1984 S.C. Op. Atty. Gen. 84 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-39, 1984 WL 159846

Office of the Attorney General

State of South Carolina
Opinion No. 84-39
April 5, 1984

***1** The Honorable Alex Harvin, III
Majority Leader
House of Representatives
505 Blatt Building
Columbia, South Carolina 29201

Dear Representative Harvin:
Thank you for your letter of March 1, 1984, asking for our advice. You asked that we review Act No. 65, 1983 Acts and Joint Resolutions, in particular that portion of the Act codified as Section 6–11–1450 of the Code of Laws of South Carolina (1983 Cum. Supp.), and respond to several questions. Each question will be discussed separately, following a general discussion of the Act.

In your letter you mentioned an incident in which a volunteer rescue squad member used the provisions of the Act in a dispute with a state trooper at the scene of an automobile accident. We are informed that the incident has been resolved and that no criminal charges are pending as a result of the incident. Nevertheless, we cannot comment on any such fact situation and do not intend our remarks herein to apply to a particular fact situation.

Act No. 65 of 1983 amends Chapter 11 of Title 6 so as to grant certain emergency powers to lawfully and regularly organized fire departments, fire protection districts, or fire companies regularly charged with the responsibility of fire protection to the particular jurisdiction in question. Section 6–11–1450 of the Code, a portion of Section 1 of the Act, provides certain criminal sanctions:
Any person who obstructs the operations of the Fire Authority in connection with extinguishing any fire, or other emergency, or disobeys any lawful command of the fire official or officer of the Fire Authority who may be in charge at such a scene, or any part thereof, or any police officer assisting the Fire Authority, is guilty of a misdemeanor and, upon conviction, may be fined not more than two hundred dollars or imprisoned for not more than thirty days.

This statute has not yet been interpreted by our state's Supreme Court; therefore, we are basically controlled by the language of the Act itself and any relevant legislative history. The governing rule is to ascertain and give effect to the intention of the legislature. McGlohon v. Harlan, 254 S.C. 207, 174 S.E.2d 753 (1970). With these basic considerations in mind, we will now respond to your inquires.

1. Does this Act and specifically the above quoted language pertain to only fire companies organized as a special [purpose] district?

Where the legislature expresses its intention clearly in one part of an act, it is to be presumed that the legislature had the same intention in another part of the act, unless a different intention clearly appears. State v. Sawyer, 104 S.C. 342, 88 S.E. 894 (1916). Furthermore, all parts of a statute must be given full force and effect. State ex rel. McLeod v. Nessler, 273 S.C. 371, 256 S.E.2d 419 (1979). That portion of the Act codified as Section 6–11–1410 states, ‘For purposes of this article ‘Fire Authority’ means any lawfully and regularly organized fire department, fire protection district, or fire company regularly charged with the responsibility of providing fire protection and other emergency services incident thereto.' The title of the Act, which may

be considered in construing the Act, Lindsay v. Southern Farm Bureau Cas. Ins. Co., 258 S.C. 272, 188 S.E.2d 374 (1972), reads in part:

***2** AN ACT . . . TO PROVIDE THAT ANY LAWFULLY AND REGULARLY ORGANIZED FIRE DEPARTMENT, FIRE PROTECTION DISTRICT, OR FIRE COMPANY REGULARLY CHARGED WITH THE RESPONSIBILITY OF PROVIDING FIRE PROTECTION TO THAT JURISDICTION HAS CERTAIN EMERGENCY POWERS.

Thus, the intention of the legislature is clear that the Act apply to any lawfully and regularly organized fire department, fire protection district, or fire company regularly charged with the responsibility of fire protection. The fact that the Act, as codified, appears in that portion of the Code pertaining to special purpose districts could not be used to defeat the legislature's intent that the Act's application be broader. 1A Sutherland Statutory Construction § 28.04; 82 C.J.S. Statutes § 275.

Section 6–11–1450 does not expressly state the specific fire departments, districts, or companies to which it is applicable, but it does contain the phrase 'Fire Authority,' which, as noted, is defined in Section 6–11–1410. Reading all portions of the Act together, it must be concluded that Section 6–11–1450 applies to any lawfully and regularly organized fire department, fire protection district, or fire company and not merely to fire companies organized as a special district. [1]

2. Does the Act and specifically Section 6–11–1450 include rescue squads which are a part of a fire company?

While the Act does not expressly state that it is applicable to rescue squads, it is inferable that the Act is applicable to a rescue squad which is an integral part of such a lawfully and regularly organized fire department, company, or district. Section 6–11–1410, defining 'Fire Authority,' describes the responsibility of such fire departments and so forth as 'providing fire protection and other emergency services incident thereto.' (Emphasis added.) The term 'incident' connotes a thing which inseparably follows another or which is incidental to the main purpose. Watts v. Copeland, 170 S.C. 449, 170 S.E. 780 (1933); Archambault v. Sprouse, 218 S.C. 500, 63 S.E.2d 459 (1951). Accordingly, a rescue squad which is an integral part of a fire department, company, or district, providing emergency services in conjunction with fire protection services would most probably be covered by the Act and thus by Section 6–11–1450. Rescue squads existing independently of such fire departments and so forth would apparently not be covered by the Act.

The applicability of the Act and especially Section 6–11–1450 to a particular rescue squad may present a question of fact which this Office may not address. A question of fact may also exist as to application of the Act to a specific factual situation in which a rescue squad, covered by the Act, has participated. This Office must reserve the resolution of questions of fact to the appropriate fact-finding body. Likewise, this Office in no way comments on the fact situation presented in your letter or March 1, 1984.

3. Does the word 'person' as used in Section 6–11–1450 include law enforcement officers who may be present at the scene in an official capacity?

