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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

January 22, 2001

Robert W. Maring, Esquire
Georgetown City Attorney
P.O. Box 478
Georgetown, South Carolina 29442

Re: Your Letter of November 13, 2000
SC Code §56-5-6240

Dear Mr. Maring:

In the above referenced letter, you ask this Office for "an opinion in regards to 56-5-6240." Specifically, you state that your "...questions are as follows:

> (1) Does 56-5-6240 envision a return to the owner when the owner is guilty of a fourth offense DUS if he pays storage charges? Section (C) states "inform the owner and any lienholders of the right to reclaim the motor vehicle within thirty days of the date notice was received, upon all reasonable towing, preservation and storage charges resulting from placing the vehicle in custody."
> (2) Can the city proceed under 56-5-6240 without filing a summons and complaint?
> (3) If a Rule to Show cause is still permissible under 56-5-6240, does it have to be accompanied by a petition?
> (4) Because of the case of Medlock v. 1985 Ford F-150 pickup 308 S.C. 68, 417 S.E.2d 85 (S.C. 1992) is this statute unconstitutional since it provides for a bench trial and not a jury trial?"

Each question will be addressed in turn.

Towing, Preservation And Storage Charges

Your first question requires an exercise of statutory interpretation. When interpreting the meaning of a statute, a few basic principles must be observed. The primary goal is to ascertain the intent the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The statute's words must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or to expand the statute's operation. State v. Blackmon, 304

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S.C. 270, 403 S.E.2d 660 (1991). The clear and unambiguous terms of a statute must be applied according to their literal meaning. State v. Blackmon, supra. All rules of statutory construction, however, are subservient to the one that the legislative intent must prevail if it reasonably can be discovered in the language used, and the language must be construed in the light of the intended purpose of the statute. Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 440 S.E.2d 364 (1994). The determination of legislative intent is a matter of law. Charleston County Parks & Recreation Comm'n v. Somers, 319 S.C. 65, 459 S.E.2d 841 (1995).

While strict construction standards apply to the terms of a forfeiture statute, Ducworth v. Neely, 319 S.C. 158, 459 S.E.2d 896 (Ct.App.1995), the statute as a whole must receive a practical, reasonable, and fair interpretation that is consonant with the purpose, design, and policy of the legislature. Browning v. Hartvigsen, 307 S.C. 122, 414 S.E.2d 115 (1992). In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Hitachi Data Systems Corp. v. Leatherman, 309 S.C. 174, 420 S.E.2d 843 (1992). The court should review the statutory language as a whole in light of its manifest purpose. Simmons v. City of Columbia, 280 S.C. 163, 311 S.E.2d 732 (1984). Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law. Bennett v. Sullivan's Island Bd. of Adjustment, 313 S.C. 455, 438 S.E.2d 273 (Ct.App.1993).

Section 56-5-6240 is a rather involved statute consisting of three separate subsections. The majority of the statute is devoted to the manner in which covered vehicles are to be confiscated, forfeited and disposed of. I believe that the General Assembly's purpose in enacting the statute can be seen in the first few lines of subsection (A) where it states, in pertinent part:

> In *addition to the penalties for a person convicted* of a fourth or subsequent violation within the last five years of operating a motor vehicle while his license is canceled, suspended, or revoked (DUS), or a third or subsequent violation within the last ten years of operating a motor vehicle while under the influence of intoxicating liquor or drugs (DUI), *the person must have the motor vehicle he drove during this offense forfeited* as provided in subsections (B) and (C) if the person is the registered owner or a resident of the household of the registered owner... (Emphasis added)

Although in a different context, the South Carolina Court of Appeals has reviewed §56-5-6240 and expressed the General Assembly's intent in enacting the statute this way:

> The purpose of the statutes governing...vehicle forfeiture (section 56-5-6240) is to make drunk driving consequences more serious upon conviction for successive violations. The General Assembly intended forfeiture to apply when a person received a fourth conviction for a DUI violation. We see no indication that the General Assembly chose to enhance criminal penalties for subsequent violations while allowing a person to elude civil forfeiture by pleading to a lesser offense. *The clear purpose of the statute is to provide for forfeiture*

> *of the driver's vehicle upon conviction* for a fourth or subsequent DUI violation... (Emphasis added)

City Of Sumter Police Department v. One (1) 1992 Blue Mazda Truck (VIN#JM2UF1132N0294812, 330 S.C. 371, 498 S.E.2d 894 (S.C. App. 1998).

