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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

January 13, 1998

Randy M. Blackmon, Chief of Police
Columbia Metropolitan Airport
P. O. Box 280037
Columbia, South Carolina 29228-0037

Re: Informal Opinion

Dear Chief Blackmon:

You have requested an opinion "in reference to an abandoned vehicle which was left on airport property by a former tenant." You note that "[a] registered letter was sent to the registered owner on September 19, 1997 pursuant to section 56-5-5630 ..." and that "[a]s of this date there has been no response."

Law / Analysis

S.C. Code Ann. Sec. 56-5-5620 provides as follows:

(a) It shall be the duty of every police officer having knowledge of an abandoned motor vehicle to seize it and have it removed for safekeeping to such place as may be designated by the sheriff of the county, or the chief of police of the municipality, in which it was found, who shall be charged with its custody and disposition as provided in this article.

(b) A sheriff or chief of police may employ his own personnel, equipment, and facilities or hire persons, equipment, and facilities for the purpose of removing, preserving and storing abandoned motor vehicles.

Re: Airport Letter

Section 56-5-5630 further states:

(a) When an abandoned motor vehicle has been taken into custody, the sheriff or chief of police shall notify within fifteen days, by registered or certified mail, return receipt requested, the last known registered owner of the vehicle and all lienholders of record that the vehicle has been taken into custody. The notice must describe the year, make, model and serial number of the vehicle; set forth where the motor vehicle is being held, inform the owner and any lienholders of the right to reclaim the motor vehicle within three weeks after the date of notice, upon payment of all towing, preservation, and storage charges resulting from placing the vehicle in custody, and state that the failure of the owner or lienholders to exercise their right to reclaim the vehicle within the time provided is deemed a waiver by the owner and all lienholders of all right, title, and interest in the vehicle and consent to the sale of the vehicle at a public auction.

(b) If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the area where the motor vehicle was abandoned is sufficient to meet all requirements of notice pursuant to this article. The notice by publication may contain multiple listings of abandoned vehicles. This notice must be within the time requirements prescribed for notice by registered or certified mail and must have the same contents required for a notice by registered mail.

(c) No lienholder shall be subject to any penalty imposed by law in this State for abandonment unless the vehicle is abandoned by the lienholder, or his agent, or servant. No owner of a vehicle which has been stolen and thereafter abandoned, as defined by this article, shall be liable for any charges or penalties imposed herein. A vehicle shall be deemed to be stolen when the owner notifies a police

officer of this State and such report is accepted and carried on the records of the sheriff or chief of police as a stolen vehicle.

In addition, Section 56-5-5640 provides for the sale of an abandoned vehicle as follows:

If an abandoned vehicle has not been reclaimed as provided for in § 56-5-5630, the sheriff or chief of police shall sell the abandoned vehicle at a public auction. The purchaser of the vehicle shall take title to it free and clear of all liens and claims of ownership, shall receive a sales receipt from the sheriff or chief of police and shall be entitled to register the purchased vehicle and receive a certificate of title. The sales receipt at such sale shall be sufficient title only for purposes of transferring the vehicle to a demolisher for demolition, wrecking or dismantling, and in such case no further titling of the vehicle shall be necessary. The expenses of the auction, the costs of towing, preserving and storing the vehicle which resulted from placing the vehicle in custody, and all notice and publication costs incurred pursuant to § 56-5-5630, shall be reimbursed from the proceeds of the sale of the vehicle. Any remainder from the proceeds of the sale shall be held for the owner of the vehicle or entitled lienholder for ninety days and then shall be deposited in the general fund of the county or municipality.

