1980 WL 120655 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
February 5, 1980

***1 Re: Outdoor advertising spacing requirements on controlled access highways located within municipalities**

Paul W. Cobb
Chief Commissioner
South Carolina Department of Highways and Public Transportation

You have requested an opinion as to whether or not the South Carolina Outdoor Advertising Control Act prohibits outdoor advertising devices from being spaced any closer together than 500 feet on controlled access highways located within a municipality. Department regulations currently authorize outdoor advertising signs to be spaced as close as 100 feet apart on controlled access highways located within municipalities. S. C. Rules and Regulations 63-346 A.5. However, the Agreement entered into between the State of South Carolina and United States, signed on January 10, 1972, requires outdoor advertising signs to be spaced on controlled access highways a minimum distance apart of 500 feet regardless of where the highway is located. The section of the S. C. Outdoor Advertising Control Act which deals with spacing is somewhat ambiguous. S. C. Code § 57-25-140(e).

The Act was enacted April 6, 1971 and preceded both the Department Regulations and the Agreement, both of which depend on the Act for their authority. In pertinent part the Act reads:
(e) No sign structure permitted under items (a)(7) and (8) of this section, on the interstate system or on a Federal-aid primary route, constructed to controlled access standards, shall be erected within five hundred feet of another such sign structure on the same side of such highway. Also no such sign may be located on such interstate or controlled access Federal-aid primary route adjacent to or within the interstate or controlled access primary highways from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way. . . . No sign structure permitted under items (a)(7) and (8) of this section on a noncontrolled access Federal-aid primary route outside of an incorporated municipality may be erected within three hundred feet of another such sign structure on the same side of the highway. No such sign structure may be erected within a distance of one hundred feet of another such sign structure inside an incorporated municipality on the same side of the highway. S. C. Code § 56-25-140(e) (emphasis added).

The question is whether the underlined sentence refers to all signs or only to those located on noncontrolled access Federal-aid primary routes.

Generally, when construing a statute of general application, an exception is considered as a limitation only upon the matter which immediately precedes it, but if a contrary intent or meaning is clearly indicated, it will operate as a general limitation on all provisions of the act. Southerland on Statutory Construction § 47.11. There is no contrary intent or meaning clearly indicated by the quoted language. There is, at most, an ambiguity as to the extent of the exception, and, traditionally, where there is doubt as to the extent of an exception on the scope of another provision's operation, the exception is strictly construed. See, Cain v. South Carolina Public Service, 222 S.C. 200, 72 S.E.2d 177 (1952). However, more recent cases have held that exceptions will be applied according to general legislative intent. See, Southerland on Statutory Construction §§ 47.09 and 47.11. The difficulty is in determining exactly what the legislative intent was.

***2** The courts have generally relied on two types of evidence in attempting to determine legislative intent: internal to the act itself (which has already been discussed) and external, i.e. events surrounding the act before, during, and after its passage. The external evidence available is far from clear.

From a history of the act provided to me by former Lieutenant Governor Brantley Harvey, the following inconclusive facts appear:

1. When the bill was originally introduced in the House, the third sentence of the section dealing with spacing requirements, specifically exempted areas within municipalities from the previously set forth spacing requirements. That sentence immediately followed two sentences dealing with spacing on controlled access highways and immediately preceded that portion of the section which first mentions other Federal-aid primary highways.

2. Prior to its passage in the House, the sentence was rewritten, limiting the exception to rest areas and interchanges located within municipalities.

3. When the bill was considered by the Senate, that body struck the entire section dealing with spacing and substituted a new section, which, however, repeated the third sentence adopted by the House and likewise omitted any reference to municipalities in the exemptions, except to provide that the spacing requirements would not apply to rest areas or interchanges located within municipalities.

4. Two subsequent attempts to strike all of the section dealing with spacing after the second sentence failed.

This history is not especially helpful, since it is unclear what the intent of the legislature was from this amending process. Generally, the adoption of an amendment is evidence that the legislature intended to change the provisions of the original bill. Southerland § 48.18. Under this line of reasoning, the adopted amendments would indicate a clear intent that all spacing restrictions otherwise applicable to controlled highways were to be followed both within and without a municipality except those pertaining to rest areas and interchanges.

On the other hand, an amendment may be adopted only because the provision deleted from the original bill was deemed unnecessary. Southerland, id. Under this line of reasoning, the adopted amendments would indicate a recognition that the 100 foot minimum spacing requirement applied equally to both controlled access and other highways.

There is no history of the debates which took place when these amendments took place. Such a history would probably not be very helpful anyway. Even though the federal courts have occasionally considered statements by legislators during debates which show a common understanding among members as to the meaning of ambiguous provisions, in general legislative debates, as was pointed out by the Supreme Court, are 'expressive of the views and motives of individual members, and are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the lawmaking body.' Duplex Printing Press Co. vs. Deering, 254 U.S. 443, 474 (1921).

