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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

June 6, 2005

Andrew M. Hodges, Esquire
Deputy Solicitor, Eighth Judicial Circuit
Post Office Box 516
Greenwood, South Carolina 29648-0516

Dear Mr. Hodges:

In a letter to this office you referenced the provisions of S.C. Code Ann. § 36-9-410(B(4) (Supp. 2004) which state:

> (A) Notwithstanding Section 36-9-401, a person who intentionally or wilfully sells or disposes of personal property that is subject to a perfected security interest, with the intent to defraud the secured party, without the written consent of the secured party and without paying the debt secured by the perfected security interest within ten days after sale or disposal or, in that time, depositing the amount of the debt with the clerk of the court of common pleas for the county in which the secured party resides, is in violation of this section.
> (B) This section does not apply:
> (1) if the sale is made without the knowledge of or notice of the perfected security interest to the purchaser by the person selling the property;
> (2) to the granting of subsequent security interests;
> (3) if the loan secured by the personal property includes a charge for nonfiling insurance; or
> (4) to personal property titled by the Department of Public Safety or the Law Enforcement Division of the South Carolina Department of Natural Resources.

(emphasis added). You referenced a situation where a private citizen lender loaned money to a private citizen borrower. As collateral for that loan, the lender put a lien on the title of an automobile owned by the borrower. The borrower then sold the vehicle to a third party using a duplicate title that did not reflect the lien. You have asked whether Section 36-9-410 applies to this situation. You indicated that some individuals believe that such provision does not apply

to an automobile or boat titled in this State. You also indicated that one other construction is that subsection (B)(4) excludes only personal property owned by and titled under the name of the Department of Public Safety or the Department of Natural Resources.

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). Moreover, 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).

I am unaware of any case law in this State or prior opinions of this office particularly construing Section 36-9-410. However, as specified by such statute, its provisions are inapplicable to "personal property titled by" the Departments of Public Safety or Natural Resources. According to The American Heritage Dictionary, Second College Edition, among the definitions of the term "by" is "with the help or use of; through". Consistent with such, in my opinion, Section 36-9-410 should be read as being inapplicable to an automobile or boat titled in this State by either the Department of Public Safety or the Law Enforcement Division of the South Carolina Department of Natural Resources. It appears illogical that the exclusion of such provision would only be applicable to personal property owned by or titled under the name of those Departments.

As stated in prior opinions of this office dated June 15, 2004 and May 20, 2004, a statute should be construed to avoid an absurd result. Therefore, a statute must be interpreted with common sense to avoid unreasonable consequences. United States v. Rippetoe, 178 F.2d 735 (4th Cir. 1949). Moreover, a sensible construction, rather than one which leads to irrational results, is always warranted. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). Another rule of statutory construction is that each word or phrase in a statute should be given effect, if possible, and not regarded as surplusage. Bruner v. Smith, 188 S.C. 75, 198 S.E. 184 (1938); Home Building and Loan Assn. v. City of Spartanburg, 185 S.C. 313, 194 S.E. 139 (1939).

Consistent with such, again, it is my opinion that Section 36-9-410 should be read as being inapplicable to an automobile or boat titled in this State by either the Department of Public Safety or the Law Enforcement Division of the South Carolina Department of Natural Resources.

Sincerely,

Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General