

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3680
FACSIMILE: 803-253-6283

May 4, 1989

Robert M. Stewart, Chief
South Carolina Law Enforcement Division
Post Office Box 21398
Columbia, South Carolina 29221-1398

Dear Chief Stewart:

Your letter dated March 16, 1989, to Attorney General Medlock has been referred to me for response. By your letter, you have stated:

Enclosed please find a copy of correspondence recently received from an individual desiring to carry a handgun in his automobile which has no trunk and a glove box that has no lock.

We would appreciate an opinion from your office with regard to this question as well as the questions listed below with reference to Section 16-23-20(9) of the S.C. Code of Laws, 1976, as amended.

- (1) Must a handgun carried in the glove box or trunk of a automobile be unloaded?
- (2) If an automobile has neither a trunk nor a glove box, is there any other way it may be carried in a vehicle?
- (3) Would a motorcycle be considered a vehicle in the carrying of a handgun if such motorcycle has a glove box?

Robert M. Stewart, Chief
Page Two
May 4, 1989

Of course, statutory construction is, ultimately, the province of the courts. Johnson v. Pratt, 200 S.C. 315, 20 S.E.2d 865 (1942).

In interpreting a statute, the primary purpose is to ascertain the intent of the legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987); Multi-Cinema, Ltd. v. South Carolina Tax Comm'n, 292 S.C. 411, 357 S.E.2d 6 (1987). When interpreting a statute, the legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in the light of the intended purpose of the statutes. Gambrell v. Travelers Ins. Cos., 280 S.C. 69, 310 S.E.2d 814 (1983).

Where a statute is clear and unambiguous, there is no room for construction and the terms of the statute must be given their literal meaning. Duke Power Co. v. South Carolina Tax Comm'n, 292 S.C. 64, 354 S.E.2d 902 (1987). In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Multi-Cinema, Ltd. v. South Carolina Tax Comm'n, *supra*. In determining the meaning of a statute, it is the duty of the court to give force and effect to all parts of the statute. State ex rel. McLeod v. Nessler, 273 S.C. 371, 256 S.E.2d 419 (1979). In construing a statute, words must be given their plain and ordinary meaning, without resort to subtle or forced construction for the purpose of limiting or expanding its operation. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Where the same word is used more than once in a statute, it is presumed to have the same meaning throughout unless a different meaning is necessary to avoid an absurd result. Smalls v. Weed, 293 S.C. 364, 360 S.E.2d 531 (Ct. App. 1987). The legislature is presumed to have fully understood the import of words used in a statute and intended to use them in their ordinary and common meaning, unless that meaning is vague and indefinite, or in their well-defined legal sense, if any. Powers v. Fidelity & Deposit Co. of Maryland, 180 S.C. 501, 186 S.E. 523 (1936).

Statutes in *pari materia* have to be construed together and reconciled, if possible, so as to render both operative. Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). In construing a statute, it is proper to consider legislation dealing with the same subject matter. Fidelity and Casualty Ins. Co. of New York v. Nationwide Ins. Co., 278 S.C. 332, 295 S.E.2d 783 (1982).

S.C. Code Ann. §16-23-20 (1976) provides:

Robert M. Stewart, Chief
Page Three
May 4, 1989

It shall be unlawful for anyone to carry about the person, whether concealed or not, any pistol,¹ except as follows:

(1) Regular, salaried law enforcement officers of a municipality, county, of the State, uncompensated Governor's constables, law enforcement officers of the federal government or other states when they are carrying out official duties while in this State, deputy wildlife conservation officers within their territorial jurisdictions, and reserve police officers while serving and functioning as law enforcement officers as authorized by §23-28-10 et seq.

(2) Members of the Armed Forces of the United States or of the National Guard, organized reserves or the State Militia when on duty.

(3) Members of organizations authorized by law to purchase or receive firearms from the United States or this State, or regularly enrolled members of clubs organized for the purpose of target shooting or collecting modern and antique firearms while such members are at or going to or from their places of target practice or their shows and exhibits.

¹ For purposes of S.C. Code Ann. §16-23-20 (1976), the General Assembly has defined "pistol" to mean "any firearm designed to expel a projectile and designed to be fired from the hand, but shall not include any firearm generally recognized or classified as an antique, curiosity, or collector's item, or any that does not fire fixed cartridges." S.C. Code Ann. §16-23-10(a) (1976). "Statutory definitions of words used elsewhere in the same statute furnish official and authoritative evidence of legislative intent and meaning, and are usually given controlling effect. Such internal legislative construction is of the highest value and prevails over executive or administrative construction and other extrinsic aids. . . . [Footnotes omitted.]" Sutherland Stat. Constr. §27.02 (4th ed. 1985).