Additionally, in a prior opinion from this Office, the legislative intent precipitating the passage of §56-5-6240 was stated as follows:

> The General Assembly seeks to deprive the owner of record of the property upon conviction subject only to the defenses of lack of knowledge or authority of the driver's conduct.
> Atty. Gen. Op. (Dated February 7, 1996)[1]

The language used by the General Assembly in §56-5-6240 is relatively stern and speaks in mandatory terms. The statute acts as an additional *penalty* for a person convicted of a covered offense and such a person *must* have the vehicle he drove during the commission of the offense *forfeited.* As we stated in Op. Atty. Gen., No. 94-13 (Feb. 1, 1994), "[the word] 'must' as ordinarily used indicate[s] a mandatory duty." Further, forfeiture is defined by *Blacks Law Dictionary* as: "A comprehensive term which means a divestiture of specific property without compensation; it imposes a loss by the taking away of some preexisting valid right without compensation ... A deprivation or destruction of a right in consequence of the nonperformance of some obligation or condition. Loss of some right or property as a penalty for some illegal act. Loss of property or money because of breach of a legal obligation ..."

Following the tenets of statutory interpretation stated above, it is my opinion that §56-5-6240 does not "envision a return to the owner when the owner is guilty of a fourth offense DUS if he pays storage charges." The statute must be reviewed as a whole in light of its manifest purpose to *provide for forfeiture of the driver's vehicle upon conviction* for a covered offense (DUI 3rd and above or DUS 4th and above). Moreover, "when the [legislature] has clearly expressed its intention in one or more parts of an act, it will be presumed that it had the same intention in another part unless a different intention clearly appears." State ex.rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). Also, different portions of the same act in apparent conflict must be read together and reconciled such that each can be given its intended effect. Powell v. Red Carpet Lounge, 280 S.C. 142, 311 S.E.2d 719 (1984). Accordingly, it seems that a reading of subsection (C) of §56-5-6240 which would allow a guilty party to redeem his or her vehicle "upon payment of all reasonable towing, preservation and storage charges ..." would clearly frustrate the legislative intent. Rather

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[1] This opinion as well as City of Sumter v. One (1) 1992 Blue Mazda Truck, supra, were penned prior to the passage of §56-5-6240 in its present form. However, the subsequent changes relate primarily to the manner of disposition of the vehicle, not the application of the statute to a specific vehicle.

than placing the guilty party in the same shoes as an innocent owner or lienholder, a more reasonable interpretation of the language in question would be that it only applies to innocent owners who have failed to retake possession of the vehicle after being allowed to do so pursuant to a finding of the court.

Summons and Complaint/Rule to Show Cause (questions 2 & 3)

Your second and third questions relate to the initiation of a forfeiture action pursuant to §56-5-6240. I have grouped them because I believe the same authority answers both.

An action for forfeiture of property is a "civil action at law." City Of Sumter Police Department v. One (1) 1992 Blue Mazda Truck (VIN#JM2UF1132N0294812, supra, citing State v. Perry, 270 S.C. 206, 241 S.E.2d 561 (1978). The South Carolina Rules of Civil Procedure "govern the procedure in all suits of a civil nature whether cognizable as cases at law or in equity..." Rule 1, SCRCP, and further provide that "[t]here shall be one form of action to be known as 'civil action.'" Rule 2, SCRCP. Moreover, "[a] civil action is commenced by filing and service of a summons and complaint." Rule 3 (a), SCRCP. The "Notes" to Rule 65, SCRCP related to, *inter alia,* Special Proceedings also state that "[a]n action may no longer be commenced by the service of an order or 'rule to show cause' only."

I can find no authority which would indicate that actions brought pursuant to §56-5-6240 are exempt from our Rules of Civil Procedure. Therefore, it is my opinion that an action initiated in the circuit court pursuant to this section must be commenced by the filing and service of a summons and complaint. Further, all other procedural rules related to civil actions would also be applicable.

Jury Trials For Forfeiture Actions

In your final query, you question the constitutionality of §56-5-6240 "since it provides for a bench trial and not a jury trial." You base your question on our Supreme Court's ruling in Medlock v. 1985 Ford F-150 pickup, 308 S.C. 68, 417 S.E.2d 85 (S.C. 1992).

