4999 / 5684

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 19, 1995

David M. Bridges, Chief of Police
City of Greenville Police Department
4 McGee Street
Greenville, South Carolina 29601-2298

Re: Informal Opinion

Dear Chief Bridges:

You have requested my opinion regarding the interpretation of S.C. Code Ann. Section 56-5-765 which deals with accidents involving police vehicles. You state as follows:

> [r]ecently one of our marked units pursued a stolen vehicle which ultimately struck a parked car and overturned. Due to the severity of the accident and to eliminate any questions, we asked the South Carolina Highway Patrol to investigate, even though our vehicle was not physically involved. We felt that the Highway Patrol could objectively and impartially investigate the accident to avoid later allegations of police misconduct relating to the chase.
>
> The Highway Patrol supervisor declined to investigate, stating that our vehicle was not involved in the accident.

You wish to know whether Section 56-5-765 is applicable here. I believe it is.

Law/Analysis

Section 56-5-765 as most recently amended this session by the General Assembly in R-215 (S-101), provides in pertinent part:

> (A) When a motor vehicle or motorcycle of a law enforcement agency, except a motor vehicle or motorcycle operated

> by the South Carolina Department of Public Safety, is involved in a traffic collision, that results in an injury or a death, or involves a privately-owned motor vehicle or motorcycle, regardless of whether another motor vehicle or motorcycle is involved, the State Highway Patrol shall investigate the collision and file a report with findings on whether the agency motor vehicle or motorcycle was operated properly within the guidelines of appropriate statutes and regulations. (emphasis added).

The issue presented here is whether a police vehicle which gives chase to another vehicle and such other vehicle hits a parked car, but the police vehicle does not physically collide with any object, is nevertheless "involved in a traffic collision" pursuant to Section 56-5-765.

The cardinal principle of statutory construction is to effectuate legislative intent. Merchants Mut. Ins. Co. v. South Carolina Second Injury Fund, 277 S.C. 604, 291 S.E.2d 667 (1982). The language of a statute must be construed in light of the intended purpose. Greenville Enterprise v. Jennings, 210 S.C. 163, 41 S.E.2d 868 (1947). Moreover, a remedial statute, such as § 56-5-765, must be broadly construed in order to effectuate its purpose. South Carolina Dept. of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978).

The obvious purpose of § 56-5-765 is to avoid conflicts of interest and to insure accountability. Where a police vehicle is involved in a collision, in the circumstances stated, the Legislature has deemed it inappropriate that the police investigate itself with respect to the accident. In order to avoid the appearance of a conflict, the Legislature has mandated that the Highway Patrol investigate instead. So long as the police vehicle is "involved" in the collision, the statute should apply. Thus, the real question here is whether being "involved" in a collision requires physical contact.

A number of cases have interpreted language similar to that used in § 56-5-765, i.e. "involved" in a traffic collision or "involved" in a traffic accident, as not requiring physical contact. A good example is Rivas v. State, 787 S.W.2d 113 (Tex. App. 1990). In Rivas, the defendant Rivas, was driving an automobile containing both a front and back seat passenger. As he approached a train crossing, warning signals for an oncoming train sounded and flashed. Rivas, thinking he could cross the tracks ahead of the approaching train, continued on ahead. The front seat passenger, fearing a collision, leaped out of the car and was killed either as a result of the collision with the train or tracks. Rivas was subsequently arrested for involuntary manslaughter as well as failure to stop and render

aid. Under Texas law, anyone "involved" in a traffic accident was required to stop and render aid. Rivas argued he did not violate the statute because there was no physical collision of his car.

