



ALAN WILSON
ATTORNEY GENERAL

March 27, 2019

The Honorable William M. Hixon, Member
South Carolina House of Representatives
District No. 83
416-A Blatt Bldg.
Columbia, SC 29201

Dear Representative Hixon:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter raises issues regarding the South Carolina Department of Motor Vehicle's ("SCDMV") collection of road use fees on large commercial motor vehicles. Your letter states:

Based on my direct questioning of SCDMV officials, it appears they are under the impression that either the South Carolina Department of Revenue [SCDOR], or county officials, should collect all intrastate road use fees.

To try to resolve this dilemma, I have looked at SC Code Section 12-37-2850, entitled *Assessment of road use fees; distribution of fees*. It sets out in pertinent part:

Beginning on January 1, 2019, the Department of Motor Vehicles shall assess annually the road use fee due on large commercial motor vehicles and buses based on the value determined in Section 12-37-2820 and an average millage for all purposes statewide for the preceding calendar year and shall publish the average millage for the preceding year by July first of each year. The Department of Revenue, in consultation with the Revenue and Fiscal Affairs Office, shall calculate the millage to be used to calculate the road use fee by June first of each year for the following calendar year. **The road use fee assessed must be paid to the Department of Motor Vehicles**, in addition to the registration fees required pursuant to Sections 56-3-660 and 56-3-670, at the time and in the manner that the registration fees on the vehicle are paid pursuant to Sections 56-3-660 and 56-3-670. [Emphasis supplied.]

As additional information, my reading of SC Code Article 23, containing SC Code Sections 12-37-2810, et seq., reveals that Sections 12-37-2860(B) and (C) provide:

(B) Instead of any property tax and the registration requirements provided in Sections 56-3-110 and 56-3-700 on semitrailers and trailers of motor carriers as defined in Section 12-37-2810, and commonly used in combination with a large commercial motor vehicle, *a one-time fee payable to the Department of Motor Vehicles* in the amount of eighty-seven dollars is imposed on all semitrailers and trailers currently registered and subsequently on each semitrailer and trailer before being placed in service.

(C) *The fee imposed pursuant to subsection (B) and the registration requirements of this article are in lieu of any local road use fee, registration fees, or any other vehicle-related fee imposed by a political subdivision of this State on a trailer or semitrailer.* [Emphasis Supplied]

Since SCDMV is reporting that it will not collect intrastate large commercial motor vehicle road use fees, with what I am concerned will result in an unnecessarily complicated large commercial motor vehicle road use fee collection system for the State of South Carolina, I am hereby requesting an Attorney General's opinion to answer the following questions;

1. Does SC Code Section 12-37-2850 place an affirmative duty on the SCDMV to collect *all* large commercial motor vehicle road use fees, that is, all interstate *and* intrastate fees that are owed?
2. If you are of the opinion that this code section does not place an affirmative duty on SCDMV to collect all of these fees, then what state agency, or other entity, has the affirmative duty to collect interstate large commercial motor vehicle road use fees? Who then must collect the intrastate road use fees?
3. SC Code Section 12-37-2865 *Distribution of revenues from road use and one-time fee assessments* appears to distribute 75% of the one-time fee assessed under SC Code Section 12-37-2860, as well as the road use fee under SC Code Section 12-37-2850, to the various counties based on a ratio of total state and federal miles within a particular county as compared to the total state and federal highway miles within our state boundaries.

Given this distribution formula, do you see any obligation for counties to collect the intrastate large commercial motor vehicle road use fees when it appears they are a distributee of these funds as opposed to a collector of these funds?

Law/Analysis

This Office understands that the request letter was also sent directly to SCDMV for its response. SCDMV provided this Office a copy of its March 14, 2019 response. In part, SCDMV responded:

The Department of Motor Vehicles (DMV) has not declined to collect intrastate road use fees on large commercial trucks. Intrastate carriers have the opportunity pay road use fees directly to the Department. Our agency currently collects and distributes the funds in accordance with Title 12.

