



ALAN WILSON
ATTORNEY GENERAL

March 20, 2013

The Honorable Michael A. Pitts
Representative, District 14
327-C Blatt Building
Columbia, SC 29201

Dear Representative Pitts:

We received your letter requesting an opinion of this Office on behalf of the Greenwood Police Department ("Department"). By way of background, you indicate that:

[o]n two separate occasions, the [Department] has been called upon to investigate traffic collisions wherein a Greenwood County Sheriff's Office ["Sheriff's Office"] vehicle and a [South Carolina] Highway Patrol ["Highway Patrol"] vehicle – both engaged in the same pursuit – collided with one another. In both instances, the collisions occurred in Greenwood County outside the corporate limits of the City of Greenwood. I find no provision in Section 56-5-765 of the SC Code of Laws for a municipal police department to investigate such a collision. In fact, subsection (B) of 56-5-765 seems to disallow municipal police departments from investigating collisions involving [South Carolina] Department of Public Safety ["DPS"] vehicles,¹ even if the collision occurred within the incorporated jurisdiction of that department. Additionally, subsection (C) of 56-5-765 seems to disallow a law enforcement agency from investigating a collision involving any vehicle of that agency, which would preclude either the Sheriff's Office or the Highway Patrol from investigating a collision between their vehicles. [Emphasis in original].

With this background in mind, you ask the following questions:

- (1) If vehicles of the Sheriff's Office and DPS/Highway Patrol collide within an incorporated jurisdiction, which law enforcement agency should investigate the collision?

¹The Highway Patrol is a division of DPS. See §23-6-100.

(2) If vehicles of the Sheriff's Office and DPS/Highway Patrol collide in an unincorporated jurisdiction, where the Sheriff's office vehicle is registered, which law enforcement agency should investigate the collision?

S.C. Code Ann. §56-5-765 provides as follows:

(A) When a motor vehicle or motorcycle of a law enforcement agency, except a motor vehicle or motorcycle of the Department of Public Safety, is involved in a traffic collision² that: (1) results in an injury or a death, or (2) involves a privately-owned motor vehicle or motorcycle, regardless of whether another motor vehicle or motorcycle is involved, the State Highway Patrol must investigate the collision and must file a report with findings on whether the agency motor vehicle or motorcycle was operated properly within the guidelines of appropriate statutes and regulations.

(B) When a motor vehicle or motorcycle of the Department of Public Safety is involved in a traffic collision that: (1) results in an injury or a death, or (2) involves a privately-owned motor vehicle or motorcycle, regardless of whether another motor vehicle or motorcycle is involved, the sheriff of the county in which the collision occurred must investigate the collision, regardless of whether the collision occurred within an incorporated jurisdiction, and must file a report with findings on whether the Department of Public Safety's motor vehicle or motorcycle was operated properly within the guidelines of appropriate statutes and regulations.

(C) A law enforcement department or agency must not investigate a traffic collision in which a motor vehicle, a motorcycle, or an employee of that department or agency is involved that: (1) results in an injury or a death, or (2) involves a privately-owned motor vehicle or motorcycle, regardless of whether another motor vehicle or motorcycle is involved.

(D) A law enforcement agency that has primary responsibility for an investigation involving a motor vehicle, a motorcycle, or an employee of another department or agency, but lacks the expertise to conduct a proper investigation, may request assistance from another agency that has the appropriate expertise, as long as the assisting agency or an employee of the assisting agency is not a subject of the investigation. A request made pursuant

²Subsection (G) provides that "involved in a traffic collision" includes a law enforcement motor vehicle or motorcycle engaged in a pursuit when a traffic collision occurs.

to this subsection shall result in a joint investigation conducted by both agencies.

The cardinal principle of interpretation is to effectuate legislative intent. Citizens and Southern Systems, Inc. v. S.C. Tax Commission, 280 S.C. 138, 311 S.E.2d 717 (1984). All rules of statutory construction are subservient to the one that legislative intent must prevail if it can reasonably be discovered in the language used, and that language must be interpreted in light of the intended purpose of the statute. McClanahan v. Richland Co. Council, 350 S.C. 433, 567 S.E.2d 240 (2002). The Legislature's intent should be ascertained from the plain language of the statute. State v. Landis, 362 S.C. 97, 606 S.E.2d 503 (Ct. App. 2004). The language must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Hitachi Data Sys. Comp. v. Leatherman, 309 S.C. 174, 420 S.E.2d 843 (1992). What the Legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000). Typically, legislative intent is determined by applying the words used by the Legislature in their usual or ordinary significance. Martin v. Nationwide Mutual Insurance Co., 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 will apply the clean 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). Finally, a remedial statute, such as §56-5-765, must be broadly construed in order to effectuate its intended purpose. Auto Owners Ins. v. Rollinson, 378 S.C. 600, 663 S.E.2d 484, 488 (2008).

