful to purchase nonferrous metals in any amount for the purpose of recycling the nonferrous metals from a seller unless the purchaser is a secondary metals recycler who has a valid permit to purchase nonferrous metals issued pursuant to subsection (B) and the seller has a valid permit to transport and sell nonferrous metals issued pursuant to subsection (C) . . .

S.C. Code Ann. § 16-17-680 (1976 Code, as amended).

We must rely on the rules of statutory construction to construe section 16-17-680. In Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000), the court stated:

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. In re Vincent J., 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* at 233, 509 S.E.2d at 262 (citing Paschal v. State Election Comm'n., 317 S.C. 434, 454 S.E.2d 890 (1995)). “What a legislature says in the text of a statute is considered the

best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992).

In section 16-17-680, a “secondary metals recycler” is defined as “a person or entity who is engaged, from a fixed site or otherwise, in the business of paying compensation for nonferrous metals that have served their original economic purpose, whether or not the person is engaged in the business of performing the manufacturing process by which nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value.” S.C. Code Ann. § 16-17-680(A)(4).

The plain and ordinary meaning of “secondary metals” explains the Legislature’s reference to “nonferrous metals that have served their original economic purpose.” It also clarifies the phrase “the business of performing the manufacturing process by which nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value.” “Secondary metals” are “metal derived wholly or in part from scrap.” See Dictionary.Com at www.dictionary.com/browse/secondary-metal; Collins Dictionary at www.collinsdictionary.com/us/dictionary/english/secondary-metal. They are also defined as “metals produced from refining scrap metals or alloys” and “metal recovered from scrap by remelting and refining.” See TheFreeDictionary.Com at <https://encyclopedia2.thefreedictionary.com/secondary+metal>; Mindat.org at https://www.mindat.org/glossary/secondary_metal.¹ Reading the South Carolina definition of “secondary metals recycler” in conjunction with the general meaning of “secondary metals,” it appears that a secondary metals recycler purchases scrap metal that will be industrially processed into raw materials for use in new products.

Pursuant to its definition, a “secondary metals recycler” is also in the “business of paying compensation” for scrap metal. Because the word “business” is defined as a “commercial enterprise carried on for profit,”² a secondary metals recycler purchases scrap metal with the objective of making a profit.

It appears that legislative intent in enacting section 16-17-680 was to regulate participants in the scrap metal recycling industry. Support for this is found in section 16-11-523, which addresses obtaining nonferrous metals unlawfully. See S.C. Code Ann. § 16-11-523. In White v. State, 375 S.C. 1, 7, 649 S.E.2d 172, 175 (Ct. App. 2007), the court explained:

In construing a statute, this Court should not consider the particular clause being construed in isolation, but we should read the clause

¹ Mindat.org is the world's largest open database of minerals, rocks, meteorites and the localities they come from. Mindat.org is run by the not-for-profit Hudson Institute of Mineralogy.

² Black's Law Dictionary (11th ed. 2019).

in conjunction with the purpose of the whole statute and the policy of the law. South Carolina Coastal Council v. South Carolina State Ethics Comm'n, 306 S.C. 41, 44, 410 S.E.2d 245, 247 (1991). Statutory provisions should be given a reasonable construction consistent with the purpose of the statute. Jackson v. Charleston County Sch. Dist., 316 S.C. 177, 181, 447 S.E.2d 859, 861 (1994). Statutes that are part of the same act must be read together. Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989). Statutes must be read as a whole and sections that are part of the same general statutory scheme must be construed together and each given effect, if reasonable. Higgins v. State, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992).

Pursuant to 2008 S.C. Acts 260, section 16-17-680 was amended to provide for the purchase of nonferrous metals by secondary metals recyclers and section 16-11-523 was added. Reading the statutes together shows that the purpose of regulating the purchase of scrap metal was the deterrence of metal theft.

The Legislature broadly provides in section 16-17-680 that it is “unlawful to purchase nonferrous metals in any amount for the purpose of recycling” unless the purchaser is a secondary metals recycler with a valid permit and the seller has a valid permit. S.C. Code Ann. § 16-17-680(D)(1) (emphasis added). The word “recycling” is not defined. However, as stated by the court in Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813, 816 (1942):

It often happens that the true intention of the Legislature, though obvious, is not expressed by the language employed in a statute when that language is given its literal meaning. In such cases, the carrying out of the legislative intention, which is the prime and sole object of all rules of construction, can be accomplished only by departure from the literal interpretation of the language used. Hence, Courts are not always confined to the literal meaning of a statute; the real purpose and intent of the lawmakers will prevail over the literal import of the words . . .

It is a familiar canon of construction that a thing which is in the intention of the makers of a statute is as much within the statute as if it were within the letter. It is also an old and well-established rule that words ought to be subservient to the intent, and not the intent to the words.

In our opinion, the Legislature did not intend to regulate hobbyists in section 16-17-680. A true hobbyist does not purchase scrap metal with the objective of selling it to a scrapyards. He

The Honorable Micah Caskey
Page 5
May 9, 2022

acquires it for his own personal use. We therefore do not believe that a person who purchases nonferrous metals for a hobby-related activity is required to obtain a permit as a secondary metals recycler.

CONCLUSION

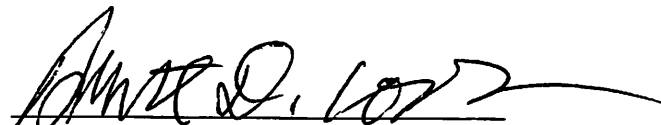
In our opinion, a person who purchases nonferrous metals for a hobby-related activity is not required to obtain a permit as a secondary metals recycler. We recognize that whether an activity is truly hobby-related is a fact-specific issue that must be answered by a court and not by this Office. See Op. S.C. Atty. Gen., 1989 WL 406130 (April 3, 1989) (“[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.”) Accordingly, the Legislature may wish to clarify this issue.

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General