***3** A suggestion that the authors of the bill and its various amendments be consulted would produce unreliable results, since there is no necessary correlation between what the draftsmen of the text understand it to mean and what members of the enacting legislature understand. Because the intent of the legislature is the deciding consideration, the views of the draftsmen are not generally considered proper grounds on which to base the interpretation of an act. Our supreme court has stated that testimony as to the intent of the legislature embodied in an act by members of the legislature which enacted the bill should not be considered. Bowaters Carolina Corp. vs. Smith, 257 S.C. 563, 186 S.E.2d 761 (1972).

One other external source of legislative intent that is occasionally useful is the contemporaneous or practical interpretation given to an act by those charged with its administration. A contemporaneous or practical interpretation will not be permitted to control the meaning of the plain and unambiguous terms of a statute. Glen Falls Insurance Co. v. City of Columbia, 242 S.C.

237 130 S.E.2d 573 (1963). Nevertheless, the interpretive regulations issued by officers, administrative agencies, department heads and other officials charged with the duty of administering and enforcing a statute and their practices which reflect their understanding of the provisions they are charged to carry out, have great weight in determining the operation of a statute. Stephenson Finance Co. v. South Carolina Tax Commission, 242 S.C. 98, 130 S.E.2d 72 (1962); State v. National Postal Transportation Association, 234 S.C. 260, 107 S.E.2d 763 (1959). Especially when the usage is long and unchallenged is it an aid in arriving at a correct interpretation of the statute.

As to this statute, the Department's interpretive regulations have long been on the books and have, until recently, been unchallenged. Still, as a firm indicator of legislative intent the Department's regulations are somewhat wanting in two particulars.

First, there is no evidence the conflict between the agreement and the regulations has ever been presented to the legislature. Attempting to derive the legislative intent from non-action on the part of the legislature in the face of such a clear conflict between the regulations and the agreement is precarious at best. Second, and equally important, is the existence of the agreement itself. The terms of the agreement relating to spacing are clear and unambiguous, just as are the Department regulations, and both were approved by the Department at approximately the same time. If the approval of either is to be considered clarifying of the statute, why is the other not, and, if the two cannot be reconciled, how may either be considered? Plainly, they cannot.

This leaves the words of the act itself and the ordinary rules of grammar, in the absence of evidence to the contrary. The grammatical rule most directly concerned is that referential or qualifying words and phrases refer solely to the last antecendent where no contrary intention appears. Southerland § 47.33. The last antecedent consists of ‘the last word, phrase, or clause that can be made an antecedent without impairing the meaning of the sentence.’ In re Kurtzmann's Estate, 396 P.2d 786 (Wa. 1964). ‘Relative and qualifying words, phrases and clauses are to be applied to the words or phrase immediately preceding, and are not to be construed as extending to or including others more remote . . ..’ 82 CJS 671, Statutes § 334.

***4** So called ‘qualifying terms' are employed three times in South Carolina Code Section 57-25-140(e) (1976). Only two of the three are pertinent to our inquiry. Both instances involve use of the word ‘such.’ The word ‘such,’ when used in a contract or statute, must, in order to be intelligible, refer to some antecedent and will generally be construed to refer to the last antecedent in the context, unless some compelling reason appears why it should not be so construed. In Re Clonan's Estate, 28 NYS 88 (1941).

The first instance where such is used refers to the antecedent describing signs placed adjacent to interstate or controlled access Federal aid primary routes. Here no reference is made to an exception for roads transversing municipalities. The second instance where such is employed refers to the antecedent describing signs placed adjacent to non-controlled federal aid primary routes. Only here is an exception made for roads located within municipalities. Applying the doctrine discussed above, this exception is only applicable to the immediate antecedent, i.e. the non-controlled access routes, unless there is a compelling reason to the contrary. A compelling reason does not exist here.

The preamble to the South Carolina Act can be found at P. 2061 of the 1971 Acts and Joint Resolutions. It concludes by stating: ‘It is the intention of the General Assembly in this act to provide a statutory basis for regulation of outdoor advertising consistent with the public policy relations to areas adjacent to Interstate and Federal-aid Primary systems declared by Congress in Title 23, U.S. Code ‘Highway’.'

This intention is echoed in the agreement entered into between the State and the Secretary of DOT.

Application of the last antecedent doctrine makes the meaning of the terms of the statute and the meaning of the terms of the agreement indistinguishable. This interpretation makes both consistent with the goals of 23 USC 131. Therefore, the legislature apparently intended for the exception contained in South Carolina Code § 56-25-140(e) pertaining to signs located within municipalities to be applicable only to noncontrolled access federal aid highways.

Therefore, it is the opinion of this office that the exception allowing outdoor advertising signs to be spaced a minimum of 100 feet apart inside an incorporated municipality applies only to those outdoor advertising signs adjacent to noncontrolled access Federal-aid primary highways. The 500 foot minimum spacing between outdoor advertising signs adjacent to Interstate and other controlled access Federal-aid primary highways is applicable whether or not the highway is located inside of or outside of an incorporated municipality.

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