

1983 S.C. Op. Atty. Gen. 163 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-96, 1983 WL 142765

Office of the Attorney General

State of South Carolina

Opinion No. 83-96

December 8, 1983

*1 The Honorable Irene K. Rudnick
Member
House of Representatives
Box 544
Aiken, South Carolina 29801

Dear Representative Rudnick:

You have inquired whether Act No. 2 of 1983, requiring the imposition of child restraint systems in motor vehicles, would apply to those vehicles used by real estate agents. Specifically, you ask about two situations: in the first, we are to assume that the vehicle involved is a personal vehicle which is also used for real estate business; in the second, it is assumed that the vehicle is one which is owned by the real estate agency and is used by agents to show property. We would advise that the answer to your questions would, in each instance, depend upon the particular facts and circumstances involved, but that the Act would most probably not apply in your second hypothetical. The answer to your first hypothetical is much less certain and would almost wholly depend upon the particular facts involved.

Act No. 2 of 1983 requires every driver of a motor vehicle registered in or primarily operating upon the highways of this State, when transporting a child under four years of age, to 'provide an appropriate child passenger restraint system' and to secure the child according to the criteria set forth in the statute. Certain exceptions are set forth in the Act and are discussed more fully below. Criminal penalties for violation of the Act (a fine of twenty-five dollars upon conviction) are the only remedy provided.

The Act expressly does not apply to the following persons and types of vehicles:

' . . . (1) Taxidrivers.

(2) Drivers of emergency vehicles when operating in an emergency situation.

(3) Church, day care and school bus drivers.

(4) Public transportation operators.

(5) Commercial vehicles.'

The question you specifically pose is whether vehicles used by real estate agents are 'commercial vehicles' within the meaning of the Act.

Of course, the primary rule in the construction of statutes is to ascertain and give effect to the intention of the Legislature. [McGlohan v. Harlan](#), 254 S.C. 207, 174 S.E.2d 753 (1970). Moreover, words used in a statute are to be given their plain and ordinary meaning unless some other meaning is indicated. [Worthington v. Belcher](#), 274 S.C. 366, 266 S.E.2d 148 (1980); [Hughes v. Edwards](#), 265 S.C. 529, 220 S.E.2d 231 (1975). And if a statute is primarily penal in nature, the statute is to be strictly construed, consistent with the Act's purpose and the rule that the act is not to be unduly narrowed so that offenders may escape.

[State v. Brown](#), 2 Speers (29 S.C.L.) 129 (1843); [State v. Johnson](#), 196 S.C. 497, 14 S.E.2d 24 (1941); [State v. Standard Oil Co. of New Jersey](#), 195 S.C. 267, 10 S.E.2d 778 (1940).

It should be noted that Act No. 2 contains no definition of 'commercial vehicle', nor have we been able to find a definition of the term in any other provision of the Code of Laws of South Carolina which might be read together with Act No. 2. Therefore, the common and ordinary definition of the term must be applied. [Worthington v. Belcher](#), *supra*.

*2 Generally, a 'commercial motor vehicle' is one 'used primarily for business and industry as contrasted with pleasure vehicles.' [Black's Law Dictionary](#) (5th ed.), [definition of 'commercial motor vehicle']. The term 'commercial vehicle' or its equivalent, 'commercial automobile' has been further defined as a vehicle (or automobile) 'used exclusively for commercial purposes, especially in transporting goods.' (emphasis added). 15A C.J.S., 'Commercial', p. 3; [Hardee v. So. Farm Bureau](#), (La.), 127 So.2d 220 (1961).

In determining whether a particular vehicle is 'commercial' in nature, it is the character of the use which is controlling. [Md. Am. Gen. Ins. Co. v. Ramsay](#), (Tex.Civ.App.), 526 S.W.2d 138 (1975), *rev'd on other grounds*, (Tex.), 533 S.W.2d 344 (1976); [Farmers Ins. Exchange v. Lausche](#), (Ariz.), 498 P.2d 495 (1972). Not all business-owned vehicles are necessarily 'commercial', [Hendricks v. American Eup. Ins. Co.](#), (La.), 176 So.2d 827 (1965), and the test is one of degree with each case judged in light of its particular facts. [Lausche](#), *supra*. The character of the use of the vehicle must be taken into consideration together with the form of the vehicle. [Bauerle v. State Farm Mut. Auto Ins. Co. v. Bloomington, Ill.](#), (N.D.), 153 N.W.2d 92 (1967). The mere fact that a vehicle is not actually used by the driver to haul for profit is not conclusive in determining whether the vehicle is 'commercial'. [Lausche](#), *supra*.

We have been unable to find a case which specifically concludes that a real estate vehicle or a vehicle used by a real estate agent in the conduct of business is a 'commercial vehicle'; nor have we located a decision which defines 'commercial vehicle' in the context of a statute such as Act No. 2. However, based upon the foregoing general definitions and principles of statutory construction, we would conclude that a court would probably find at least that an automobile which was used exclusively for real estate business and was owned and controlled by the real estate company was a 'commercial vehicle' pursuant to Act No. 2. Such a vehicle having a purpose 'commercial' in nature, would likely be held to fall within the generally accepted definition of the term,¹ especially if the statute were held to be primarily penal in nature and thus strictly construed.²

Factual circumstances other than the one described above would however be more difficult to predict. Questions of fact concerning the degree of control of the particular vehicle by the real estate company, if any, and especially the degree of personal use, made of the vehicle by the real estate agent as well as other factors would have to be considered on a case by case basis. As the [Bauerle](#) case indicates, because a vehicle is used on occasion 'for pleasure and non-economic purposes' does not change its character, so long as the vehicle is used primarily for commercial purposes. 153 N.W.2d, *supra* at 97. On the other hand, where a vehicle is used primarily for personal purposes and only occasionally or sporadically for real estate business, it would be questionable whether the vehicle would be exempt under the Act. Again, central to the inquiry is whether the particular vehicle in question was used exclusively or at least primarily for commercial purposes; if so, then a court would likely conclude that the vehicle was exempted from Act No. 2's requirements.³

*3 In sum, we cannot say in every case whether a vehicle used by a real estate agent was a 'commercial vehicle' for purposes of the Act. Instead, we can only set forth, as we have done above, the general guidelines a court would likely consider.

Sincerely,

M. Richbourg Roberson
Assistant Attorney General

Footnotes

- 1 In Farmers Ins. Exchange v. Lausche, *supra*, the Court held that a truck used to transport an employee of a telephone company from place to place to collect coins inserted in telephone coin boxes was a 'commercial automobile' even though the truck was not primarily used to haul goods. The rationale in Lausche would appear equally applicable here.
- 2 It is not completely clear whether Act No. 2 would be deemed a statute primarily penal in nature for all purposes. Arguably it is, because the statutes' primary purpose is 'expressly enforceable by fine, imprisonment or other punishment . . .'. Sutherland, Statutory Construction, § 59.01. Moreover, if a criminal proceeding were brought, under the Act a court would likely be inclined to give the accused the benefit of any doubt. Supra at § 71.04. On the other hand, it is also clear that a primary purpose of the Act is one of public safety and welfare and thus in noncriminal contexts the Act may be given a more liberal construction. See, McKenzie v. People's Baking Co., 205 S.C. 149, 31 S.E.2d 154 (1944). However, since the common and ordinary definition of 'commercial vehicle' appears well established, Lausche, supra, this distinction would probably make a difference only in a non-penal context, where there was a close question of fact.
- 3 It must be remembered that our reasoning is based upon cases construing these terms in contexts other than presented here.
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