



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 13, 1995

The Honorable James R. Metts, Ed.D.
Sheriff of Lexington County
Post Office Box 639
Lexington, South Carolina 29071

RE: Informal Opinion

Dear Sheriff Metts:

By your letter of June 23, 1995, to Attorney General Condon, you have sought an opinion as to a revision to S.C. Code Ann. §23-28-70 which was adopted by the General Assembly during the 1995 legislative session. You expressed your understanding that H.3135¹ concerning reserve officers of law enforcement agencies was signed into law by Governor Beasley on June 12, 1995. Because reserve deputies of your department are a great resource, you wish to utilize them to the extent allowed by law. Your concern is in the new language of §23-28-70 that provides "...a reserve police officer at all times must be accompanied by a full-time certified South Carolina police officer." You have sought an interpretation of the term "accompanied." You asked whether reserve officers, who have been permitted to patrol the county alone because of their experience with your department, would be permitted to continue this practice in any manner.

1995 Amendment

Prior to the 1995 amendment, §23-28-70 provided in pertinent part that "[e]ach reserve shall be in proximate contact, by radio or otherwise, with the full-time officer to whom he is assigned." The 1995 amendment by the General Assembly struck this sentence and put in its place the following:

¹H.3135 is R-138 of 1995; an act number has apparently not yet been assigned to this act.

The Honorable James R. Metts

Page 2

July 13, 1995

While performing in any capacity as a reserve, a reserve police officer at all times must be accompanied by a full-time certified South Carolina police officer. ...

These amendments to §23-28-70 are reflected in the title of the legislative act, which provides in relevant part:

AN ACT ... TO DELETE THE REQUIREMENT THAT EACH RESERVE MUST BE IN APPROXIMATE [sic] CONTACT WITH A FULL-TIME OFFICER TO WHOM HE IS ASSIGNED AND TO REQUIRE THAT A RESERVE POLICE OFFICER MUST BE ACCOMPANIED BY A FULL-TIME CERTIFIED SOUTH CAROLINA POLICE OFFICER;

Rules of Statutory Construction

In construing any legislative act, the primary objective of both the courts and this Office is to ascertain and effectuate legislative intent if at all possible to do so. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Language used in a statute must be construed in light of the intended purpose of the act. Bohlen v. Allen, 228 S.C. 135, 89 S.E.2d 99 (1955). Words used in a statute are to be given their plain and ordinary meanings. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). Where terms of a statute are clear and unambiguous and leave no room for construction, they are to be applied literally. Green v. Zimmerman, 269 S.C. 535, 238 S.E.2d 323 (1977). The title of an act may be used to show the intent of the legislature. Ponder v. City of Greenville, 196 S.C. 79, 12 S.E.2d 851 (1941). In adopting an amendment to a statute, it will be presumed that the legislature intended to make some change in the existing law. Vernon v. Harleysville Mut. Cas. Co., 244 S.C. 152, 135 S.E.2d 841 (1964).

Discussion

The plain and ordinary meaning of the term "accompany" is "[t]o go along with; join in company." The American Heritage Dictionary 72 (Second College Edition 1982). The dictionary lists as synonyms for "accompany" the terms "escort" and "chaperon," observing that "[t]hese verbs are compared as they mean to be with or to go with another person or persons. Accompany suggests going with another on an equal basis. ..." Id.

Judicial decisions in other jurisdictions are in accord with this plain and ordinary meaning. In the context of a statute requiring a minor operating a motor vehicle to be "accompanied by" an adult, the court in Rush v. McDonnell, 214 Ala. 47, 106 So. 175 (1925) stated that to be "accompanied by" meant for the minor to be "attended by an adult person having and exercising supervision over the infant in respect to his operation of the

The Honorable James R. Metts

Page 3

July 13, 1995

car." Id., 106 So. at 179. A similar statute was construed in Hughes v. New Haven Taxicab Co., 87 Conn. 416, 87 A. 721 (1913); there the court stated that "accompanied by" meant that the "licensed operator shall be in such proximity to the unlicensed operator of the car as to be able to furnish with reasonable promptness such advice and assistance as may be necessary for the safe operation of the car." Id., 87 A. at 722. The court in Planned Parenthood Ass'n of Atlanta Area v. Harris, 670 F.Supp. 971 (N.D. Ga. 1987), in construing a requirement of the Georgia Parental Notification Act that a minor seeking an abortion must notify a parent or seek a waiver of such notification from the juvenile court, so that a parent or other adult must accompany the minor seeking an abortion, used the definition "to go with or attend as an associate or companion." Id., 670 F.Supp. at 987. It was not sufficient that contact be had with the parent by telephone or mail, for example; the statute required the presence of the parent or other adult. Other decisions have used the definition of "accompany" as to go along with, go with, or attend as a companion or associate. United States v. Lee, 131 F.2d 464 (7th Cir. 1942); United States v. Alberty, 65 F.Supp. 945 (S.D. Cal. 1946).

Conclusions

Applying the foregoing rules of statutory construction, the definitions of the concept of accompaniment employed by courts of other jurisdictions, and the presumption that the General Assembly intended to make a change in the statute as it existed prior to the 1995 amendment, I am constrained to conclude that there is no room for interpretation of §23-28-70 as recently amended by the General Assembly. I must conclude that §23-28-70 as it presently exists requires that reserve officers be with or in the company of a full-time certified South Carolina police officer during the performance of their duties as reserve police officers. To conclude otherwise would be to ignore the plain meanings of the words as used by the General Assembly and to legislate, a task which is constitutionally reserved for the General Assembly.

In so concluding, I must concur with your observation that reserve officers are indeed an excellent resource of manpower for the law enforcement departments, both municipal and county, of this State, which departments are always in need of additional resources and manpower. You may wish to bring your concerns to the attention of your county's legislative delegation or the associations which represent law enforcement agencies or officers in this State, toward having the statute amended to be able to better utilize this valuable resource.

This letter is an informal opinion only. It has been written by a designated Senior Assistant 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. I trust that

The Honorable James R. Metts
Page 4
July 13, 1995

it has satisfactorily responded to your inquiry and that you will advise if clarification or additional assistance should be necessary.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General