ALAN WILSON
ATTORNEY GENERAL

September 15, 2015

The Honorable Charles E. McNair
Chief, Cayce Department of Public Safety
2 Lavern Jumper Rd.
Cayce, SC 29171

Dear Chief McNair:

We are in receipt of your opinion request concerning the release of vehicles confiscated pursuant to Section 56-5-6240 "upon the service of 'claim and delivery' or other repossession orders from the lienholder ***prior*** to the adjudication of criminal charges." (emphasis in original). Our response follows.

I. Law

As you are aware, Section 56-5-6240 of the South Carolina Code addresses, among other things, the "forfeiture, confiscation, and disposition of vehicles seized for conviction of [Driving Under Suspension ("DUS") and Driving Under the Influence ("DUI")]." See S.C. Code Ann. § 56-5-6240 (2006) (explaining, via legislative title, that the statute deals with "[f]orfeiture, confiscation, and disposition of vehicles seized for conviction of DUS and DUI"). Notably, the statute explains individuals "convicted of a fourth or subsequent" DUS "within the last five years . . . or a third or subsequent DUI . . . within the last ten years, . . . must have the motor vehicle he drove during the offense. . . forfeited . . . ." S.C. Code Ann. § 56-5-6240(A). The statute adds that the "vehicle must be confiscated . . . at the time of the arrest," requires the registered owner to be notified of the confiscation within seventy-two hours, and provides the registered owner with a ten day window to request a hearing disputing the confiscation of their vehicle. Id. Further, and particularly relevant to your question, subsection (A) requires that within the ten day window following confiscation of the vehicle, "[t]he sheriff or chief of police in possession of the vehicle must provide notice by certified mail . . . to all lienholders of record[.]" Id.

In slight contrast to Section 56-5-6240(A), which, from a procedural standpoint focuses on post-confiscation, pre-conviction procedures, Section 56-5-6240(B) of the Code touches on post-conviction forfeiture procedures. In particular, Section 56-5-6240(B) explains that where "a person fails to file an appeal within ten days after his conviction or pleas of guilty or nolo contendere to the offenses in subsection (A), the sheriff or chief of police shall initiate an action in the circuit court of the county in which the vehicle was confiscated to accomplish forfeiture . . . ." Also, and again relevant to your question, subsection (B) of 56-5-6240 mandates that "registered owners, lienholders of record, and other persons claiming an interest in the vehicle

subject to forfeiture" receive notice of the forfeiture and be given "an opportunity to appear at a hearing and show why the vehicle should not be forfeited[.]" S.C. Code Ann. § 56-5-6240(B) (2006). Continuing, subsection (B) explains that despite the mandatory requirement that lienholders be notified of an impending forfeiture, "[t]he failure of the lienholder to appear at the hearing does not in any way alter or affect the claim of a lienholder of record" and adds that "[f]orfeiture of a vehicle is subordinate in priority to all valid liens and encumbrances." Id.

II. Analysis

Understanding the relevant provisions of Section 56-5-6240, we now return to your question, whether your office may release a "confiscated vehicle upon the service of 'claim and delivery' or other repossession orders from the lienholder ***prior*** to the adjudication of criminal charges." (emphasis in original). As explained below, we believe that it can.[1]

In order to determine whether Section 56-5-6240 authorizes a sheriff or chief of police to release a confiscated vehicle subject to forfeiture under its terms prior to adjudication, we must first look to the statute's legislative intent. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible."). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will" and "courts are bound to give effect to the expressed intent of the legislature." Media General Communications, Inc. v. South Carolina Dept. of Revenue, 388 S.C. 138, 148, 694 S.E.2d 525, 530 (2010); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002).

When determining the effect of words utilized in a statute, a court looks to the "plain meaning" of the words. City of Rock Hill v. Harris, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011). Nevertheless, courts do not focus on isolated portions of the language contained within a statute, but instead consider the statute's language as a whole. See Mid-State Auto Action of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) ("In ascertaining the

[1] Despite our conclusion that a law enforcement agency may generally release a vehicle confiscated pursuant to Section 56-5-6420, "upon the service of 'claim and delivery' or other repossession orders from the lienholder ***prior*** to the adjudication of criminal charges" we note that this conclusion is not absolute. For instance, if a confiscated vehicle that is otherwise subject to forfeiture under Section 56-5-6420 is *also* involved in any of the 24 offenses where preservation of "physical evidence" is mandated pursuant to Section 17-28-320(A), part of the Preservation of Evidence Act, the vehicle, assuming it amounts to physical evidence, could not be released until the earliest of the circumstances outlined in Section 17-28-320(C) has occurred. See S.C. Code Ann. § 17-28-320(A) (2014) (requiring a custodian of evidence to "preserve all physical evidence . . . related to the conviction or adjudication" for any one of 24 different crimes); S.C. Code Ann. § 17-28-320(C) (2014) ("The physical evidence and biological material must be preserved until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A). However, if the person is convicted or adjudicated on a guilty or nolo contendere plea for the offense enumerated in subsection (A), the physical evidence and biological material must be preserved for seven years from the date of sentencing, or until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A), whichever comes first.").

intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole."). This is because "[a] statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent." 2A Norman J. Singer & J.D. Shambie Singer, Sutherland Statutes and Statutory Construction, § 46.5 (7th ed. 2007).

