



7126 Librany

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

March 23, 2001

Benjamin P. Mustian, Esq.
House Judiciary Committee
P.O. Box 11867
Columbia, South Carolina 29211

RE: Informal Opinion

Dear Mr. Mustian:

By your letter of March 21, 2001, you have requested an opinion of this Office concerning South Carolina Code Section 5-7-155 and its application to the municipalities of North Myrtle Beach and Atlantic Beach. By way of background, the Town of Atlantic Beach is entirely surrounded by the Town of North Myrtle Beach to the north, south, and west. North Myrtle Beach and Atlantic Beach are both bounded to the east by the Atlantic Ocean. United States Highway 17 passes through North Myrtle Beach, into Atlantic Beach for approximately one-third of a mile, and then back into North Myrtle Beach. You have asked whether Section 5-7-155 gives concurrent jurisdiction to the North Myrtle Beach police department and the Atlantic Beach police department over the length of Highway 17 that briefly passes through Atlantic Beach.

Section 5-7-155 reads:

If any portion of a street or highway is within the boundary of a municipality, the right of way of the street or highway not within the municipal boundary but touching the boundary is nevertheless considered to be within the boundary of that municipality for purposes of its police jurisdiction.

A street or highway which serves as the boundary between municipalities is under the police jurisdiction of both municipalities regardless of the municipality in which the street or highway is located.

This statute appears to clarify police jurisdictions over streets and highways where the boundaries between the municipalities could cause some confusion over which police department may exercise its jurisdiction in the area immediately surrounding the boundary line.

Although there is no case law in South Carolina interpreting the provisions of Section 5-7-155, the time-tested rules of statutory construction provide us with some guidance in applying the statute to the circumstances in North Myrtle Beach and Atlantic Beach. The cardinal rule of statutory interpretation is to ascertain and give effect to the legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Most often, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). The words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991).

Applying these rules of construction to the circumstances in question, we do not believe that Section 5-7-155 grants the North Myrtle Beach police department concurrent jurisdiction over that portion of Highway 17 passing through Atlantic Beach. For the following reasons, we believe that a careful reading of the statute limits its application only to portions of the highway and the immediate right of way touching the boundary and should not be extended to include portions of the highway extending one-third of a mile into another municipality.

Clearly the second paragraph of Section 5-7-155 does not apply to North Myrtle Beach and Atlantic Beach. That provision, by its literal terms, would apply only if Highway 17 served as the actual boundary between North Myrtle Beach and Atlantic Beach. Because the Highway simply crosses over the boundary lines, this portion of the statute is not controlling.

The first paragraph of Section 5-7-155 is more complicated, but nevertheless also inapplicable. This provision appears to control when a road crosses the boundary in or out of a municipality. At the point where the road passes out of the boundary, the remaining "right of way ... not within the municipal boundary but touching the boundary" falls under the jurisdiction of the municipal police department. We believe that "right of way" is the controlling area allowed by the statute. The following "of the street or highway" merely refers to which right of way the statute intends. In other words, "highway not within the municipal boundary but touching the boundary" should not be severed from "right of way" to force an application to an extended length of highway beyond the boundary.

A limited reading of "touching the boundary" to the immediate area surrounding the boundary is more compelling when considering that a 1994 amendment to the statute inserted "right of way" in place of "remaining width." See S.C. CODE ANN. § 5-7-155. Most likely, the General Assembly intended with this amendment to include not only the remaining width of the road but also the shoulder. This expansion of the statute, however, does not justify a reading that would include one-third of a mile of Highway 17 after it passes out of the Town of North Myrtle Beach, although

Mr. Mustian
March 23, 2001
Page 3 of 3

it certainly touches the boundary as it passes through. Such a reading would lead to an absurd result: if all highways touch a municipal boundary when exiting the municipal limits, how far down the highway would the municipal jurisdiction extend outside its boundaries lines? One-third of a mile? Two miles? The plain language construction of the statute answers this question by limiting jurisdiction to the "right of way" not within the boundary but touching the boundary. This statute would not authorize North Myrtle Beach's concurrent jurisdiction over the one-third of a mile portion of Highway 17 passing through Atlantic Beach.

Although we believe Section 5-7-155 does not authorize the North Myrtle Beach to exercise concurrent jurisdiction with Atlantic Beach over this portion of Highway 17, you may wish to examine another provision in the Code of Laws. Section 5-7-110 states in pertinent part that:

[a]ny such police officers shall exercise their powers on all private and public property within the corporate limits of the municipality and on all property owned or controlled by the municipality wheresoever situated; provided, that the municipality may contract with any public utility, agency or with any private business to provide police protection beyond the corporate limits. Should the municipality provide police protection beyond its corporate limits by contract, the legal description of the area to be served shall be filed with the State Law Enforcement Division, the office of the county sheriff and the Department of Public Safety.

This provision would allow North Myrtle Beach to expand the limits of its jurisdiction by agreement with the Town of Atlantic Beach. In the past, this Office has advised this course of action in instances when a police department sought to extend its jurisdiction beyond the town. See OPS. ATTY. GEN. JAN. 19, 1998 (concerning a road which passed out of town into unincorporated areas of county); July 11, 1986 (concerning town officers assisting at accidents just outside of town limits). You may wish to review this statute as a preferable alternative to a forced construction of Section 5-7-155.

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 nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole
Assistant Attorney General