Robert M. Stewart, Chief
Page Four
May 4, 1989

(4) Licensed hunters or fishermen while engaged in hunting or fishing and going to and from their places of hunting or fishing.

(5) Any person regularly engaged in the business of manufacturing, repairing, repossession or dealing in firearms, or the agent or representative of such person while possessing, using or carrying a pistol in the usual or ordinary course of such business.

(6) Guards engaged in protection of property of the United States or any agency thereof.

(7) Any authorized military or civil organizations while parading or the members thereof when going to and from the places of meeting of their respective organizations.

(8) Any person in his home, or upon his real property, or fixed place of business.

(9) Any person in any vehicle where the pistol is secured in a closed glove compartment or closed trunk.

(10) Any person carrying a pistol unloaded and in a secure wrapper from the place of purchase to his home or a fixed place of business or while in the process of the changing or moving of one's residence or the changing or moving of one's fixed place of business.

(11) Any prison guard while engaged in his official duties.

(12) Any person who is granted a permit under provision of law by the State Law Enforcement Division to carry a pistol about his person, in circumstances and under conditions set forth in such permit.

Persons authorized to carry weapons pursuant to items (6) and (12) of this section may exercise such privilege only after acquiring a permit from the State Law Enforcement Division as provided for in Article 3 of Chapter 31 of Title 23.

Robert M. Stewart, Chief
Page Five
May 4, 1989

Applying the above rules of statutory construction to these statutes, I will address your questions.

In State v. Henderson, 285 S.C. 320, 329 S.E.2d 448 (Ct. App. 1985), the South Carolina Court of Appeals considered Henderson's appeal of his conviction for one count of carrying a pistol in violation of §16-23-20. In Henderson, the F.B.I. agent observed a .38 caliber pistol in Henderson's briefcase when Henderson opened his briefcase inside his car. Acknowledging the exception recognized in §16-23-20(9), the court stated:

At the time it was seen by the F.B.I. agent, the pistol was not in a glove compartment or a trunk of an automobile. We find no merit to Henderson's contention that the pistol was in the closed trunk of his car. Accordingly, we affirm the conviction for carrying a pistol.

Id. at 322, 329 S.E.2d at 450.

Analyzing §16-23-20(9), this Office has previously opined:

Section 16-23-20 specifically exempts from its criminal sanction those persons in any vehicle "where the pistol is secured in a closed glove compartment or closed trunk." The word "secured", in our opinion, serves only a descriptive function in the above exception and does not imply that the glove compartment must be locked. The statute only requires that the compartment be closed presumably so that accessibility to the weapon will be somewhat limited. [Emphasis in original.]

S.C. Att'y Gen. Op., Jan. 6, 1978 (responding to a "request [for] an opinion from this office concerning whether an individual would be in violation of Section 16-23-20, Code of Laws of South Carolina (1976) if he kept a pistol in the closed, unlocked glove compartment of his automobile."). This Office has also opined that "an individual carrying a pistol in a closed console of an automobile would, presuming he is not within one of the other exceptions provided by Section 16-23-20, [], be in violation of such criminal section." S.C. Att'y Gen. Op., Nov. 28, 1979 (responding to "whether a person could be charged with violating Section 16-23-20, Code of Laws of South Carolina, 1976, which defines the act of unlawfully carrying a pistol where the pistol

Robert M. Stewart, Chief
Page Six
May 4, 1989

was found in a closed console of an automobile."'). Analyzing the impact of the proposed amendment to the 1968 Gun Control Act, 18 U.S.C. §921 et seq., upon South Carolina's gun laws, including §16-23-20, this Office opined

Pursuant to proposed section 926, an individual could transport a firearm through this State in interstate commerce consistent with the section's provisions, i.e., unloaded and not readily accessible. However, such provision would not apply to pistols carried solely within this State which, again, would have to be transported consistent with Section 16-23-20 (9).

S.C. Att'y Gen. Op., May 20, 1986 (providing general comments on how a proposed amendment to the 1968 Gun Control Act would impact on State gun laws).

The individual desiring to carry a pistol in his automobile which has no trunk and a glove compartment that has no lock could apparently carry the pistol in his automobile if the pistol is secured in the closed glove compartment, since there is no requirement that the glove compartment must be locked. See S.C. Att'y Gen., Jan. 6, 1978 (quoted above).