A. Interpreting Section 56-5-6240(A)

Applying these concepts to Section 56-5-6240(A),[2] it becomes clear that while a driver's forfeiture of a motor vehicle is an additional consequence of a "fourth or subsequent" DUS conviction in five years, or a "third or subsequent" DUI conviction in ten years, the overarching intent of subsection (A) is to immediately take the vehicle away from the driver, regardless of whether they own the vehicle, even prior to adjudication. This is best illustrated by subsection (A)'s requirement that "[t]he vehicle *must be confiscated* by the arresting officer or other law enforcement officer of that agency *at the time of the arrest*" S.C. Code Ann. § 56-5-6240 (emphasis added) and is further supported by subsection (A)'s innocent owner provision.

---

[2] Section 56-5-6240(A) of the South Carolina Code states:

> In addition to the penalties for a person convicted of a fourth or subsequent violation within the last five years of operating a motor vehicle while his license is canceled, suspended, or revoked (DUS), or a third or subsequent violation within the last ten years of operating a motor vehicle while under the influence of intoxicating liquor or drugs (DUI), the person must have the motor vehicle he drove during this offense forfeited as provided in subsections (B) and (C) if the person is the registered owner or a resident of the household of the registered owner. *The vehicle must be confiscated by the arresting officer or other law enforcement officer of that agency at the time of arrest. The officer shall deliver it immediately to the sheriff, chief of police, or the authorized agent of the sheriff or chief of police, in the jurisdiction where the motor vehicle was confiscated. The sheriff, chief of police, or the authorized agent of the sheriff or chief of police shall by certified mail notify the registered owner of the confiscation within seventy-two hours. Upon notification of the confiscation, the registered owner has ten days to request a hearing before the presiding judge of the judicial circuit or his designated hearing officer.* The hearing must be held within ten days from the date of receipt of the request. *The purpose of the hearing is to determine if there is a preponderance of the evidence that (1) the use of the vehicle on the occasion of the arrest was not expressly or impliedly authorized, or (2) the registered owner did not know that the driver did not possess a valid license.* If the requisite showing is made, the vehicle must be returned to the registered owner. The vehicle confiscated pursuant to this section may be returned to the registered owner upon petition to the court by the law enforcement agency confiscating the vehicle if the criminal charge has not been disposed of within twelve months of the date of confiscation. If the registered owner of the vehicle does not remove the vehicle from law enforcement's possession within ten days of service of the court order allowing the return, law enforcement may dispose of the vehicle as provided in subsection (C). *The sheriff or chief of police in possession of the vehicle must provide notice by certified mail of the confiscation to all lienholders of record within ten days of the confiscation.*

S.C. Code Ann. § 56-5-6240(A) (emphasis added).

Specifically, subsection (A)'s innocent owner provision actually requires the registered owner to prove, by a preponderance of the evidence, that the driver's use of the confiscated vehicle was either (1) unauthorized; or (2) occurred only because the owner was unaware that the driver did not possess a valid license. Id. In fact, it is only upon satisfying such a standard that a vehicle confiscated pursuant to Section 56-5-6240(A) can be immediately released to a registered owner.[3] Stated differently, only a registered owner who has affirmatively proven that they are an innocent owner is entitled to immediate release of a vehicle confiscated pursuant to Section 56-5-6240(A), while all other vehicle owners, regardless of whether they were the driver or not, are unable to secure the immediate release of a vehicle subject to forfeiture under Section 56-5-6240(A). In light of these provisions, we believe the Legislature, via Section 56-5-6240(A), not only intended to keep vehicles out of certain repeat offender's hands immediately after arrest (i.e. three DUS and a current DUS arrest in a five year period, or two DUI's and a current DUI arrest in a ten year period), but also intended to keep vehicles out of a non-driver owner's hands when the owner of the vehicle has provided the vehicle to the driver regardless of whether they are legally authorized to operate the vehicle.

1. Interpreting Section 56-5-6240(A)'s Post-confiscation, Pre-adjudication Provision

Understanding the overarching intent of Section 56-5-6240(A), we now look to Section 56-5-6240(A)'s post-confiscation, pre-adjudication notification provision. As noted above, Section 56-5-6240(A)'s post-confiscation, pre-adjudication notification provision states "[t]he sheriff or chief of police in possession of the vehicle must provide notice by certified mail of the confiscation to all lienholders of record within ten days of the confiscation." In analyzing this provision, we note that we may not view this provision in isolation, but must instead view it against the balance of Section 56-5-6240(A)'s other language, as well as the entirety of Section 56-5-6240. See Mid-State Auto Action of Lexington, Inc., 324 S.C. at 69, 476 S.E.2d at 692 ("In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole."). In other words, we must read Section 56-5-6240(A)'s post-confiscation, pre-adjudication notification provision in light of subsection (A)'s overriding intent—(1) to keep vehicles out of a repeat offender's hands immediately following an arrest that would qualify the vehicle for forfeiture; and (2) to keep vehicles out of a non-driver owner's hands when the owner of the vehicle has provided the vehicle to the driver regardless of whether they are legally authorized to operate the vehicle.