It appears that § 56-5-5620, -30 and -40 were originally part of Act No. 1263 of 1972, which was entitled "An Act To Provide For The Disposal of Abandoned Motor Vehicles and To Repeal Sections 46-489 through 46-490.6 And 47-406, Code of Laws of South Carolina, 1962, Relating To Abandoned Vehicles and Other Property on Highways." Such Act, in Section 1 thereof, defined an "Abandoned motor vehicle" in terms of such vehicle being left upon a right of way of any road or highway for more than 48 hours, or is inoperable and left on private property without the consent of the owner or person in control of the property for longer than 48 hours, or does not have a valid license plate and is parked or left standing in an inoperative or junked condition on any residentially zoned property, with certain exceptions not here relevant. The portion of definition dealing with motor vehicles that are left on any right of way or road for more than 48 hours was codified in § 56-5-5610; however, pursuant to 1996 Act No. 458, § 246A, § 56-5-5610 was repealed, but the remainder of the old 1972 Act, including § 56-5-5630 was left intact.

It is evident that, at least until the repeal of § 56-5-5610 by Act No. 459 of 1996, the definition of "abandoned vehicle" was clearly limited for purposes of § 56-5-5630, to the situation enumerated in § 56-5-5610 and referenced above (motor vehicles left on a right of way more than 48 hours). However, the question is now whether your situation would be covered by § 56-5-5630 in light of the removal of such limitations by the repeal of § 56-5-5610.

In addition, § 56-5-5810 et seq. must be referenced. Such provisions are part of Article 41 which is entitled "Disposition of Abandoned or Derelict Motor Vehicles on Public or Private Property." Subsection (b) of § 56-5-5810 defines an "abandoned vehicle" as a

... vehicle required to be registered in this State if operated on a public highway in this State that is left unattended on a highway for more than forty-eight hours, or a vehicle that has remained on private or other public property for a period of more than seven days without the consent of the owner or person in control of the property. (emphasis added).

This Act, dealing with the disposition of "abandoned vehicles" as defined above was also amended by Act No. 459 of 1996. Specifically, § 56-5-5680 was modified, deleting the requirement that "all abandoned motor vehicles left on any right of way of any road, street or highway for a period of over forty eight hours shall be removed and disposed of as provided for in Sections 56-5-5610 to 56-5-5680." Section 56-5-5840 now reads simply that

[a]ll abandoned and derelict vehicles shall be subject to removal from public or private property and disposed of in accordance with the provisions of this article.

While it can certainly be argued that your situation is governed by § 56-5-5630, there is still a question as to whether this Code Section would now be the appropriate method for disposition of an abandoned vehicle left upon Airport property. It appears to me that the Legislature had a distinct purpose in repealing the definition of "abandoned vehicle," contained in § 56-5-5610 (relating to vehicles left on a right of way more than 48 hours), and at the same time, amending § 56-5-5840 now to require that even those vehicles left on a highway right of way for more than 48 hours must be disposed of pursuant to § 56-5-5810 et seq. Indeed, the Title of Act No. 459 of 1996 states that the Legislature's purpose is to amend § 56-5-5840 to delete "obsolete provisions" Moreover, it is significant that § 56-5-5630 is still codified in the part of the Code dealing

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with the "Disposition of Abandoned Motor Vehicles on Highways." Thus it is now not at all clear what type of abandonment of vehicles is encompassed by § 56-5-5630. However, clearly § 56-5-5810 et seq. would encompass your situation.

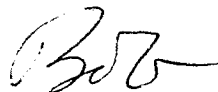
The result of your following either of these statutory provisions may be about the same, however. Much of the language contained in new § 56-5-5850 appears to be identical to that of § 56-5-5630. Pursuant to both provisions, after proper notice as required by the statute, a vehicle is sold and the remainder of the proceeds after expenses, towing charges, etc. is provided to the entity involved -- in this instance, probably the Airport Commission. See §§ 56-5-5850, -5870, -5880, -5890, -5900.

Without a declaratory ruling from a court, I would suggest that you now follow § 56-5-5810 et seq. for disposition of this vehicle. Presuming no claim of ownership from the owner or lienholder, the vehicle could be sold pursuant to these statutes and the proceeds retained by the governing entity upon whose property the vehicle was abandoned -- the Airport. The fact that you have already given notice pursuant to § 56-5-5630 should not preclude your now following § 56-5-5810 et seq. This would appear to be the safest course in light of the recent legislative amendments.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions 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 am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an