

1980 S.C. Op. Atty. Gen. 105 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-56, 1980 WL 81939

Office of the Attorney General

State of South Carolina

Opinion No. 80-56

May 20, 1980

***1 SUBJECT:**

1. Without the inclusion of a saving clause or other such preservation provision into a legislative act which creates a new state dairy commission and repeals the statutory authority for the former agency, the act would operate to end the authority of the former dairy agency upon its being signed into law.
2. The enactment into law of a bill both repealing the statutory authority for a body of regulations and denying their enforcement, effectively repeals those regulations.

TO: Mr. Charles A. Shaw

Director

State Dairy Commission of South Carolina

QUESTIONS:

1. What effect, if any, would the final passage of House Bill No. 3529 have upon the presently existing Dairy Commission?
2. What effect, if any, would final passage of House Bill No. 3529 have upon the Dairy Commission's body of existing rules and regulations?

STATUTES AND CASES:

Act No. 230 of 1953, 48 acts and Joint Resolutions 279

Act No. 319 of 1961, 52 Acts and Joint Resolutions 512

[Helfrich v. Brasington Sand & Gravel Co.](#), 268 S. C. 236, 233 S.E.2d 291 (1977)

[Marshall v. Richardson](#), 240 S. C. 318, 125 S.E.2d 639 (1962).

Section 39–33–300, S. C. Code of Laws (1976).

82 C. J. S. Statutes, Section 434, p. 1008.

DISCUSSION:

1. The statute which established the first Dairy Commission, Act No. 230 of 1953, 48 Acts and Joint Resolutions 279, named the new State agency 'the State Dairy Commission.' This statute was repealed on May 15, 1961 upon the enactment into law of Act No. 319 of 1961, 52 Acts and Joint Resolutions 512. This later statute, which was codified in the 1962 and 1976 Codes of

Law, changed the name of the agency controlling milk in this state to 'The State Dairy Commission of South Carolina.' ¹ Act No. 319 of 1961, Sections 1,B, (1) and 2.

Of particular import was the inclusion into Section 2 of the following provision preserving the then-existing body:
The members of the present Dairy Commission may serve as members of the commission herein created until the expiration of their respective terms.

It is evident from the incorporation of this sentence into the law that while the state legislature intended to abolish the former dairy agency and replace it with a new one having a new name and different composition, that it did not intend to terminate the terms and service of those commissioners actively serving when the new statute became effective. ²

Like Act No. 319, Bill No. H. 3529 proposes to change the name and composition of the State's dairy industry control authority by giving it a new name (actually a reversion back to the use of 'the State Dairy Commission'), increasing the number of members to eleven, and denying to the Commissioner of Agriculture the privilege to vote. However, unlike Act No. 319, Bill H. 3529 contains no such preservation provision as the one excerpted above.

In construing a statute or group of statutes, the primary guide is, of course, the intent of the legislature. [Helfrich v. Brasington Sand & Gravel Co.](#), 268 S.C. 236, 233 S.C.2d 291 (1977). Where as a practical matter the determination of such a legislative intent becomes almost impossible is as in the instant case where the whole General Assembly has yet to debate the proposed legislation and evidence its collective intent. Nevertheless, it is the opinion of this Office, based upon the information presently available to it, that if the S. C. Senate were to pass H. 3529 the operation of Section 2 of the Bill, the repealer, would be to replace the present dairy commission and terminate all authority of the presently sitting commissioners.

*2 2. The authority for the State Dairy Commission of South Carolina to issue orders and promulgate rules and regulations is based upon Section 39–33–300(1)(a) & (b), S. C. Code of Laws (1976). Being a part of Article 3 of the present law, Section 39–33–300 would be repealed by operation of Section 2 of H. 3529 and replaced by a proposed Code Section 39–33–130 which is contained in Section 1 of the bill. There is no saving clause or preservation provision proposed for the present Dairy Commission regulations.

The general law on the effect of a repealing statute is that the general rule against the retrospective construction of statutes does not apply to repealing acts, which in the absence of a saving clause or other clear expression of intention are generally to be construed retrospectively. Furthermore, the repeal of a statute has the effect of blotting it out as completely as if it had never existed and of putting an end to all proceedings under it. [Marshall v. Richardson](#), 240 S.C. 318, 215 S.E.2d 639 (1962); 82 C.J.S. Statutes, Section 434, p. 1008.

Applying the general law to the facts and question presented, it can be concluded that the legislature would in passing H. 3529 be contemplating that all of the regulations issued pursuant to the authority contained in Section 39–33–300 should be rendered null and of no effect along with statutory authority for the existence of those regulations. At the very least, it would appear that if the General Assembly did not specifically intend for these regulations to be repealed on the date that H. 3529 becomes law that the practical effect of rendering them unenforceable by repealing the statutory provision for enforcement, Section 39–33–300(8), is the same as their having been specifically repealed.

