

November 27, 2007

The Honorable Jimmy C. Bales
Member, House of Representatives
1515 Crossing Creek Road
Eastover, South Carolina 29044

Dear Representative Bales:

We understand from your letter that you wish to request an opinion of this Office interpreting section 56-3-120 of the South Carolina Code, which provides exemptions for licencing and registration for certain motor vehicles. Specifically, you ask what is meant by use of the term “incidentally” as used in subsection (2) of this provision. Further, you ask: “Would a vehicle meet the requirement for this exemption if it was operated or moved on the highway less than ten times per year?”

Law/Analysis

Section 56-3-110 of the South Carolina Code (2006) requires every motor vehicle operated on a highway in this State to be registered and licenced. Section 56-3-120 of the South Carolina Code (2006) provides certain exemptions to the licensing and registration requirements. Among the vehicles exempt from registration pursuant to section 56-3-120 are “any implement of husbandry, including knuckleboom loader mounted on a trailer or straight truck, whether of a type otherwise subject to registration and license which only incidentally is operated or moved upon a highway” S.C. Code Ann. § 56-3-120(2) (emphasis added). You question what is meant by the term “incidentally.”

In our review of chapter 3 of title 56, we do not find incidentally defined among the statutes. Thus, we must employ the rules of statutory construction to determine what is meant by this term. As our Supreme Court recently explained:

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. All rules of statutory construction are subservient to the maxim that legislative intent must

prevail if it can be reasonably discovered in the language used. A statute's language must be construed in light of the intended purpose of the statute. Whenever possible, legislative intent should be found in the plain language of the statute itself.

State v. Pittman, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) (citations omitted). "Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." Sloan v. South Carolina Bd. of Physical Therapy Examiners, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006).

Webster's New World Dictionary defines the term incidentally as "in an incidental manner; as something less important but associated." Webster's New World Dictionary 710 (2nd College ed. 1976). The term incidental has been defined as "happening as a result of or in connection with something more important" or "[s]ubordinate to something of greater importance; having a minor role." Id.; Black's Law Dictionary 765 (7th ed. 1999). Although we did not find any South Carolina cases interpreting the term incidentally or incidental with regard to section 56-3-120(2), we found several South Carolina cases interpreting the meaning of the term incidental under other circumstances.

In Archambault v. Sprouse, 218 S.C. 500, 63 S.E.2d 459 (1951) our Supreme Court interpreted a provision in a restrictive covenant limiting the construction of structures on property to "detached single-family dwellings" and "[b]uildings incidental to residential use." Looking at the term incidental, the Court quoted the following definition of incidental: "The word 'incidental' is defined in Black's Law Dictionary, Third Edition, as follows: 'Depending upon or appertaining to something else as primary; something necessary, appertaining to, or depending upon another which is termed the principal; something incidental to the main purpose.'" Id. at 507, 63 S.E.2d at 462. Based on this definition, the Court determined the structure in question was not incidental to the use of the appellant's residence. Id.

_____ In subsequent cases, our courts relied on the Supreme Court's interpretation of incidental in Archambault under other circumstances. For example, the Court of Appeals employed the Court's analysis in Archambault in Horton v. Vaughn, 309 S.C. 383, 423 S.E.2d 543 (Ct. App. 1992) when it interpreted section 20-7-1572 of the South Carolina Code instructing the courts to "attach little or no weight to incidental visitations" in considering the statutory factors for terminating parental rights. The Court, looking to the meaning of the term incidental, cited to the definition provided in Archambault and determined "[a]s used in a TPR statute, 'incidental visitation' means that a parent may not rely upon fortuitous meetings between the parent and a child as a defense to an abandonment claim." Id. at 387, 423 S.E.2d at 545. In addition to Horton, several other South Carolina Cases also rely on the Court's interpretation of incidental under Archambault. See Gurley v. United Serv. Auto. Ass'n, 279 S.C. 449, 309 S.E.2d 11 (Ct. App. 1983); Charleston County Aviation Auth. v. Wasson, 277 S.C. 480, 289 S.E.2d 416 (1982).

In addition to the case law cited above, this Office considered what is meant by the term incidentally when addressing a similar question to the one posed in your request in 1960. Op. S.C. Atty. Gen., February 11, 1960. In that opinion, we were asked to opine as to whether or not certain farm trailers and semi-trailers are exempt from the license and registration requirements. Id. We considered section 46-12(2) of the South Carolina Code (1952), the predecessor to section 56-3-120(2), which stated: “Any implement of husbandry whether of a type or otherwise subject to registration and license which is only incidentally operated or moved upon a highway” is exempt from registration and licensing. Id. We looked to the federal courts’ interpretations of the term incidental and interpretations provided by Texas courts interpreting a similar statute. Id. We concluded as follows:

In view of the foregoing authorities, it is the opinion of this Office that a trailer or semi-trailer, suitable for use in farm operations and used exclusively by the owner in such operations, may be operated on the highways without license for the following purposes:

1. Transporting supplies to be used in the farming operation from one part of the farm to another.
2. Transporting supplies to be used in the production of crops from the source of supply to the farm.
3. Transporting tools and other equipment used in the farm operation from one part of the farm to another, from source of supply to the farm, and from farm to source of supply for the purpose of repair or servicing.

Id.

Based on the plain and ordinary meaning of the term incidental gathered from various dictionaries and relied on by our courts, we are of the opinion that the term incidentally, as used in section 56-3-120(2), does not necessarily contemplate the number of times in which a vehicle meeting the description under section 56-3-120(2) travels on the highway. Rather, we are of the opinion that such a vehicle is exempt for the licensing and registration requirements when its travel upon the highway is necessary and in connection with the vehicle’s use as an implement of husbandry. Furthermore, we believe the purposes as noted in our 1960 opinion are consistent with our interpretation of this term and therefore, suggest that you use them as guidance in determining whether a particular vehicle may be exempt from licensing and registration under section 56-3-120(2).

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Very truly yours,

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Attorney General

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REVIEWED AND APPROVED BY:

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