We have previously concluded that “[t]he obvious purpose of §56-5-765 is to avoid conflicts of interest and to insure accountability.”³ See Ops. S.C. Atty. Gen., June 18, 1998 (1998 WL 746030); July 10, 1996 (1996 WL 494732). The decision of the South Carolina Court of Appeals in State v. Sheldon, 344 S.C. 340, 543 S.E.2d 585 (Ct. App. 2001) best illustrates the strict application of the statute by state courts. Sheldon was an on-duty State Trooper involved in an accident with his patrol vehicle in Orangeburg County. The driver and passenger of the other car died in the collision. Although §56-5-765 required the Orangeburg County Sheriff’s Office, rather than the Highway Patrol, investigate the collision, the Highway Patrol’s Multi-disciplinary Accident Team (“MAIT”) assisted in the investigation. The trial court suppressed the evidence gathered or prepared by MAIT, because it was obtained in violation of the statute. The State appealed, arguing the MAIT investigation was not the type of investigation contemplated by §56-5-765 and that the Orangeburg County Sheriff’s Office remained the investigating agency while MAIT merely performed technical portions of the investigation, because the Orangeburg County Sheriff’s Office had neither the trained personnel nor the equipment to conduct a detailed investigation of the dynamics of the accident. The State also maintained the MAIT report only took into account objective factors which could be measured and replicated, and made no conclusions other than the pre-impact speed of the two vehicles. Id., 543 S.E.2d at 585-86. The Court of Appeals

³We note that subsection (D) provides for criminal sanctions for a violation of the statute.

disagreed, finding that “[t]here is no exception to the rule.” *Id.* 543 S.E.2d at 586. [Emphasis added]. The Court stated that while the Orangeburg County Sheriff’s Office may not have had the necessary resources to perform the speed tests for the investigation of the collision, it should have sought assistance elsewhere to avoid a violation of the statute. *Id.*⁴

Clearly, where a police vehicle is involved in a collision in the circumstances stated in the statute the Legislature has deemed it inappropriate that the agency investigate itself with respect to the accident under any circumstances.⁵ “[T]here is no exception to the rule.” *Id.* Accordingly, in order to avoid the appearance of a conflict, the Legislature has mandated that the Highway Patrol investigate when a police vehicle is involved in a collision. If the Highway Patrol is involved in a collision, however, the county sheriff is required to investigate instead, whether or not the collision occurred within an incorporated jurisdiction. Further giving §56-5-765 what appears to be its plain meaning, there is little doubt the intent of the Legislature is that a municipality may not investigate such a collision which occurs within its corporate limits. The canon of statutory construction “*expressio unius est exclusio alterius*” or “*inclusio unius est exclusio alterius*,” which holds that “to express or include one thing implies the exclusion of another, or of the alternative,” may be used as guidance in construing the statute in this regard. *Hodges v. Rainey*, 341 S.C. 79, 533 S.E. 2d 578, 582 (2000). It would seem to us that such a conclusion is the logical intent of this statute.

Based upon the foregoing, we are of the opinion that the South Carolina Law Enforcement Division (“SLED”) is the agency best suited and has the most resources available to investigate the traffic collisions involving the patrol vehicles described in your letter. SLED is the chief investigative agency in the State. *Op. S.C. Atty. Gen.*, July 13, 1979 (1979 WL 43464). SLED was created by §§23-3-10 *et seq.* and its agents are given a wide range of functions and activities. *See* §23-3-15. Significantly, the power and authority of SLED agents can be exercised statewide, including within the boundaries of an incorporated municipality. *See Ops. S.C. Atty. Gen.*, May 17, 2001 (2001 WL 790259); September 28, 2000 (2000 WL 1803612). SLED’s investigation would best avoid any potential conflict of interest and insure accountability. We therefore suggest that both the Sheriff’s Office and Highway Patrol contact SLED to conduct the investigation of these collisions pursuant to §56-5-765.

Finally, the Legislature may wish to consider legislation to address this situation. *Op. S.C. Atty. Gen.*, August 5, 1986 (1986 WL 192045).

⁴The Court acknowledged the availability of criminal sanctions, but it remanded the case to the trial court for a determination of any prejudice to Sheldon from the admission of the MAIT report. *Id.*, 543 S.E.2d at 586.

⁵For purposes of this opinion, we presume the collision between the two patrol vehicles resulted in an injury or a death, and that the vehicles were otherwise “involved” in a collision, pursuant to the triggering language contained in §56-5-765. *See, e.g., Op. S.C. Atty. Gen.*, July 19, 1995 (1995 WL 803716) [patrol vehicle was “involved” in a collision where the accident between another vehicle and a parked car resulted from a chase with the patrol vehicle].

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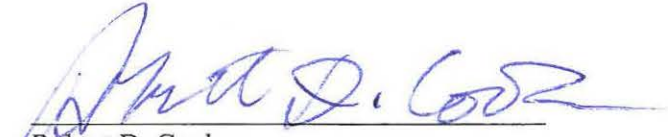
If you have any further questions, please advise.

Very truly yours,



N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:


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