Utilizing this construction requirement, we believe subsection (A)'s post-confiscation, pre-adjudication notification provision should not be understood as merely requiring the

[3] While we recognize subsection (A) does permit a "vehicle confiscated pursuant to this section to be returned to the registered owner upon petition to the court by the law enforcement agency confiscating the vehicle if the criminal charge has not been disposed of within twelve months of the date of confiscation," it seems clear this does not undermine the intent to immediately deprive registered owners of vehicles who do not otherwise meet subsection (A)'s innocent owner requirements.

notification of lienholders of a confiscation and potential forfeiture, but must also be viewed as a provision designed to encourage lienholders holding a claim and delivery or other repossession order to serve such an order and take possession of a vehicle that would otherwise be subject to forfeiture. Simply stated, we believe subsection (A)'s post-confiscation, pre-adjudication notification provision is not only designed for notification of lienholders, but also serves as an invitation to them. Accordingly, we believe this provision implicitly authorizes a law enforcement agency to release a confiscated vehicle upon the service of 'claim and delivery' or other repossession orders from the lienholder prior to the adjudication of criminal charges.

In so finding we note that such a construction not only furthers Section 56-5-6240(A)'s goal of immediate confiscation, but also furthers Section 56-5-6240's broader legislative goal of forfeiture and does so without the need to adjudicate the offense triggering confiscation and forfeiture under the statute. Specifically, because service of a claim and delivery or other repossession order would in many instances, accomplish forfeiture without additional litigation[4] as well as allow a lienholder with a superior claim[5] to seek forfeiture of the property that is the subject of the lien, it appears pre-adjudication release of a vehicle subject to repossession would be a preferred method of disposing of a vehicle otherwise subject to forfeiture under Section 56-5-6240. Indeed, subsection (B) supports this conclusion by explaining that "[f]orfeiture of a vehicle is subordinate in priority to all valid liens and encumbrances," meaning that pre-adjudication release of a vehicle for purposes of repossession would obviate the need for additional forfeiture litigation since the result of a subsequent forfeiture action under Section 56-5-6240 would be "subordinate in priority."

Moreover, the structure of Section 56-5-6240(B), specifically its' post-adjudication, pre-forfeiture lienholder notification requirements, also support our conclusion that Section 56-5-6240(A) is designed to encourage lienholders holding a claim and delivery or other repossession order to serve such an order prior to adjudication. For instance, and as noted above, subsection (B)'s requirement that "lienholders and other persons claiming an interest in the vehicle subject to forfeiture" must be notified and given an opportunity to be heard regarding forfeiture, shows an obvious intent to encourage lienholders to serve any claim and delivery or repossession orders they may have regardless of whether it is before or after adjudication of the arresting offense. In fact, the next sentence of subsection (B) further supports this understanding since a lienholder who fails to appear at the hearing concerning forfeiture "does not in any way alter or affect the claim of a lienholder of record." S.C. Code Ann. § 56-5-6240(B). In other words, a review of

---

[4] See e.g., S.C. Bench Book for Summary Court Judges, *Action of Claim and Delivery* ("A common illustration of a proper claim and delivery action is where a security agreement, installment contract, or an installment has been signed for the purchase of an automobile and there has been a default in payments by the purchaser. Provisions in the security agreement or installment contract that allow the seller or lender to take *immediate possession of an automobile* when the buyer defaults and wrongfully detains it *are enforced by an action of claim and delivery* . . . .") (emphasis added).

[5] See S.C. Code Ann. § 56-5-6240.

subsection (B) of Section 56-5-6240 shows that the statute, when viewed as a whole, is obviously aimed at providing lienholders with every opportunity to recover a vehicle that would otherwise be subject to forfeiture pursuant to the terms of Section 56-5-6240.

III. Conclusion

In conclusion, it is the opinion of this Office that Section 56-5-6240(A)'s post-confiscation, pre-adjudication notification provision implicitly authorizes a law enforcement agency to release a confiscated vehicle upon the service of a claim and delivery or other repossession order. Specifically, as discussed in Section II(A)(1) of our opinion, we believe that since the Legislature not only intended to keep vehicles out of certain repeat offender's hands immediately after arrest, but also intended to keep vehicles out of certain non-driver owner's hands when the owner of the vehicle has provided the vehicle to the driver and is not an innocent owner, pre-adjudication release of such a vehicle via a claim and delivery or other repossession order is entirely consistent with the statute's overarching legislative intent—forfeiture of the vehicle. As detailed above, this conclusion is supported throughout Section 56-5-6240, particularly subsection (B), which explains that "[f]orfeiture of a vehicle is subordinate in priority to all valid liens and encumbrances[.]" As a result, absent the existence of circumstances outlined in footnote one of our opinion, we believe it is unnecessary for law enforcement to hold a vehicle subject to a claim and delivery or other repossession order through adjudication of the offense triggering confiscation and forfeiture under Section 56-5-6240(A).

Sincerely,

Brendan McDonald
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General