8068 Library

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

December 1, 2005

The Honorable Mike Fair
Senator, District No. 6
P. O. Box 14632
Greenville, South Carolina 29610

Dear Senator Fair:

In a letter to this office you raised questions regarding the Drycleaning Facility Restoration Trust Fund as set forth in S.C. Code Ann. §§ 44-56-410 et seq. In particular, you have questioned whether a dry cleaning establishment may discontinue participation in the trust fund. You particularly questioned whether elimination of the materials which required participation reverts that cleaner's status to that of a business whose participation is discretionary thereby allowing that cleaner to exercise the option of not participating.

Three different provisions provide for fees to be paid by drycleaning establishments. Section 44-56-430(A)(1) provides that

> One percent of the gross proceeds of sales of a drycleaning facility must be levied as an environmental surcharge on every owner or operator of a drycleaning facility participating in the drycleaning facility restoration trust fund except for the facilities possessing a valid statement of nonparticipation pursuant to Section 44-56-480(A). (emphasis added).

Section 44-56-470(A) states that

> For each drycleaning facility owned and in operation, the owner or operator of the facility or person shall register and pay initial registration fees to the Department of Revenue by October 1, 1995, and pay annual or quarterly renewal registration fees as established by the Department of Revenue.

Pursuant to Section 44-56-480(A)

Beginning July 1, 1995, an environmental surcharge is assessed on the privilege of producing in, importing into, or causing to be imported into the State drycleaning solvent...A drycleaning facility that has made an election not to be under the provisions of this article pursuant to Section 44-56-485(A) or (B) may request a statement of nonparticipation from the Department of Revenue so as to demonstrate its status under this article and its exemption from the surcharge provided for in this subsection. (emphasis added).

Section 44-56-485, cited in the above provision, states that

(A) Notwithstanding any other provision of this article, this article does not apply to a drycleaning facility that was in existence on July 1, 1995, that drycleans with nonhalogenated cleaners only, nor to dry drop-off facilities whose clothing and other fabrics are cleaned only by such a drycleaning facility. However, an owner or operator of a facility or person may elect to place the facility under the provisions of this article by paying the required annual fee for the facility before October 1, 1995. If an owner or operator of a facility or person does not elect to place a facility under this article before October 1, 1995, the current or a future owner or operator of the site or person is prohibited from receiving any funds or assistance under this article. Failure to pay the required annual fee by October 1, 1995, constitutes electing not to place a facility under this article. Additionally, an owner, operator, or person who does not elect to place a facility under this article is prohibited from receiving any funds or assistance under this article for any site the owner, operator, or person currently or previously operated or abandoned. (emphasis added).

(B) A drycleaning facility in existence on July 1, 1995, that uses halogenated fluids and nonhalogenated cleaners may elect to remove the facility from the requirements of this article if the election is made before October 1, 1995. Failure to pay the required annual fee by October 1, 1995, constitutes electing to remove a facility from the requirements of this article. An owner, operator, or person of a facility using halogenated and nonhalogenated cleaners may not elect to remove a facility from the requirements of this article for one solvent and not the other. (emphasis added).

(C) Notwithstanding subsections (A) and (B) of this section, if a person or an owner or operator of a drycleaning facility in existence on July 1, 1995, has made an election not to place a facility under the provisions of this article as allowed in subsection (A) or (B) above, then the person, owner, or operator may affirmatively and irrevocably elect to place the drycleaning facility under the provisions of this article. This election must be made by registering with the Department of Revenue on or before July 1, 2005, and paying the fees and taxes provided under this article.... (emphasis added).

> (E) Notwithstanding any other provisions in this article, the department may direct the Department of Revenue to allow a person or owner or operator of a drycleaning facility, who elected not to place the facility under this article pursuant to subsection (A) or (B) of this section to register, provided the department finds that the person or owner or operator of the drycleaning facility requesting to register did not have notice of this article for more than ninety days prior to requesting registration. The person or owner or operator of a drycleaning facility registering pursuant to this subsection is liable for payment of all taxes or fees, including interest, from the later of July 1, 1995, or the date the drycleaning facility began operating; however, the registering person, owner, or operator is not liable for penalties. No fees will be prorated or refunded for a business in operation for less than twelve months.

When interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

As set forth by subsection (A) of Section 44-56-485, the trust fund provisions do not apply to a drycleaning facility that was in existence on July 1, 1995, that drycleans with nonhalogenated cleaners only, nor to drop-off facilities whose clothing and other fabrics are cleaned only by such a drycleaning facility. However, as stated by such provision, an owner or operator of a facility could have elected to place the facility under the trust fund provisions by paying the required annual fee for the facility before October 1, 1995. Under subsection (B), a drycleaning facility in existence on July 1, 1995, that uses halogenated fluids and nonhalogenated cleaners could have elected to remove the facility from the trust fund provisions if the election to do so had been made before October 1, 1995. The failure to pay the required annual fee by October 1, 1995, constituted an election to remove a facility from the trust fund act. It was further provided that an owner or operator of a facility using halogenated and nonhalogenated cleaners could not elect to remove a facility from the trust fund provisions for one solvent and not the other. Subsection (C) recognizes the option of an election to participate in the trust fund by its statement that "...if a person or an owner or operator of a drycleaning facility in existence on July 1, 1995, has made an election not to place a facility under the provisions of this article as allowed in subsection (A) or (B) above, then the person, owner, or operator may affirmatively and irrevocably elect to place the drycleaning facility under the provisions of this article...." (emphasis added). Subsection (E) states that DHEC may direct the Department of Revenue to allow an owner or operator of a drycleaning facility " who elected not to

place the facility under this article pursuant to subsection (A) or (B)" to register in the referenced circumstances.

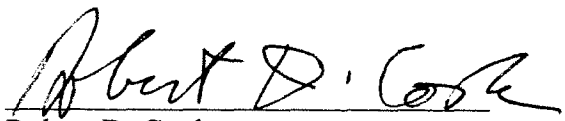
Based upon the foregoing, I am unaware of any basis by which an owner or operator of a drycleaning facility may elect not to participate in the drycleaning trust fund after the 1995 dates specified in these referenced statutes. There is no provision for opting out of participation after the dates specified. Instead, the statutes are mandatory in allowing an election of whether or not to participate only by the dates set forth. Such conclusion would also apply to a drycleaning establishment that formerly used halogenated fluids but reverted to other chemicals. Section 44-56-430(A)(1) and 44-56-480(A) allow for exemption from the payment of surcharges only for those drycleaning establishments that have elected nonparticipation pursuant to Section 44-56-480(A) or (B) as stated in such provisions.

With kind regards, I am,

Sincerely,

Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General