***3** Section 6–11–1450 states in part, 'Any person who obstructs the operations of the Fire Authority . . ..' (Emphasis added.) The Act does not define the phrase 'any person or contain any other provision from which the legislative intent as to scope of definition may be determined. Words used in a statute must be given their plain and ordinary meaning. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). The term 'any' means 'all.' Watson v. Watson, 230 S.C. 247, 251, 95 S.E.2d 266, 268 (1956). The ordinary and usual meaning of 'person' includes 'all individuals.' Alexander v. Alexander, 140 F. Supp. 925, 928 (W.D.S.C. 1956); see also 32 Words and Phrases, 'Person,' p. 50 (1983 Cum. Supp.). Because the legislature expressed no contrary intent, it appears that all individuals would be subject to the provisions of Section 6–11–1450. [2]

It would be inappropriate for us to comment on applicability of the section to a law enforcement officer who may be present at an accident scene in his official capacity, leaving such factual interpretation or application to the courts of this State. It should be noted that, depending on the nature of the emergency and the locality, there may be a number of officials who would have

jurisdiction for varying reasons; the Act does not appear to address the manner in which various officials should cooperate when such jurisdictions overlap. [3]

4. What is the scope of the word 'emergency?' Does it include an automobile accident where there is no fire or immediate danger of fire?

Construing the Act as a whole, giving meaning to all of its parts, it is apparent that the legislature intended the term 'emergency' to encompass a broad range of situations. By Section 6–11–1420,

Notwithstanding any other provisions of law, authorized representatives of the Fire Authority having jurisdiction, as may be in charge at the scene of a fire or other emergency involving the protection of life or property or any part thereof, have the power and authority to direct such operation as may be necessary to extinguish or control the fire, perform any rescue operation, evacuate hazardous areas, investigate the existence of suspected or reported fires, gas leaks, or other hazardous conditions or situations, and of taking any other action necessary in the reasonable performance of their duty. . . .

(Emphasis added.) Moreover, Section 6–11–1430 refers to evacuation of persons 'within and adjacent to burning structures, open fires, dangerous gas leaks, flammable liquid spills, and transportation incidents.' [4] (Emphasis added.) Construing these sections together, apparently the legislature contemplated that a Fire Authority would have authority in instances involving the protection of life or property or both, but did not choose to limit the scope of emergency to fire or the other specified situations since the undefined phrase 'other hazardous conditions or situations' is included. It would probably be impossible to comprehensively list the situations to which a Fire Authority might respond.

***4** You have asked whether an automobile accident where there is no fire or immediate danger of fire might constitute an emergency. While this Office cannot address the specific fact situation described in your letter, it may be seen that 'transportation incidents' are covered by Section 6–11–1430 (evacuation powers), and that a court could also find an automobile accident to be within the scope of 'other hazardous conditions or situations' contemplated by Section 6–11–1420. Additionally, the Act does not expressly distinguish between situations involving fire or an immediate threat of fire and those in which fire is not a factor, though the threat of fire may impliedly be present in certain situations, for instance those involving gas leaks.

In conclusion, we are of the opinion that Act No. 65 is applicable to a broad range of fire departments, companies, and districts, as well as persons and situations. You may wish to consider additional legislation to clarify the scope of incidents to which the Act was intended to apply, to narrow the category of persons to whom Section 6–11–1450 was meant to apply, to specify how officials of various police or fire jurisdictions are to cooperate, or to clarify any portions the enforcement of which would lead to unjust, unreasonable, or absurd results, in keeping with the legislature's intent.

Please advise us if we may be of additional assistance.

Sincerely,

T. Travis Medlock
Attorney General

Footnotes

1 To say that a fire department, company, or district is 'lawfully and regularly organized' means that such a department, company, or district is organized 'in pursuance of or according to law' or that it is 'duly' organized. See 52A C.J.S. 'Lawfully,' p. 747; 76 C.J.S. 'Regularly,' p. 610. Accordingly, examples of such departments, companies, or districts would include those organized pursuant to Sections 33–31–10 et seq. (volunteer fire departments organized as non-profit corporations); 5–25–20 (municipal fire department); 4–23–10 et seq. (joint county fire departments); or 4–9–10 et seq. (county fire protection systems). We note that Section 4–19–10 et seq., which provides for a county system of fire protection, was held to be impliedly repealed by the Home Rule Act in City of Myrtle Beach v. Richardson, Supreme Court Opinion No. 22034, filed January 19, 1984.

2 We recognize that there is as yet no official legislative history in South Carolina; accordingly, our Supreme Court has stated that '[t]he law as it is passed is the will of the majority of both houses, and the only mode in which that will is spoken is in the Act itself, and the rule that the intention of the Legislature is the primary consideration in the construction of a statute does not permit the courts to consider statements made by the author of a bill or by those interested in its passage . . ..' Tallevast v. Kaminski, 146 S.C. 225, 236, 143 S.E. 796 (1928). According to the files of the House Judiciary Committee relative to Act No. 65, which constitute unofficial legislative history, this Office's broad interpretation is consistent with the interpretation given the Act by others interested in its passage. See letter of 24 March 1983 from Ogburn Jay, President, Charleston County Volunteer Rescue Squad to the Honorable Robert J. Sheheen.

3 It should be noted that in the hearing by the Senate Judiciary Committee on April 19, 1983, Senator Leventis stated that it was his understanding that the Act would not change the already existing authority for police to act when they arrive at the scene of an emergency.

4 Early versions of the bill which became Act No. 65 would have permitted a Fire Authority to evacuate in incidents involving hazardous materials or train derailments. These provisions were deleted before the bill became law, however.

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