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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 15, 1996

Chief Thomas E. Watson
Vice President, Spartanburg County Police
Chiefs' Association
2000 GSP Drive, Suite 1
Greer, South Carolina 29651-9202

RE: Informal Opinion

Dear Chief Watson:

In a letter to this office you raised several questions regarding funeral processions. You first asked whether funeral processions have any specific rights under state law.

In Nabors v. Spencer, 262 S.C. 630, 207 S.E.2d 79 (1974), the State Supreme Court stated

We find no statute, and...(in that case)...no ordinance was pleaded or introduced into evidence which exempts the driver of a vehicle in a funeral procession from the obligation to observe traffic control devices...(as required by state law).

The Court cited the provision now codified as S.C. Code Ann. Section 56-5-950 which states

(t)he driver of any vehicle shall obey the instructions of any official traffic-control device...unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle....

In Nabors, the court indicated that a vehicle in a funeral procession would not be considered as being included within the definition of an "authorized emergency vehicle." The Court further referenced that "well established custom" did not provide any special exemption from the requirements of state law. Therefore, there are no special privileges accorded funeral processions in this state.

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You next asked whether a city or county ordinance could be adopted which would give funeral processions the right of way when under police escort.

S.C. Code Ann. Section 5-7-30 provides

(e)ach municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general laws of this State....

A prior opinion of this office, 1993 Op. Atty. Gen. No. 177, stated "...so long as the ordinance is within the broad confines of Section 5-7-30 and does not conflict with constitutional or state law, the ordinance will be upheld." In determining whether a conflict exists, a court would examine the entire field of pertinent legislation, as well as considering whether the ordinance contains any conditions which are inconsistent or irreconcilable with relevant state statutes. Town of Hilton Head Island v. Fine Liquors, 302 S.C. 550, 397 S.E.2d 662 (1990); City of Charleston v. Jenkins, 243 S.C. 205, 133 S.E.2d 242 (1963).

Another opinion of this office, 1991 Op. Atty. Gen. No. 196, stated that pursuant to S.C. Code Ann. Section 4-9-30, counties are given a list of enumerated powers, including the authority to enact ordinances. However, as specified in the opinion, a county "...cannot adopt an ordinance which would conflict with the state constitution or general law."

As referenced above, Section 56-5-950 requires a driver to "obey the instructions of any official traffic-control device...unless otherwise directed by a police officer." In Otto v. Whearty, 27 N.E.2d 190 (Ohio, 1940), a municipal ordinance which purported to give a right of way at street intersections to funeral processions was determined to be invalid as in conflict with general statutory law relating to traffic lights at intersections. Therefore, any ordinance regarding funeral processions must be consistent with general state statutory law, such as Section 56-5-950. However, consistent with Sections 4-9-30 and 5-7-30, a city or county ordinance could be adopted which would give funeral processions the right of way in circumstances when they are operating under police direction which authorizes them to proceed against a traffic control device.

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You next asked whether the number of vehicles could be limited in a funeral procession. If so, would this be a matter of policy or should this issue be addressed by ordinance.

I am unaware of any provisions which could be construed to limit the number of vehicles in a funeral procession. Furthermore, I question whether such a limitation could be easily put into place by ordinance or policy.

You also asked which intersections should be controlled by a stationed law enforcement officer.

A prior opinion of this office dated May 17, 1991 referenced that local law enforcement has the authority to regulate traffic intersections and processions on highways within their own jurisdictions. See: S.C. Code Ann. Sections 56-5-710(2) and (3). The opinion stated that

...an officer stationed at an intersection may direct a funeral procession to proceed against the traffic light. However, the...(South Carolina)...Supreme Court held in Nabors v. Spencer,...that when there is no police officer directing traffic so as to supersede the traffic light, no South Carolina law "exempts the driver of a vehicle in a funeral procession from the obligation to observe traffic control devices."

Consistent with such, if there is to be any intention that a funeral procession would be authorized to disregard a traffic control device at any intersection, such would have to be at the direction of a law enforcement officer with authority within that jurisdiction. Therefore, it appear that as to all intersections through which a funeral procession passes, if it is intended that the procession pass through without observing a traffic control signal, such travel must be under the direction of a stationed law enforcement officer with authority within that jurisdiction.