Section 16-23-20(9) does not address whether the pistol is required to be loaded or unloaded. In §16-23-20(10) the South Carolina General Assembly specified that the pistol be unloaded for that exception. Consequently, the General Assembly's failure to include such a specification in §16-23-20(9) probably indicates that the General Assembly intended §16-23-20(9) to include either loaded or unloaded pistols. Cf. S.C. Att'y Gen. Op., May 20, 1986 (quoted above).

To come within the exception provided by §16-23-20(9), the vehicle must have either a glove compartment or a trunk that can be closed inside of which the pistol would be secured. Therefore, a person carrying a pistol,² assuming no other exception in §16-23-20 is applicable,² in a vehicle without those requisite characteristics would probably violate §16-23-20(9).

² This Office has previously opined that it is lawful for a licensed hunter or fisherman to have a pistol in his possession while hunting or fishing but, when being carried in any vehicle, the pistol must be in a closed trunk or glove compartment. S.C. Att'y Gen. #2664 (1968-9).

Robert M. Stewart, Chief
Page Seven
May 4, 1989

The word "vehicle" has been defined:

That in or on which persons, goods, etc. may be carried from one place to another, especially along the ground. Any moving support or container fitted or used for the conveyance of bulky objects; a means of conveyance. That which is used as an instrument of conveyance, transmission or communication. Term refers to every device in, upon or by which a person or property is or may be transported upon a highway. Term has been held to include a "moped" (People v. Jordan, 75 Cal. App.3d Supp. 1, 142 Cal. Rptr. 401, 405), while a bicycle has been held by some courts to be a vehicle under traffic laws (Richards v. Goff, 26 Md.App. 344, 338 A.2d 80, 84), while others have held that it is not (Fowles v. Dakin, 160 Me. 392, 205 A.2d 169, 173).

Black's Law Dictionary 1393 (rev. 5th ed. 1979). Cf. S.C. Code Ann. §§56-3-20(1), 56-19-10(39) (1976) (definitions of "vehicle"); Mini-Tow, Inc. v. South Carolina Dep't of Hwys & Publ Transp., 271 S.C. 11, 244 S.E.2d 516 (1978) (A "Mini-Tow" transport dolly was not a "vehicle" as defined in the two-unit provisions of South Carolina statutes and, when attached to a motor vehicle for service towing, did not violate such two-unit limit.). In Mid-west Mut. Ins. Co. v. Fireman's Fund Ins. Co., 258 S.C. 533, 189 S.E.2d 823 (1972) (quoting Mittelsteadt v. Bovee, 9 Wis. 2d 44, 100 N.W.2d 376 (1960)), the South Carolina Supreme Court observed:

To the average man and to the public mind it is common knowledge that the word automobile indicates a motor driven vehicle mounted on four wheels, and that motorcycle indicates a motor vehicle mounted on two wheels.

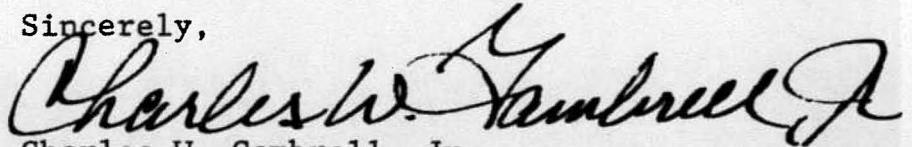
Cf. S.C. Code Ann. §§56-1-10, 56-3-20(3), 56-5-140, & 56-19-10(18) (1976) (definitions of "motorcycle"). Consequently, the word "vehicle" in §16-23-20(9) would probably include a motorcycle; however, the motorcycle would probably have to have either a glove compartment or trunk that can be closed inside of which the pistol could be secured to avoid a violation of §16-23-20(9). But cf. S.C. Att'y Gen. Op., September 4, 1973 (Relying on State v. Weston, 108 S.C. 383, 94 S.E. 871 (1918)),

Robert M. Stewart, Chief
Page Eight
May 4, 1989

this Office previously opined: "a pistol carried in a latched saddlebag attached to a motorcycle would not constitute a violation of the State's pistol law....").

I hope the above is responsive to your questions. If I can be of further assistance, please advise.

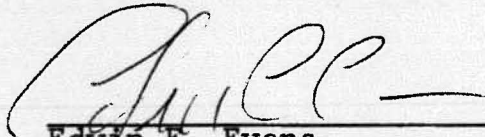
Sincerely,




Charles W. Gambrell, Jr.
Deputy Attorney General

CWGjr./fg

REVIEWED AND APPROVED BY:



Edwin E. Evans
Chief Deputy Attorney General



Robert D. Cook
Executive Assistant for Opinions