

The State of South Carolina



Office of the Attorney General

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April 14, 1989

Allan J. Spence, Director
Division of Motor Vehicle Management
1022 Senate Street
Columbia, South Carolina 29201

Dear Mr. Spence:

You have earlier requested an Opinion as to an interpretation of a proviso in the 1988-89 Appropriation Act. Thereafter, in January of 1989, you requested guidance as to certain language to be proposed for the 1989-90 Appropriation Act. I shall address these questions separately.

First, you have requested advice concerning the language in Section 16.31 of the 1988-89 Appropriation Act. Your specific inquiry is:

The amended proviso contains contradictory and confusing language. In one section, it states that "State employees...shall not be held liable to the State for the cost of repairs, unless it is determined in a court of competent jurisdiction that the employee was under the influence of alcohol or illegal drugs at the time of the accident." Another section states that "The employee-operator may be assessed for an amount not to exceed two hundred dollars for each occurrence if he is found to be at fault in the accident after a review of records conducted by a duly appointed Accident Review Board."

Therefore, I request your office's opinion concerning whether State employees may be assessed for any portion of State vehicle damage resulting from an accident in which the employee operator is adjudged to be at fault.

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The language you quote in your request is found in Section 16.31 of the 1988-89 Appropriation Act. That Section provides:

16.31. State employees who, while driving State-owned vehicles on official business, are involved in accidents resulting in damages to such vehicles shall not be held liable to the State for the cost of repairs, unless it is determined in a court of competent jurisdiction that the employee was under the influence of alcohol or illegal drugs at the time of the accident. Agencies shall insure such vehicles through the Budget and Control Board or shall absorb the cost of repairs within the agency budget. The employee-operator may be assessed for an amount not to exceed two hundred dollars for each occurrence if he is found to be at fault in the accident after a review of records conducted by a duly appointed Accident Review Board. The operator may be assessed up to the full cost of repairs if he was convicted of driving under the influence at the time of the accident and the Accident Review Board determines that the operator's impaired condition substantially was the cause of the accident.

A careful reading of this section indicates that there is no contradiction. I note from your letter that you have assumed that the section in question allows State agencies to assess employees for up to \$200.00 of the damage done to a State vehicle. However, the assessment mentioned in the proviso makes no mention of damage.

The key word in the sentence allowing the assessment of an amount not to exceed \$200.00 is the word "assessed". South Carolina Courts have only been called upon to determine the meaning of "assessed" in the area of taxation. State v. Cronwell, 18 S.E. 184, 40 S.C. 26 (1983).

In interpreting statutory language, the better rule is that when language is clear and unambiguous it must be held to mean what it plainly says. Jones v. South Carolina State Highway Department, 146 S.E.2d 166, 247 S.C. 137 (1966). "Assessed" has been held to be the equivalent of "imposed". Town of Brandon v. Harvey, 168 A. 708. Webster's Third New International Dictionary (1976) defines "assessed" as meaning to determine the rate or amount (as a tax, charge, or fine). Black's Law Dictionary,

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Fifth Edition, (1979) defines "assess" to mean the imposition of a pecuniary payment upon persons or property. These common definitions clearly allow the use of the term "assess or assessed" without having any relationship to damages.

Thus, while only a court could give a definitive interpretation, it is my advice that a court construing the language of Section 16.31 would be able to reach the following conclusion: First, if the employee were convicted of driving under the influence by a court of competent jurisdiction and the Accident Review Board determined that the employee's impaired condition substantially was the cause of the accident, then the employee could be required to pay the full cost of repairs. Second, if the employee were found to be at fault by an Accident Review Board, he may be charged an amount not to exceed \$200.00. The damage done or cost of repairs is not necessarily the measure of the amount to be assessed up to \$200.00.

Next you have requested that I "comment" on a proposed revision of Section 16.31. That revision is as follows:

Proposed "Insurance Proviso"
To FY 89 Annual Appropriations Act

16.31 Agencies shall insure State-owned vehicles through the Budget and Control Board or shall absorb the cost of accident repairs within the agency budget. State employees who, while driving State-owned vehicles on official business, are involved in accidents resulting in damages to such vehicles, shall not be held liable to the State for the cost of repairs, except in the following cases:

--The employee operator may be assessed for an amount not to exceed two hundred dollars for each occurrence if he is found to be at fault in the accident after a review of records conducted by a duly appointed Accident Review Board.

--The operator may be assessed up to the full cost of repairs if he was convicted of driving under the influence of alcohol or illegal drugs at the time of the accident and the Accident Review Board determines that the operator's impaired condition substantially was the cause of the accident.

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Employees subjected to these assessments may appeal such assessment to the following bodies, in the order shown:

- Agency Accident Review Board
- Agency Executive Director or governing Board or Commission
- State Motor Vehicle Management Council
- State Budget and Control Board

This proposed "Insurance Proviso" achieves the same result as Section 16.31 of the 1988-89 Appropriation Act; however, this proposed proviso appears more clearly written. In order to clarify further the language I suggest some minor modifications to your proposed proviso. This modification is attached hereto as "Attachment 1." Feel free to utilize these suggestions or discard them as you deem fit.

You have also enclosed a letter from an individual who raises a concern about due process. Without a specific factual situation this concern is difficult to address and I express no opinion as to the constitutionality of the proposed "Insurance Proviso;" however, I shall set out some general due process considerations for your information.

Due process may be divided in two categories -- substantive and procedural. Both substantive due process and procedural due process requirements are recognized within the protection of the fifth and fourteenth amendments of the United State Constitution. See, e.g. Hamilton v. Bd. of Trustees of Oconee County School Dist., 282 S.C. 519, 319 S.E. 2d 717 (Ct. App. 1984) (Upon analysis of the fifth and fourteenth amendments of the United States Constitution, substantive due process means state action which deprives a person of life, liberty, or property must have a rational basis; the reason for the deprivation may not be so inadequate that the judiciary will characterize it as arbitrary.); Beckman v. Harris, 756 F.2d 1032 (4th Cir.), cert. denied, 474 U.S. 903 (1985) (To be entitled to the procedural safeguards, i.e., notice and opportunity to be heard, encompassed by the due process clause of the fourteenth amendment, the complaining party must suffer from the deprivation of a liberty or property interest.).

Procedural due process is not a technical concept with fixed parameters unrelated to time, place and circumstances; rather, it is a flexible concept that calls for such procedural protections

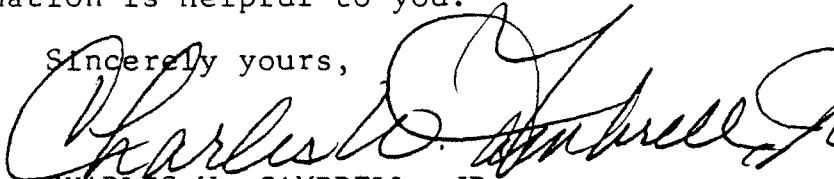
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as the situation demands. Matthews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed. 2d 18 (1976).

I note that in your proposed "Insurance Proviso" you do provide an appellate procedure which, depending upon the procedures employed, may well satisfy all the requirements of procedural due process.

I hope the above information is helpful to you.

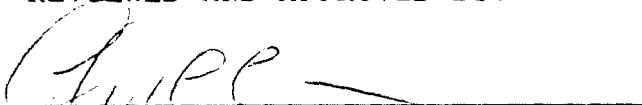
Sincerely yours,



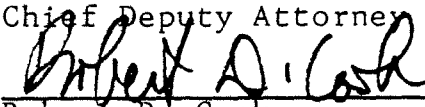
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