



ALAN WILSON
ATTORNEY GENERAL

July 11, 2013

Jeffrey B. Moore, Executive Director
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P. O. Box 21428
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Dear Mr. Moore:

By your letter dated June 19, 2013, you have asked for the opinion of this Office regarding the interpretation of Section 16-17-680, which, as pointed out in your letter, deals with the purchase, transportation and sale of nonferrous metals. In your letter you explain:

As provided by the statute, anyone wishing to transport, sell, or purchase nonferrous metals must be permitted by the county sheriff. There are exceptions for certain licensed professionals.

The issue that has arisen concerns auto parts stores such as Auto Zone, NAPA, and others that are issuing "store credits" in lieu of cash or checks for old batteries which are covered under the nonferrous law. They claim that offering a "store credit" is not technically "purchasing" a battery and therefore they are exempt from the permitting and other requirements of 16-17-680. This practice has now caused a flurry of activity by other entities that are required to adhere to the requirements of 16-17-680.

For example, we now have recyclers offering prepaid credit or debit cards in lieu of cash or checks for nonferrous metals, and claiming that it's not a "purchase" but a "credit" for the product thus allowing them to ignore the provisions of 16-17-680. It would appear that these payments in "store credits" or credit or debit cards are nothing more than a blatant attempt to circumvent the law.

We have made it clear that any payment regardless of its form, i.e. store credits, pre-paid credit or debit cards are still a financial transaction for the product received, and that all requirements under 16-17-680 remain in effect.

We request your assistance in clarifying this matter. Time is of the essence as this practice only serves to assist a criminal in circumventing the very law intended to deter the crime of copper and other nonferrous theft.

While we understand you are requesting clarification on the question of whether an auto parts store offering a store credit amounts to a purchase, it is first necessary to consider which portions of the statute apply to auto parts stores such as Auto Zone and NAPA. For example, if auto parts stores such as Auto Zone and NAPA are exempted entities under the statute, then they would be exempt from the permitting requirements of Section 16-17-680 making such a determination irrelevant. See e.g. S.C. Code Ann. §§ 16-17-680(J)(1)(a)-(f) (West 2012 Supp.) (effective Dec. 15, 2012) (explaining that except as provided for in subsection (J)(2), certain transactions and entities are exempt from Section 16-17-680). Thus, the first question which must be asked is whether auto parts stores such as Auto Zone and NAPA are exempted entities as detailed in Section 16-17-680(J)(1) of the Code.

Law/Analysis

As background, Section 16-17-680 of the South Carolina Code governs the purchase, transportation and sale of nonferrous metals.¹ Subsection (B)(1) generally requires a secondary metals recycler² to obtain a permit to *purchase nonferrous metals*. S.C. Code Ann. § 16-17-680(B)(1) (West 2012 Supp.) (effective Dec. 15, 2012). Additionally, subsection (C)(1) generally requires that “a person or entity” wishing to *transport or sell nonferrous metals* to a secondary metals recycler must obtain a permit in order to do so. S.C. Code Ann. § 16-17-680(C)(1) (West 2012 Supp.) (effective Dec. 15, 2012).

Further, subsection (D)(1) criminalizes *purchasing nonferrous metals* for purposes of recycling “unless the purchaser is a secondary metals recycler” with a valid permit issued under subsection (B) and the seller has a “valid permit to transport and sell nonferrous metals” issued under subsection (C). S.C. Code Ann. § 16-17-680(D)(1) (West 2012 Supp.) (effective Dec. 15, 2012). Similar to subsection (D)(1), subsection (E)(1) criminalizes *selling nonferrous metals* “to a secondary metals recycler” unless the secondary metals recycler has a valid permit to purchase

¹ Section 16-17-680(A)(2) defines “nonferrous metals” as:

metals not containing significant quantities of iron or steel, including, but not limited to, copper wire, cooper 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.

S.C. Code Ann. § 16-17-680(A)(2) (West 2012 Supp.) (effective Dec. 15, 2012).

² Section 16-17-680(A)(3) defines a secondary metals recycler 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.

S.C. Code Ann. § 16-17-680(A)(3) (West 2012 Supp.) (effective Dec. 15, 2012).

nonferrous metals issued under subsection (B) and the seller has a “valid permit to transport and sell nonferrous metals” issued under subsection (C). S.C. Code Ann. § 16-17-680(E)(1) (West 2012 Supp.) (effective Dec. 15, 2012). Subsection (G)(1) criminalizes *transporting nonferrous metals* unless a person can present a valid permit to transport and sell nonferrous metals issued under subsection (C), or if the person can present a valid bill of sale for the nonferrous metals. See e.g. S.C. Code Ann. §§ 16-17-680(G)(2)(a)-(b) (West 2012 Supp.) (effective Dec. 15, 2012).

However, as you have noted, there are exceptions to the permitting requirements of the statute. In particular, Section 16-17-680(J)(1) of the Code explains that with the exception of subsection (J)(2)³ of the statute, “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.

S.C. Code Ann. § 16-17-680(J)(1) (West 2012 Supp.) (effective, Dec. 15, 2012).

In determining whether auto parts stores such as Auto Zone, NAPA, and others are exempt entities under Section 16-17-680(J)(1) of the Code we must first look to legislative intent. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (“The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible.”). When ascertaining legislative intent, South Carolina’s appellate courts have stated, “[w]hat a legislature says in the text of a statute is considered the best evidence of the legislative intent or will” and “courts are bound to give effect to the expressed intent of the legislature.” Media General Communications, Inc. v. South Carolina Dept. of Revenue, 388 S.C. 138, 148, 694

³ Subsection (J)(2) states, “[a]n exempted entity listed in item (1) is subject to the provisions of subsection (C)(10) and subsection (G)(5)” and further explains that secondary metals recyclers must maintain a record of transactions involving exempted entities listed in item (1) as required under subsection (D) and are subject to the penalty provisions of subsection (D)(6). S.C. Code Ann. § 16-17-680(J)(2) (West 2012 Supp.) (effective Dec. 15, 2012).