As this Office previously opined "... in considering the constitutionality of legislation which is enacted by the General Assembly, we must presume that the act is constitutional in all respects. Moreover, such an act will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. While this Office may comment upon potential constitutional problems, it is solely within the province of the courts of this State to declare an act of the General Assembly unconstitutional." Atty. Gen. Op. (September 25, 1998) (citations omitted). In that regard, the court in Townsend v. Richland County, 190 S.C. 270, 2 S.E.2d 777 (1939), stated that:

> The rule of law is, that an investigation like this, concerning the constitutionality of an Act of the Legislature, begins with the presumption that the Act is valid. All doubts or uncertainties arising, either from the language of the Constitution or of the Act, must be resolved in favor of the validity of the Act, and the Court will assume

> to declare it void only in case of a clear conflict with the Constitution. The duty of the Court is to so construe Acts of the Legislature as to uphold their constitutionality and validity if it can reasonably be done, and if their construction is doubtful the doubt will be resolved in favor of the law. 2 S.E.2d at 779.

In 1985 Ford F-150 Pick Up the Court held that "defendant owners possess a right to a jury trial where the property subject to forfeiture under [SC Code] sections 44-53-520 and -530 is property normally used for lawful purposes." 417 S.E.2d at 87. The Court noted that "[a] trial by judge has been defined as '[t]rial before judge alone, in contrast to before jury and judge'"(citation omitted) and found that the aforementioned civil forfeiture statutes were intended by the legislature to provide for proceedings before a judge alone because of the following language in Section 44-53-530(a) :

> The judge shall determine whether the property is subject to forfeiture and order the forfeiture confirmed. If the judge finds a forfeiture, he shall then determine the lienholder's interest as provided in this article. The judge shall determine whether any property must be returned to a law enforcement agency pursuant to Section 44-53-582. 1985 Ford F-150 Pick Up, 417 S.E.2d at 87.

The 1985 Ford F-150 Pick Up Court further held "that section 44-53-530(a) is unconstitutional to the extent that it denies a defendant owner the right to a jury trial in those cases where the property subject to forfeiture normally is used for lawful purposes" and remanded the matter for a new trial. 417 S.E.2d at 87, 88.

The language in §44-53-530(a) which the Court found to indicate an intent for a bench trial does not exist in §56-5-6240. Subsection (B) of 56-5-6240 provides that an action shall be initiated in the "circuit court" and that the "court, after hearing, shall order..." that the vehicle be forfeited or returned to the registered owner. There is no specific indication that the General Assembly intended that the forfeiture issue be decided by a judge alone. Accordingly, it is likely that the Court would, with an eye towards preserving its constitutionality, construe the provisions of the statute to allow aggrieved parties to request a jury trial as guaranteed by our Constitution. Moreover, even if such is not the case, the remedy would not be an invalidation of the entire statute. As with §44-53-530, the remedy would be to give the "defendant owner" of the property a jury trial upon his request, not prohibit the forfeiture action. See, Childers v. Medlock, 308 S.C. 73, 417 S.E.2d 88 (1992)[2]; See Also Commonwealth v. One 1972 Chevrolet Van, 385 Mass. 198, 431 N.E.2d 209 (Mass. 1982)

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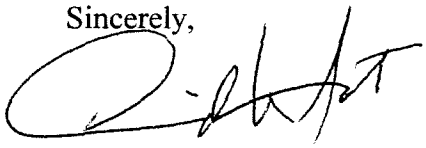
[2] This case is related to Medlock v. 1985 Ford F-150 Pick Up, supra. Here, Childers, the "defendant owner"instituted a "claim and delivery" action in an attempt to obtain a jury trial regarding the forfeiture of his property. The Court stated that "In the companion case of 1985 Ford F-150 Pick Up, we held that Childers is entitled to a jury trial. Accordingly, as Childers is entitled to assert the present claim before a jury under the 1985 Ford F-150 Pick Up case, we dismiss this appeal without prejudice.")

(The court concluded that the owner of a van was entitled to a trial by jury and that the provision in Statute that purports to provide for a trial without a jury for motor vehicle forfeitures may appropriately be excised from the statute and the balance of the statute allowed to stand).

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant
Assistant Attorney General

DKA/an