...

While it is true that SC Code Section 12-37-2850 requires the road use fees to be assessed by the department, the department does not understand that Section to require that payment must be made only to the Department as opposed to giving registrants the option of payment either to the department or to the counties with remittal to the department. This was the process that was followed prior to Act 40 of 2017 for collection by the counties and remittal to the Department of Revenue for ad valorem tax.

This Office cannot make factual determinations in an opinion and will generally assume facts as provided in a request letter for purposes of providing legal analysis. Op. S.C. Att'y Gen., 2012 WL 1371025, at *2 (April 11, 2012) ("[F] actual determinations ... are beyond the scope of an opinion of the Attorney General."). However, SCDMV's response indicates that it does permit the road use fees due on large commercial motor vehicles to be paid either directly to the department or to the counties who remit payment to the department. SCDMV's response further states that it does not interpret S.C. Code Ann. § 12-37-2850 to prohibit this practice.

It is this Office's long standing policy, like that of our state courts, to defer to an administrative agency's reasonable interpretation of the statutes and regulations that it administers. See Op. S.C. Att'y Gen., 2013 WL 3133636 (June 11, 2013). In Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014), the South Carolina Supreme Court explained why this deference is warranted, "[W]e give deference to agencies both because they have been entrusted with administering their statutes and regulations and because they have unique skill and expertise in administering those

statutes and regulations.” The Court further identified when our state courts will not defer to the administering agency as follows:

[T]he deference doctrine properly stated provides that where an agency charged with administering a statute or regulation has interpreted the statute or regulation, courts, including the ALC, will defer to the agency's interpretation absent compelling reasons. We defer to an agency interpretation unless it is “arbitrary, capricious, or manifestly contrary to the statute.”

411 S.C. at 34–35, 766 S.E.2d at 718.

Since January 1, 2019, SCDMV has been authorized to administer the annual assessment of road use fees due on large commercial motor vehicles at issue here. See S.C. Code Ann. § 12-37-2850; 2017 Act No. 40, § 8.A. Therefore, this Office likewise defers to SCDMV's interpretation of S.C. Code Ann. § 12-37-2850 unless it is “arbitrary, capricious, or manifestly contrary to the statute.” Kiawah Dev. Partners, II, supra.

As emphasized in the request letter, the question of whether SCDMV's interpretation of Section 12-37-2850 is reasonable depends on whether the statement that “[t]he road use fee assessed must be paid to the Department of Motor Vehicles” is incompatible with allowing those fees to be paid to the counties who then remit payment to the department. The rules of statutory construction state that where a statute's language is plain and unambiguous, “the text of a statute is considered the best evidence of the legislative intent or will.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Further, when a statute authorizes an action that is accompanied by the word “must,” courts generally interpret this to mean the action is nondiscretionary. See S.C. Police Officers Ret. Sys. v. City of Spartanburg, 301 S.C. 188, 391 S.E.2d 239 (1990) (“shall” and “must” are considered mandatory words according to principles of statutory construction). Therefore, SCDMV must accept payment of road use fees. The response from SCDMV states that it does accept payment of road use fees. SCDMV accepts payments both directly at SCDMV facilities and indirectly from the counties who remit payments to the department.

Based on the explanation in SCDMV's response, this Office understands SCDMV to interpret the phrase in Section 12-37-2850 “paid to the Department of Motor Vehicles” to include a payment of road use fees to a county which is then remitted to SCDMV. SCDMV supports this position in its response by noting that, prior to being amended by 2017 Act No. 40, § 8.A, the Department of Revenue (“SCDOR”) allowed counties to accept payment with remittal to SCDOR under Section 12-37-2850. Section 12-37-2850 previously read as follows:

The Department of Revenue shall assess annually the taxes due based on the value determined in Section 12–28–2820 and an average millage for all purposes

statewide for the preceding calendar year and shall publish the average millage for the preceding year by June 1 of each year. The taxes assessed must be paid to the Department of Revenue no later than December 31 of each year and may be made in two equal installments. Distribution of the taxes paid must be made by the State Treasurer's Office based on the distribution formula contained in Section 12-37-2870.

