



HENRY McMASTER  
ATTORNEY GENERAL

April 26, 2010

Sam W. White, Chief  
Union Public Safety Department  
215 Thompson Boulevard  
Union, South Carolina 29379

Dear Chief White:

In a letter to this office you indicated that the Union Public Safety Department (“the Department”) has provided funeral blocks for processions that travel through the Union city limits. You also stated that the Department is asked to provide traffic blocks for events, such as walks or runs, that take place on the public highways. You specifically stated that frequently with funerals there are more intersections than officers and that results in the processions going through a regulated intersection with no officer present to supersede the traffic signal or other traffic regulatory device. Referencing such, you have requested an opinion as to what are the responsibilities of the Department when providing services to funeral processions and events such as walks or runs. You also questioned what consequences an agency might expect if there is an accident during such an event or procession.

A prior opinion of this office dated October 15, 1996 dealt with the issue of law enforcement responsibilities regarding funeral processions. That opinion quoted the opinion of the State Supreme Court in Nabors v. Spencer, 262 S.C. 630, 207 S.E.2d 79 (1974) where the Court stated that

[w]e find no statute, and...(in that case)...no ordinance was pleaded or introduced into evidence which exempts the driver of a vehicle in a funeral procession from the obligation to observe traffic control devices...(as required by state law).

262 S.C. at 634. The Court cited the provision now codified as S.C. Code Ann. § 56-5-950 which states

(t)he driver of any vehicle shall obey the instructions of any official traffic-control device...unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle....

The 1996 opinion of this office stated that

[i]n Nabors, the court indicated that a vehicle in a funeral procession would not be considered as being included within the definition of an “authorized emergency vehicle.” The Court further referenced that “well established custom” did not provide any special exemption from the requirements of state law. Therefore, there are no special privileges accorded funeral processions in this state.

As stated, Section 56-5-950 requires a driver to “obey the instructions of any official traffic-control device...unless otherwise directed by a police officer.” The 1996 opinion cited another opinion of this office dated May 17, 1991 which dealt with the question of the authority of a law enforcement officer to control an intersection. That opinion referenced that local law enforcement has the authority to regulate traffic intersections and processions on highways within their own jurisdictions. See: S.C. Code Ann. §§ 56-5-710(2) and (3). The opinion stated that

...an officer stationed at an intersection may direct a funeral procession to proceed against the traffic light. However, the...(South Carolina)... Supreme Court held in Nabors v. Spencer,...that when there is no police officer directing traffic so as to supersede the traffic light, no South Carolina law “exempts the driver of a vehicle in a funeral procession from the obligation to observe traffic control devices.”

Consistent with such, if there is to be any intention that a funeral procession would be authorized to disregard a traffic control device at any intersection, such would have to be at the direction of a law enforcement officer with authority within that jurisdiction. Therefore, it appears that as to all intersections through which a funeral procession passes, if it is intended that the procession pass through without observing a traffic control signal, such travel must be under the direction of a stationed law enforcement officer with authority within that jurisdiction.

The 1996 opinion also dealt with the question of the potential liability of a law enforcement agency or a funeral home in association with a funeral procession. Questions had been raised as to whether an initiating agency has any responsibility or liability if a procession continues beyond that agency's jurisdictional boundaries without an escort, whether an agency that provides escorts has any liability or responsibility if, due to case load or manpower shortage, it fails to provide a proper escort and whether a funeral home has any responsibility or liability during a funeral procession. The opinion stated that

[a]ny question relating to potential liability is dependent on an examination of each situation's facts and circumstances. Therefore, a case by case analysis would have to be undertaken regarding any question of liability. This office in numerous opinions has indicated that an opinion of this office is inadequate to resolve factual issues. See, e.g., Op. Atty. Gen. dated November 15, 1995. However, consistent with decisions

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in other jurisdictions, the potential for liability is certainly present as to a law enforcement agency and a funeral home with regard to its association with a funeral procession depending upon the facts of a particular situation.

The opinion cited the decision of the Louisiana Supreme Court in LeJeune v. Allstate Insurance Co., 365 So.2d 471 (La. 1971) where the court determined that a deputy sheriff who failed to secure a highway intersection through which a funeral procession passed was negligent and his negligence was the cause of a fatal collision between a hearse and an automobile which approached the intersection at an excessive speed. Consistent with such, the prior opinion of this office stated that "... potential liability would exist for any failure by a law enforcement officer to properly act in a manner consistent with his law enforcement authority."

