



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

March 23, 2004

The Honorable J. G. McGee, III  
Member, House of Representatives  
420-A Blatt Building  
Columbia, South Carolina 29211

Dear Representative McGee:

In a letter to this office you indicated that a constituent of yours has leased a parcel of property and desires to sublease spaces on this property to third parties who would place vehicles on the property for sale. According to your letter, the constituent would make no commission from the sale of the vehicle and charges for the spaces on a monthly basis. The question has been raised as to whether the constituent would have to be licensed as a dealer in order to engage in the referenced activity.

In researching your question I contacted an individual at the Department of Public Safety who was familiar with the constituent's request. That individual indicated that the constituent's activities would bring him within the definition of a "dealer". S.C. Code Ann. Section 56-15-10(h)(1991) defines "dealer" as "...any person who sells or attempts to effect the sale of any motor vehicle." (emphasis added). Pursuant to S.C. Code Ann. Section 56-15-310 (Supp. 2003), "(b)efore engaging in business as a dealer or wholesaler in this State, a person first must make application to the...(Department of Motor Vehicles)...for a license." The individual at the Department indicated that the constituent's activities in providing a place of operation would come within the definition of "attempting to effect the sale" of a motor vehicle and, therefore, a license as a dealer would be required.

Generally, the construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons. Dunton v. South Carolina Board of Examiners in Optometry, 291 S.C. 221, 353 S.E.2d 132 (1987); Faile v. South Carolina Employment Security Commission, 267 S.C. 536, 230 S.E.2d 219 (1976). As a matter of policy, this office typically defers to the administrative agency charged with the enforcement of a statute in question. See Op. Atty. Gen. dated September 15, 2003. As stated in an opinion of this office dated June 24, 2003

The courts have stated that it is not necessary that the administrative agency's construction be the only reasonable one or even one the court would have reached if

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the question had initially risen in a judicial proceeding...Typically, so long as an administrative agency's interpretation of a statutory provision is reasonable, this office would defer to that interpretation.

Consistent with such, this office is unable to conclude that the interpretation of the referenced provisions so as to indicate that a license is required in such circumstances is unreasonable. Therefore, it is my opinion that the constituent would have to be licensed as a dealer in order to engage in the activities referenced above.

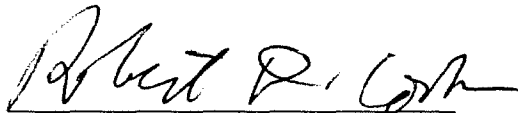
With kind regards, I am,

Very truly yours



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General