January 10, 2008

The Honorable Robert W. Hayes, Jr.
Senator, District No. 15
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator Hayes:

In a letter to this office you referenced S.C. Code Ann. § 58-23-620 and questioned the legality of actions taken by the cities of Welford and Duncan in collecting business license fees from members of the State towing and recovery association. Such provision states:

> [n]o city, town, or county in this State shall impose a license fee or license tax upon a holder of a certificate A or a certificate B, and no city, town, or county shall impose a license fee or license tax on the holder of a certificate E or a certificate F, Certificate of Compliance, or a common or contract motor carrier of property, except the city or town of such carrier's residence or the location of his principal place of business. However, the fee required of a holder of a certificate C is in addition to any license tax or license fee charged by a municipality.

Several of the various certificates referenced pertain to classes of certificates issued by the Office of Regulatory Staff as to motor vehicle carriers pursuant to S.C. Code Ann. § 58-23-210 et seq. which are designated as a certificate A, certificate B, certificate C, certificate D, certificate E and certificate F.

In reviewing your question, I spoke with Ms. Florence Belser, the general counsel for the Office of Regulatory Staff, and was informed that a towing company would not be required to obtain a certificate issued by the Office of Regulatory Staff. However, she referred to S.C. Code Ann. § 56-3-661 which states that

> [n]o for-hire motor vehicle carrier of property, except carriers of household goods or hazardous waste for disposal, may operate in this State without having applied for and received a Class E Certificate of Compliance from the Department of Motor

> Vehicles...The holder of a Class E Certificate may be eligible for exceptions provided by Sections 58-23-620 and 44-96-160(W)(1).

A towing company would be considered a "for-hire motor vehicle carrier of property" for purposes of Section 56-3-661 and must receive a Class E Certificate of Compliance from the Department of Motor Vehicles in order to operate in South Carolina.

A prior opinion of this office dated November 14, 1989 dealt with the question of whether Richland County could impose a business license tax upon the holders of a Class E or F certificate that was then issued such business by the Public Service Commission under the provisions of S.C. Code Ann. Section 58-23-510. The opinion cited Section 58-23-620, which has been amended in certain regards since the opinion was issued, which stated prior to the amendment that

> ...no city, town or county shall impose a license fee or license tax on the holder of a certificate E or a certificate F except the city or town of such carrier's residence or the location of his principal place of business.

The prior opinion of this office, which was issued in 1989 prior to the existence of Certificates of Compliance, concluded that such provision "...precludes the imposition by a county of its business license tax upon the holders of Class E or F Certificates issued such businesses by the Public Service Commission under the authority of Section 58-23-510 et seq."

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 and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

Section 58-23-620 is quite specific in stating that no city "...shall impose a license fee or license tax upon a holder of a certificate A or a certificate B...[or]...a certificate E or a certificate F, Certificate of Compliance, or a common or contract motor carrier of property, except the city or town of such carrier's residence or the location of his principal place of business." (emphasis added). Additionally, as referenced above, Section 56-3-661 states that "[t]he holder of a Class E Certificate of Compliance may be eligible for exceptions provided by Sections 58-23-620...." As noted, a towing company should hold a Class E Certificate of Compliance issued by the State Department of Motor Vehicles. Therefore, in the opinion of this office, only the city or town of the towing

company's residence or the location of its principal place of business is authorized to impose a license fee or license tax pursuant to Section 58-23-620.

If there are any questions, please advise.

Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook
Assistant Deputy Attorney General