S.E.2d 525, 530 (2010); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002). Indeed, “[t]here is no safer nor better rule of interpretation than when language is clear and unambiguous it must be held to mean what it plainly states.” Jones v. South Carolina State Highway Dep’t, 247 S.C. 132, 137, 146 S.E. 2d 166, 168 (1966).

A review of Section 16-17-680(J)(1) of the Code reveals that the provisions of 16-17-680 do not apply to certain types of transactions and entities. See e.g. S.C. Code Ann. §§ 16-17-680(J)(1)(a)-(f) (explaining that except as provided for in subsection (J)(2), certain transactions and entities are exempt from Section 16-17-680). In particular, Section 16-17-680(J)(1)(e) provides, *inter alia*, that “[e]xcept as provided in item (2), the provisions of this section do not apply to a holder of a retail license[.]” Thus, it seems clear that the South Carolina legislature specifically identified entities holding a retail license as exempt from the requirements of Section 16-17-680 notwithstanding the limited provisions of subsection (J)(2). Understanding this, it is this Office’s opinion that auto parts stores such as Auto Zone and NAPA, are exempt entities under Section 16-17-680(J)(1)(e) of the Code since they presumably hold a retail license.⁴ As a result, they are exempt from Section 16-17-680’s permitting requirements and, by the terms of Section 16-17-680(J)(1), are only subject to the provisions of Section 16-17-680(J)(2) as it relates to exempt entities.

Section 16-17-680(J)(2) says exempt entities as defined in subsection (J)(1) are still subject to the provisions of subsection (C)(10) and subsection (G)(5).⁵ Subsection (J)(2) further explains that *secondary metals recyclers* must maintain a record of transactions *involving exempted entities* pursuant to subsection (D) and are subject to the penalty provisions of subsection (D)(6) for failing to do so. S.C. Code Ann. § 16-17-680(J)(2). Additionally, subsection (J)(2) states that nonferrous metals *acquired from an exempted entity* may still be held by authorities as mentioned in subsection (F). Id.

Understanding this, auto parts stores like Auto Zone and NAPA, who, as explained above are exempted entities pursuant to Section 16-17-680(J)(1)(e), are only subject to the provisions of subsection (J)(2) as it relates to exempted entities. Accordingly, only subsections (C)(10) and (G)(5) of the statute apply to these types of stores. With this in mind, we find it unnecessary to

⁴ Auto parts stores such as Auto Zone and NAPA, who sell a variety of products to the general public, are clearly retailers meaning that they are required to obtain a retail license under state law. See S.C. Code Ann. § 12-36-70(2)(a) (West 2000) (defining a retailer as every person maintaining a place of business or qualifying to do business in the State); S.C. Code Ann. § 12-36-510(A) (West 2000) (requiring every retailer to obtain a retail license for each permanent branch, establishment or agency). Engaging in business without a retail license or with a suspended license is a misdemeanor. S.C. Code Ann. § 12-36-560 (West 2000). Accordingly, this Office assumes, for purposes of this opinion, that the stores at issue hold a valid retail license as is required by state law.

⁵ Subsection 16-17-680(C)(10) criminalizes obtaining a permit to transport and sell nonferrous metals for the purpose of transporting or selling stolen nonferrous metals and provides penalties for failing to abide by the statute. Similarly, subsection 16-17-680(G)(5) criminalizes knowingly transporting stolen nonferrous metals; knowingly possessing stolen nonferrous metals; presenting a valid or falsified permit to transport and sell nonferrous materials which are known to be stolen; and presenting a valid or falsified bill of sale to transport or sell nonferrous materials which are known to be stolen.

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determine whether the practice of an auto parts store offering store credit for a lead-acid battery is a purchase under 16-17-680 of the Code since the provisions related to the purchase of nonferrous metals do not apply to an auto parts store holding a retail license under Section 16-17-680(J)(1)(e).

Thus, it is this Office's opinion that auto parts stores such as Auto Zone or NAPA, who are exempted entities under Section 16-17-680(J)(1)(e) because they presumably hold a retail license, are not subject to the requirements of Section 16-17-680 with the exception of subsection (J)(2). Moreover, because Section 16-17-680(J)(2) explains exempted entities are only subject to subsections (C)(10) and (G)(5) of Section 16-17-680, neither of which deal with the subject of purchasing nonferrous metals, it is unnecessary to determine whether the practice of offering a store credit rather than purchasing lead-acid batteries is at odds with the statute. Specifically, since the permitting requirements dealing with the purchase, transport and sale of nonferrous metals do not apply to entities like Auto Zone or NAPA pursuant to Section 16-17-680(J)(1)(e), their failure to abide by inapplicable permitting requirements obviously do not matter. Be that as it may, we do note that by the terms of subsection (J)(2), an auto parts store which is otherwise exempt under subsection (J)(1) may still be subject to criminal liability for violating subsections (C)(10) and (G)(5) of Section 16-17-680.

Conclusion

In conclusion, while we understand you are requesting clarification on the question of whether an auto parts store offering a store credit for a lead-acid battery amounts to a purchase under Section 16-17-680 of the Code, we believe it is unnecessary to do so in light of the fact Section 16-17-680's requirements related to purchasing, sale and transport of nonferrous metals do not apply to an auto parts store holding a valid retail license under Section 16-17-680(J)(1)(e).

Sincerely,



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REVIEWED AND APPROVED BY:



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