



ALAN WILSON
ATTORNEY GENERAL

January 4, 2013

The Honorable Glenn G. Reese
Senator, District No. 11
P.O. Box 142
Columbia, S.C. 29202

Dear Senator Reese,

We received your letter requesting an opinion of this Office as to whether S.C. Code § 16-17-680, as recently amended, permits a secondary metals recycler to enter into a cash transaction for the purchase of copper, catalytic converters, and beer kegs from certain individuals or entities.

Law/Analysis

The provisions of S.C. Code § 16-17-680 (Supp. 2012) generally govern the purchase, transportation, and sale of nonferrous metals.¹ Subsections (B) and (C) require a “secondary metals recycler”² purchasing nonferrous metals and sellers of such metals to obtain proper permits. See § 16-17-680(B)(1) (“A secondary metals recycler shall obtain a permit to purchase nonferrous materials”); § 16-17-680(C)(1) (“A person or entity who wants to transport or sell nonferrous materials to a secondary metals recycler shall obtain a permit to transport and sell the nonferrous metals”). Subsections (D) and (E) criminalize certain acts and omissions by purchasers and sellers in transactions involving nonferrous metals. For example, the purchase of nonferrous metals is unlawful if the purchaser and seller do not have the appropriate permits required by subsections (B) and (C). § 16-17-680(D)(1). Likewise, the sale of nonferrous metals is unlawful if the purchaser and seller do not have such permits. § 16-17-680(E)(1).

As indicated in your letter, subsection (D)(4) of § 16-17-680 specifically addresses cash transactions for the purchase of copper, catalytic converters, and beer kegs:

¹ “Nonferrous metals” are defined as “metals not containing significant quantities of iron or steel, including, but not limited to, copper wire, copper clad steel wire, copper pipe, copper bars, copper sheeting, aluminum other than aluminum cans, a product that is a mixture of aluminum and copper, catalytic converters, lead-acid batteries, steel propane gas tanks, and stainless steel beer kegs or containers.” § 16-17-680(A)(2).

² “Secondary metals recycler” is defined as “a person or entity who is engaged, from a fixed site or otherwise, in the business of paying compensation for nonferrous metals that have served their original economic purpose, whether or not the person is engaged in the business of performing the manufacturing process by which nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value.” § 16-17-680(A)(3).

(4) A *secondary metals recycler* shall not enter into a cash transaction in payment for the *purchase* of copper, catalytic converters, and beer kegs. Payment for the purchase of copper, catalytic converters, and beer kegs must be made by check alone issued and made payable to the seller. A secondary metals recycler shall neither cash a check issued pursuant to this item nor use an automated teller machine (ATM) or other cash card system in lieu of a check.

§ 16-17-680(D)(4) (emphasis added). The offenses for violations of this prohibition are set forth in subsection (D)(6).

By its own terms, § 16-17-680(D)(4)'s prohibition against such cash transactions applies only to a *purchase* made by a *secondary metals recycler* and gives no regard to the identity of the seller. Thus, when considered by itself § 16-17-680(D)(4) operates as a blanket prohibition against any cash purchase of copper, catalytic converters, or beer kegs by a secondary metals recycler.

However, subsection (J) of § 16-17-680 lists certain individuals, entities, and transactions that are exempt from the statute's requirements and prohibitions:

(J)(1) Except as provided in item (2), the provisions of this section do not apply to:

(a) the purchase or sale of aluminum cans;

(b) *a transaction between a secondary metals recycler and another secondary metals recycler;*

(c) a governmental entity;

(d) a manufacturing or industrial vendor that generates or sells regulated metals in the ordinary course of its business;

(e) a holder of a retail license, an authorized wholesaler, an automobile demolisher as defined in Section 56-5-5810(d), a contractor licensed pursuant to Chapter 11, Title 40, a residential home builder licensed pursuant to Chapter 59, Title 40, a demolition contractor, a provider of gas service, electric service, communications service, water service, plumbing service, electrical service, climate conditioning service, core recycling service, appliance repair service, automotive repair service, or electronics repair service; or

(f) organizations, corporations, or associations registered with the State as charitable organizations or any nonprofit corporation.

(2) An exempted entity listed in item (1) is subject to the provisions of subsection (C)(10) and subsection (G)(5).

A secondary metals recycler shall maintain a record of transactions involving exempted entities listed in item (1) pursuant to subsection (D) and is subject to the penalty provisions of subsection (D)(6). Any item of nonferrous metals acquired from an exempted entity listed in item (1) is subject to a hold notice pursuant to subsection (F).

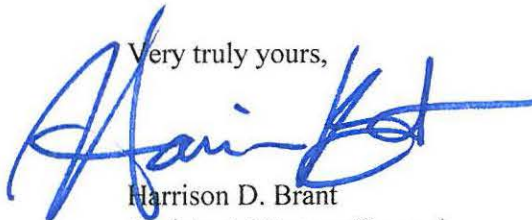
§ 16-17-680(J) (emphasis added).

With the exception of the exclusion for “transactions between a secondary metals recycler and another secondary metals recycler” pursuant to subsection (J)(1)(b), none of the above exclusions are broad enough to apply to the cash purchase of copper, catalytic converters, or beer kegs by a secondary metals recycler. Subsection (J)(1)(a) applies only to the purchase of aluminum cans. Furthermore, the individuals and entities listed in subsections (J)(1)(c) through (f) are not subject to the requirements and prohibitions of subsection (D)(4) because, as previously mentioned, that subsection applies only to secondary metals recyclers. Therefore, subsections (J)(1)(a) and (J)(1)(c) through (f) do not have the effect of excluding a secondary metals recycler from subsection (D)(4)’s prohibition against cash purchases of copper, catalytic converters, or beer kegs. Accordingly, it is our opinion that a secondary metals recycler may only enter into a cash transaction for the purchase of copper, catalytic converters, or beer kegs with another secondary metals recycler.

Conclusion

It is the opinion of this Office that a secondary metals recycler may only enter into a cash transaction for the purchase of copper, catalytic converters, or beer kegs if the other party to the transaction is also a secondary metals recycler. When read by itself, § 16-17-680(D)(4) operates as a blanket prohibition against the cash purchase of copper, catalytic converters, or beer kegs by a secondary metals recycler. The only applicable exception to this rule is found in § 16-17-680(J)(1)(b) which provides that the provisions of § 16-17-680 are not applicable to a transaction between two secondary metals recyclers. Accordingly, this is the only instance in which such a cash transaction is permitted under the statute.

Very truly yours,



Harrison D. Brant
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General