CONCLUSIONS:

1. Due to the fact that no saving clause or other provision designed to preserve the State Dairy Commission of South Carolina was included in Bill No. H. 3529, the enactment into law of this bill creating a new dairy commission would end the authority of the presently existing body.

2. Since the enactment of Bill No. H. 3529 would bring about the repeal of the statutory authority (Section 39–33–300) for the Dairy Commission's existing regulations and their enforcement, the enactment into law of this bill would effectively repeal this body of regulations.

Reddick A. Bowman, Jr.
Assistant Attorney General

AN ORDINANCE

AN ORDINANCE TO IMPLEMENT CHAPTER 18 OF TITLE 4 OF THE 1976 SOUTH CAROLINA CODE OF LAWS, AS AMENDED, SO AS TO PROVIDE THAT NO WRECKER SHALL PROCEED TO THE SCENE OF AN ACCIDENT UNLESS REQUESTED BY THE OWNER OR DRIVER OF THE VEHICLE INVOLVED IN THE ACCIDENT OR THE LAW ENFORCEMENT OFFICER IN CHARGE AT THE SCENE; TO CREATE ZONES FOR WRECKER SERVICES; TO PROVIDE PROCEDURES FOR DISPATCHING WRECKERS TO THE SCENE OF AN ACCIDENT; AND TO PRESCRIBE PENALTIES FOR VIOLATIONS.

***3 BE IT ORDAINED BY GREENVILLE COUNTY COUNCIL:**

Section 1. Authority. This ordinance is authorized by Chapter 18 of Title 4 of the 1976 Code of Laws of South Carolina, as amended.

Section 2. Wreckers prohibited from going to the scene of an accident unless requested. No wrecker, wrecker operator, or agent or employee of a wrecker service, shall proceed to the scene of an accident in the unincorporated areas of Greenville County unless requested to do so by the owner or driver of a vehicle involved in the accident or the law enforcement officer in charge at the scene of the accident.

Section 3. Procedure for dispatching wreckers.

A. Should the owner or driver of a vehicle involved in an accident within the unincorporated areas of Greenville County request the services of a particular wrecker service or operator (whether or not such service is on the approved lists hereafter mentioned) the law enforcement officer who is in charge at the scene of the accident shall so inform his dispatcher who will thereupon call the requested wrecker service or operator and ask such service or operator to proceed to the scene of the accident.

B. If the owner or driver of the vehicle involved in the accident expresses no preference or has no information as to available wrecker services, the following procedures shall apply:

1. For purposes of this ordinance, Greenville County will be divided into four wrecker zones, as follows:

(a) Zone 1: All of Greenville County which lies north of Interstate Highway 85 and west of U.S. Highway 25;

(b) Zone 2: All of Greenville County which lies north of Interstate Highway 85 and east of U.S. Highway 25;

(c) Zone 3: All of Greenville County which lies south of Interstate Highway 85 and east of U.S. Highway 276;

(d) Zone 4: All of Greenville County which lies south of Interstate Highway 85 and west of U.S. Highway 276.

2. All wrecker services operating within the unincorporated areas of Greenville County who wish to assist in an accident shall make application to the South Carolina Highway Patrol on the form set forth in Appendix 'A' hereof, sending a copy of such application to the Greenville County Sheriff's Office. Copies of such forms shall be made available to applicants by the local office of the Highway Patrol or the Sheriff's office. Wrecker operators meeting the requirements set forth in Appendix 'B'

hereof will be placed on lists of participating wrecker services which shall be maintained by the Sheriff's Office and the local office of the State Highway Patrol for each of the zones described in Paragraph 3 B above. Copies of such lists, as updated from time to time, shall at all times be kept in the possession of members of the Sheriff's patrol and the Police Service Bureau Communications Center, which shall receive its copies of the approved list from the Sheriff's office. Members of the State Highway Patrol and personnel of its communications center will also be requested to keep copies of such lists in their possession at all times. Any wrecker service may elect to have its name placed on the list for a zone other than that in which it is located, but its name shall appear on only one list and it shall not make such election more frequently than once in three years. Approval may be withdrawn from an approved wrecker if at any time it fails to meet the requirements of 'Appendix B', but no such action shall be taken unless the wrecker service fails to correct a deficiency after thirty (30) days written notice.

*4 3. If the owner or driver of a vehicle involved in an accident shall have no information as to available wrecker services, he shall be shown the list of available wrecker services located within the zone in which the accident occurred and select a service from such list. Unless requested to do so, law enforcement officers will make no recommendation to the owner or driver as to their preference of a wrecker service.