The Texas Court of Appeals disagreed and held the statute applicable to Rivas. Said the Court,

> Rivas argues that the term "involved in an accident" envisions an actual physical collision ... The State submits that this is too restrictive a reading of the phrase "involved in an accident" and we agree. While the phrase "involved in an accident" certainly includes "collision," it is not exclusively limited to that term.
>
> The Court of Criminal Appeals in [Steen v. State, 640 S.W.2d 912, 914 (Tex.Crim.App. 1982)] ... held that a collision is not necessary in order for one party to be liable under the statute .... In Steen, one party swerved into another lane of traffic causing a second car to collide with a third. Although the first car did not physically collide with the second, the Steen court held that it caused the accident and that the second car colliding into the third was a natural consequence of the actions of the driver of the first car. Similarly, in our case, Rivas' actions resulted in or was the cause of the death of the front seat passenger. In other words, but for Rivas' actions, the accident and resulting death of the passenger would not have occurred. Further, fleeing a car that is about to be hit by a train may be just as natural a consequence of a driver's conduct as swerving out of the way of an inattentive driver.
>
> While not mandating, controlling precedent ... cases from other jurisdictions do provide guidance in this area. A New York court found that the driver of a pickup truck, whose passenger jumped out of the door, after being subjected to the driver's sexual advances, was sufficiently involved in an accident, the result of which was the passenger's death. See People v. Slocum, 112 A.D.2d 641, 492 N.Y.S.2d 159, 160 (N.Y.App.Div. 1985). There, the court determined that the evidence established the culpability of the defendant, as well

> as the happening of an accident. A California court, interpreting a statute almost identical to the statute presented to this Court, found that the driver of a vehicle who cut off a motorcycle by making a left turn in front of it, thus forcing the motorcycle to hit a metal pole to avoid the car, was involved with and did cause an accident. See People v. Ammons, 10 Cal.App.3d 682, 89 Cal.Reptr. 360, 361-363 (1970) .... These cases are persuasive and illustrative for the proposition that "involvement in an accident" need not require a physical condition.

787 S.W.2d at 115.

A host of other decisions support this view in a variety of contexts. In State v. Peterson, 522 P.2d 912, 920 (Ore. 1974), the Court held that Oregon's hit-and-run statute was applicable to a situation even though the driver charge did not come in physical contact with a vehicle or object. The defendant was alleged to be involved in a drag race which caused a collision between two other vehicles. Rejecting any contention that physical contact was a statutory requirement, the Court reasoned:

> [a]t a minimum, it is clear that physical contact is not required in order for a vehicle to be "involved in an accident." Thus, in People v. Bammes, 265 Cal.App.2d 626, 71 Cal.Reptr. 415 (1968) where the defendant pulled into the path of a station wagon to swerve and be struck by a logging truck, the defendant was held to be "involved" in the accident even though there was no physical impact with defendant's automobile. The court reasoned that defendant's action in turning in front of the station wagon was an efficient cause" of the station wagon's collision with the truck, because it was that action which precipitated the need for evasive action on the part of the station wagon. Similarly, in Baker v. Fletcher, 191 Misc. 40, 79 N.Y.S.2d 580 (1948), where defendant opened the door of his car, causing another vehicle to swerve and collide with a third vehicle, the court found the defendant was "involved" in the accident, holding that whenever a person affects "in any way" the operation of the vehicles, he is involved.

> Thus, it is clear that the class of persons "involved in an accident" has not been limited to those whose vehicles or bodies are physically involved in a collision.

See also, Hastings Mut. Ins. Co. v. State Farm Ins. Co., 177 Mich. App. 428, 442 N.W.2d 684 (1989) [for motor vehicle to be "involved in accident" within meaning of no-fault provision of no-fault statute, vehicle must play active role which contributes to accident]; Comstock v. Maryland, 82 Md.App. 744, 573 A.2d 117 (1990) [driver whose vehicle went from right southbound lane to left southbound lane cutting off victim's vehicle and allegedly causing victim to swerve resulting in a collision, was "involved in an accident" within hit-and-run statute's meaning, even though driver's vehicle did not collide with another vehicle].

Neither is the fact that the statute has been recently amended controlling as to your question. The triggering language, that the law enforcement vehicle be "involved" in the collision, remains intact. The Legislature has now simply narrowed somewhat the specific categories of "collisions to which [the] section applies."

Based upon the foregoing, it is my opinion that § 56-5-765 would be applicable to the situation you describe, even though the police vehicle did not collide with another vehicle. Based upon the broad purpose of the statute, as well as the many cases cited above, where the vehicles were deemed "involved" even though such vehicle was not itself in any collision, I would deem the statute applicable. It would appear that, but for the chase by the police vehicle, there would have been no collision. In such circumstances, courts have held the vehicle to be "involved" in the collision.

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