As to the question of any liability of the funeral home itself, the opinion cited that decision of the Florida Supreme Court in Union Park Memorial Chapel v. Hutt, 670 P.2d 64 at 67 (Fla. 1996) where the court stated that

[w]e recognize that a funeral director has no general duty to orchestrate or lead a funeral procession. However, once a director voluntarily undertakes to do so, the director assumes at least a minimal duty to exercise good judgment, and ensure that procession members proceed to the cemetery in a safe manner. Whether a funeral director exercised reasonable care in a given case will depend on the circumstances of that case; and, therefore, must be determined on a case-by-case basis by the trier of fact.

The opinion of this office also cited the decisions of Maida v. Velella, 511 N.E.2d 56 (N.Y. 1987) (a funeral home owes a duty "to refrain from creating an unreasonably hazardous situation for those participating in the procession") and Pickett v. Jacob Schoen and Sons, Inc., 488 So.2d 1257 (La. 1986) (a question of fact existed as to whether a funeral director had a duty to individuals in a procession to prevent risks of collisions at intersections crossed by a funeral procession). The opinion concluded that consistent with such authorities, "...there is certainly the potential for possible liability in the situations...referenced. However, each situation would be dependent upon its own set of facts and a blanket response cannot be provided."

I am unaware of any statutory exemption of a walker to ignore a traffic control device. S.C. Code Ann. § 56-5-970 states that

[w]henver traffic is controlled by traffic-control signals exhibiting different colored lights or colored lighted arrows, successively one at a time or in combination, only the colors, green, red, and yellow, shall be used except for special pedestrian signals carrying a word legend. Such lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(A) Green indication:

(1) Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

(2) Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(3) Unless otherwise directed by a pedestrian-control signal, as provided in Section 56-5-990, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(B) Steady yellow indication:

(1) Vehicular traffic facing a steady circular yellow or yellow arrow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter.

(2) Pedestrians facing a steady circular yellow or yellow arrow signal, unless otherwise directed by a pedestrian-control signal as provided in Section 56-5-990, are advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

(C) Steady red indication:

(1) Vehicular traffic facing a steady circular red signal alone shall stop at a clearly marked stop line but, if none, before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until an indication to proceed is shown except as provided in item (3).

(2) Vehicular traffic facing a steady red arrow signal shall not enter the intersection to make the movement indicated by the arrow, and unless entering the intersection to make a movement permitted by another signal, shall stop at a clearly marked stop line but, if none, before entering the crosswalk on the near side of the intersection or,

if none, then before entering the intersection and shall remain standing until an indication permitting the movement indicated by such arrow is shown except as provided in items (3) and (5).

(3) Except when a sign is in place prohibiting a turn, vehicular traffic facing any steady red signal may cautiously enter the intersection to turn right or to turn left from a one-way street into a one-way street after stopping as required by item (1) or (2). Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(4) Unless otherwise directed by a pedestrian-control signal as provided in Section 56-5-3110, pedestrians facing a steady circular red or red arrow signal alone shall not enter the roadway. (emphasis added).

S.C. Code Ann. §§ 56-5-3110 provides that

(a) [a] pedestrian shall obey the instructions of any official traffic-control device specifically applicable to him unless otherwise directed by a police officer.

(b) Pedestrians shall be subject to traffic and pedestrian-control signals as provided in §§ 56-5-970 and 56-5-990.

(c) At all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this chapter.

Additionally, Section 56-5-990 states that

[w]henver special pedestrian control signals exhibiting the words "Walk" or "Wait" are in place such signals shall indicate as follows:

(1) "Walk" indicates that a pedestrian facing such signal may proceed across the roadway in the direction of the signal and shall be given the right of way by the drivers of all vehicles; and

(2) "Wait" indicates that no pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the walk signal shall proceed to a sidewalk or safety island while the wait signal is showing.

Referencing the above, there are clearly defined statutory rights and responsibilities associated with funeral processions and such should be conducted with deference to such rights and responsibilities. There is the general obligation of a funeral procession to obey the instructions of

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a traffic control device unless otherwise directed by a law enforcement officer. Any question of potential liability would be dependent on the facts and circumstances of each situation presented. Also, with regard to walks or runs, State law sets forth clearly the responsibilities of pedestrians generally and, as stated in Section 56-5-3110, “[a] pedestrian shall obey the instructions of any official traffic-control device specifically applicable to him unless otherwise directed by a police officer.”

With kind regards, I am,

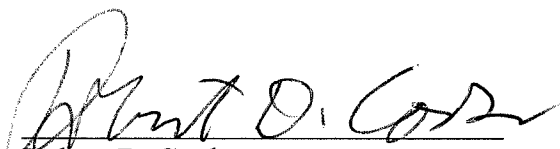
Very truly yours,

Henry McMaster  
Attorney General



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