4. If no particular wrecker operator or service is requested by the owner or driver, the dispatcher will refer to the list of wrecker operators for the zone in which the accident occurred and call the wrecker operator or service which appears next on his list after the name of the last operator which has been called; provided, that if in the opinion of the law enforcement officer at the scene a sufficient emergency exists, the dispatcher may call an available wrecker operator or service which is nearest to the scene; and provided further, that only wrecker services with large wreckers will be called to accidents involving large vehicles such as trucks.

Section 4. Debris Removal. All wrecker services who are called to the scene of an accident shall remove broken glass, damaged parts, oil and other debris which remains at the location from which the vehicle is towed.

Section 5. Records. Wrecker services shall keep a record of each towed vehicle which shall include the following information: license number of vehicle, date and time it was towed, location from which it was towed, and the name of the officer ordering the towing.

Section 6. Penalties. If a wrecker proceeds to the scene of an accident in violation of any of the provisions of this ordinance, the owner of the wrecker shall be deemed guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed two hundred dollars or imprisoned for a term not to exceed thirty days.

Section 7. Time Effective. This ordinance shall be effective from the date of its adoption.

ADOPTED in regular meeting this ____ day of _____, 1980.

APPENDIX 'A'

APPLICATION TO BECOME APPROVED WRECKER SERVICE

The undersigned wrecker service hereby applies to the State Highway Patrol to be placed on the approved list of such services:

1. Name and Address of Firm:

2. Name and addresses of all persons having a financial interest in such firm:

(If additional space is needed, please continue on the reverse side hereof.)

3. Names and Addresses of Drivers and Attendants:

a. Name: _____

Address: _____

Number of years employed by firm: _____

Training: _____

Total years of experience in towing: _____

b. Name: _____

Address: _____

Number of years employed by firm: _____

*5 Training: _____

Total years of experience in towing: _____

(If others please give the same information on the reverse side hereof.)

_____ (Name of Firm)

By: _____

(Authorized Signature)

Approved this ____ day of _____, 19__.

(Title)

APPENDIX 'B'

REQUIREMENTS FOR APPROVAL OF WRECKER SERVICES

Any wrecker service which applies for approval under Greenville County Ordinance No. ____ shall meet the following requirements:

I. Minimum Standards for Equipment.

Every emergency wrecker proposed to be used by an applicant shall be subject to inspection in a manner determined by the Patrol District Captain and every such wrecker, other than emergency heavy duty wreckers, shall comply with the following minimum requirements:

- A. Every applicant shall have at least one wrecker of not less than one ton in size with dual wheels and booster brakes.
- B. Every wrecker shall be equipped with at least one amber or red mounted oscillation rotating or flashing red light. Red light to be used at scene only.
- C. Each wrecker shall be equipped with a power operated winch, winch line, and boom with a lifting capacity of not less than eight thousand pounds, single line capacity.
- D. Each wrecker shall carry as standard equipment: tow sling, tow bar, towing dollies, safety chains, a fire extinguisher, wrecking bar, broom, shovel, flares and two reflectorized signs displaying 'Slow Wreck Ahead.' These signs to be two feet wide and three feet tall with red lettering on white background. The lettering is to be four inches in size.
- E. Each wrecker and all of its equipment shall be maintained in a safe and good working condition.
- F. Each wrecker shall be equipped with a two-way radio in good working order.
- G. Every emergency heavy duty wrecker of not less than 2-½ tons in size shall meet the requirements of Subsection A of this section, and in addition thereto, shall be equipped with a power operated winch, winch line and boom, with a rated lifting capacity of not less than thirty-two thousand pounds, single or double line capacity, and a tow sling.
- H. Each applicant shall maintain twenty-four hour wrecker service.
- I. Flares and signs listed in Subsection D are to be placed at appropriate locations adjacent to accident scene to serve as a warning to other motorists upon highway. Placement of these signs and/or flares shall be the responsibility of the wrecker operator.

II. Insurance.

An applicant shall procure and keep in full force and effect a policy of public liability and property damage insurance issued by a casualty insurance company authorized to do business in the State and in the standard form approved by the Insurance Commissioner of the State, and the coverage provision insuring the public from any loss or damage that may arise to any person or property by reason of the operation of an emergency wrecker of such applicant.

III. Storage Requirements.

***6** Each applicant shall have a storage lot in close proximity to the place of business with adequate storage space either under cover or fenced with six foot chain link fence. Stored vehicles and contents must be kept safe from pilfering.

IV. Hours.

There shall be an attendant on call, capable of responding to law enforcement requests for towing, as well as, being present or available for the release of vehicles to the public, twenty-four hours a day, seven days a week.

Footnotes

- 1 Due to some anomaly, the descriptive phrase 'of South Carolina' was dropped from the name of the dairy commission upon the codification of Section 2 of Act 319 of 1961 into Section 32-1621, S. C. Code of Laws (1962).
- 2 Act No. 319 also increased the membership on the commission from nine (9) to ten (10) members and restricted the Agriculture Commissioner's privilege to vote except in the case of a tie.
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