In your next question you asked whether a funeral home could be charged for such services.

Previously referenced Section 5-7-30 further authorizes municipalities to establish uniform service charges. Section 4-9-30 also authorizes the assessment of uniform service charges by counties. Consistent with such, it appears that a funeral home could be charged a fee for escort services provided in association with funeral processions.

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You next asked when a funeral procession reaches the end of a jurisdiction, who has responsibility for the procession as it proceeds on to its destination.

Pursuant to S.C. Code Ann. Section 17-13-40 a municipal police officer is granted law enforcement authority within the corporate limits of his municipality or when, in pursuit, within three miles of the corporate limits of his municipality. A deputy sheriff is considered as having law enforcement authority only within his county. See: Op. Atty. Gen. dated February 4, 1988. A prior opinion of this office dated June 21, 1995, indicated that, generally, a law enforcement officer possesses no law enforcement authority beyond his jurisdiction unless expressly authorized by statute. See, e.g., S.C. Code Ann. Section 5-7-120 (authorizes a law enforcement officer to respond in cases of emergency to another municipality upon request). Therefore, a law enforcement agency would have authority relating to a funeral procession only when such is passing through that agency's territorial jurisdiction.

In your next question you asked whether a law enforcement agency has the rights or responsibilities if they continue to provide escorts past their jurisdictional boundaries.

As referenced, a law enforcement agency only has authority within its territorial boundaries unless a further grant of authority is made through a particular grant of additional authority. Any action beyond their jurisdictional boundaries would be without authority.

You also raised several questions regarding potential liability of a law enforcement agency or a funeral home in association with a funeral procession. You asked whether an initiating agency has any responsibility or liability if a procession continues beyond that agency's jurisdictional boundaries without an escort. You also asked whether an agency that provides escorts has any liability or responsibility if, due to case load or manpower shortage, it fails to provide a proper escort. You additionally questioned whether a funeral home has any responsibility or liability during a funeral procession.

Any question relating to potential liability is dependent on an examination of each situation's facts and circumstances. Therefore, a case by case analysis would have to be undertaken regarding any question of liability. This office in numerous opinions has indicated that an opinion of this office is inadequate to resolve factual issues. See, e.g., Op. Atty. Gen. dated November

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15, 1995. However, consistent with decisions in other jurisdictions, the potential for liability is certainly present as to a law enforcement agency and a funeral home with regard to its association with a funeral procession depending upon the facts of a particular situation.

In LeJeune v. Allstate Insurance Co., 365 So.2d 471 (La. 1971), the Louisiana Supreme Court determined that a deputy sheriff who failed to secure a highway intersection through which a funeral procession passed was negligent and his negligence was the cause of a fatal collision between a hearse and an automobile which approached the intersection at an excessive speed. Therefore, potential liability would exist for any failure by a law enforcement officer to properly act in a manner consistent with his law enforcement authority.

As to funeral homes, the Florida Supreme Court stated in Union Park Memorial Chapel v. Hutt, 670 P.2d 64 at 67 (Fla. 1996) that

We recognize that a funeral director has no general duty to orchestrate or lead a funeral procession. However, once a director voluntarily undertakes to do so, the director assumes at least a minimal duty to exercise good judgment, and ensure that procession members proceed to the cemetery in a safe manner. Whether a funeral director exercised reasonable care in a given case will depend on the circumstances of that case; and, therefore, must be determined on a case-by-case basis by the trier of fact.

See also: Maida v. Velella, 511 N.E.2d 56 (N.Y. 1987) (a funeral home owes a duty "to refrain from creating an unreasonably hazardous situation for those participating in the procession"); Pickett v. Jacob Schoen and Sons, Inc., 488 So.2d 1257 (La. 1986) (a question of fact existed as to whether a funeral director had a duty to individuals in a procession to prevent risks of collisions at intersections crossed by a funeral procession). Therefore, there is certainly the potential for possible liability in the situations you referenced. However, each situation would be dependent upon its own set of facts and a blanket response cannot be provided.

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 been personally scrutinized by the

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Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,

A handwritten signature in cursive script, appearing to read "Charles H. Richardson".

Charles H. Richardson
Senior Assistant Attorney General

CHR:kws