S.C. Code Ann. § 12-37-2850 (2014) (emphasis added). The emphasized language regarding the payment of taxes to SCDOR mirrors the current language in Section 12-37-2850 regarding the payment of road use fees to SCDMV. If SCDOR did in fact follow the same practice of allowing counties to collect payments and then remit these payments to SCDOR under the prior statutory scheme, a court would likely find that SCDMV's interpretation, which is based on identical statutory language, is not arbitrary and capricious. Moreover, SCDMV's interpretation does not appear to be expressly contradicted by the plain language of the statute or by implication. Therefore, our state courts would likely defer to this SCDMV interpretation of S.C. Code Ann. § 12-37-2850. See Kiawah Dev. Partners, II, supra ("We defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the statute.'"). This Office notes that the phrase "paid to the Department of Motor Vehicles" is not a defined term within Article 23 of Title 12, Chapter 37. If the General Assembly intended that road use fees could be paid only by making payment directly to SCDMV, statutory clarification that the phrase "paid to the Department of Motor Vehicles" does not include payments made to the counties with remittal to the SCDMV may be appropriate.

Finally, this Office received comments from the South Carolina Trucking Association ("SCTA") regarding policy considerations in addition to the logistical challenges motor carriers face when complying with SCDMV's road use fee payment policy. The SCTA raised concerns about the consistency and transparency in billing from counties. One example included a county providing a lump-sum bill with "improper and confusing terminology, with no line-itemization or explanation as to any partial payment options." While these complaints may be justified, this Office must defer to SCDMV's interpretation of S.C. Code Ann. § 12-37-2850 because it is the agency charged to administer it. As stated above, the General Assembly may wish to address the issues the SCTA raises with legislative clarification regarding the entities which are authorized to accept payment of road use fees. Alternatively, to create consistency in billing practices among the counties who remit payment to SCDMV, the department may choose to develop regulations which stipulate the process or forms that the counties use when processing road use fees.

Conclusion

It is this Office's opinion that a court would likely defer to the South Carolina Department of Motor Vehicle's ("SCDMV") interpretation of S.C. Code Ann. § 12-37-2850 because it is the agency charged with its administration. See Kiawah Dev. Partners, II, 411 S.C.

16, 34-35, 766 S.E.2d 707, 718 (“We defer to an agency interpretation unless it is ‘arbitrary, capricious, or manifestly contrary to the statute.’”). In relevant part, S.C. Code Ann. § 12-37-2850 states, “The road use fee assessed must be paid to the Department of Motor Vehicles...” (Supp. 2018). This Office understands SCDMV to interpret the phrase in Section 12-37-2850 “paid to the Department of Motor Vehicles” to include a payment of road use fees to a county which is then remitted to SCDMV. SCDMV supports this position in its response by noting that, prior to being amended by 2017 Act No. 40, § 8.A, the Department of Revenue (“SCDOR”) allowed counties to accept payment with remittal to SCDOR under Section 12-37-2850. If SCDOR did in fact follow the same practice of allowing counties to collect payments and then remit these payments to SCDOR under the prior statutory scheme, a court would likely find that SCDMV’s interpretation, which is based on identical statutory language, is not arbitrary and capricious. Moreover, SCDMV’s interpretation does not appear to be expressly contradicted by the plain language of the statute or by implication. This Office notes that the phrase “paid to the Department of Motor Vehicles” is not a defined term within Article 23 of Title 12, Chapter 37. If the General Assembly intended that road use fees could be paid only by making payment directly to SCDMV, statutory clarification that the phrase “paid to the Department of Motor Vehicles” does not include payments made to the counties with remittal to the SCDMV may be appropriate. Alternatively, to create consistency in billing practices among the counties who remit payment to SCDMV, the department may choose to develop regulations which stipulate the process or forms that the counties use when processing road use fees.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General