



ALAN WILSON
ATTORNEY GENERAL

March 13, 2020

The Honorable Will F. Derrick
Chief Administrative Judge
Oconee County Summary Court
106 East Windsor Street
Westminster, SC 29693

Dear Judge Derrick:

You are asking this Office for clarification of the definition of a “farm truck” in section 56-3-670 of the South Carolina Code, which sets the fees for farm truck licenses. According to your letter, there has been a dispute between State Transport and a business regarding whether “it is legal to transport without a commercial tag mulch that was not paid for and transport [it] back to the business, and then on to the customer . . .” You draw our attention to a former opinion of this office, 2001 WL 129338, and state that you “believe that further opinion since 2001 would help clarify the meaning of ‘market’ and ‘including first market’ [in section 56-3-670 and] would help both State Transport and the business proceed without continued incidents.”

You specifically ask the following questions:

- 1) The wording “including first market” . . . would this be limited to first market only, or all market[s]?
- 2) Would “market” include a cash transaction only, or also include free or donate[d] product?

LAW/ANALYSIS:

As we have stated in many prior opinions, this Office is not empowered to investigate or make factual findings.¹ However, we can provide you with the applicable law. Section 56-3-670, in its entirety, states:

¹ See Op. S.C. Atty. Gen., 1989 WL 406130 (April 3, 1989) (“[b]ecause this Office does not have the authority of a court or other fact-finding body, we are not able, in a legal opinion, to adjudicate or investigate factual questions.”)

(A) For the purpose of this section, “farm truck” is defined as a truck used exclusively by the owner for agricultural, horticultural, dairying, livestock, and poultry operations and includes transporting farm processed horticultural products, including soil amendments and mulches owned by the truck’s owner or another person, including first market. However, farm trucks with an empty weight of less than seven thousand five hundred pounds may be used for ordinary domestic purposes and general transportation but must not be used to transport persons or property for hire. No part of this definition may be interpreted to exempt any commercial motor vehicle less than 26,001 pounds GVW/GVWR/GCW/GCWR from all or part of state laws or regulations applicable to intrastate commerce if the vehicle:

- (1) transports hazardous materials requiring a placard; or
- (2) is designed or used to transport sixteen or more people, including the driver.

(B) The Department of Motor Vehicles shall issue to bona fide farmers special farm vehicle licenses on an annual basis for farm trucks for a fee as follows according to the gross vehicle weight of the truck:

Gross Vehicle Weight

- (1) Up to 26,499 pounds
- (2) 26,500 to 32,499 pounds
- (3) 32,500 to 42,500 pounds
- (4) 42,501 to 52,500 pounds
- (5) 52,501 to 62,500 pounds
- (6) 62,501 to 72,500 pounds
- (7) 72,501 to 80,000 pounds

Nothing in this section exempts farm vehicles from gross weight-axle requirements contained in Section 56-5-4140.

(C) A person who is issued a farm license plate for the purpose defined in this section and uses the license plate for purposes other than those defined is guilty of a misdemeanor and, upon

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conviction, must be fined not more than two hundred dollars or imprisoned not more than thirty days, or both.

S.C. Code Ann. § 56-3-670 (1976 Code, as amended) (emphasis added).

In our 2001 opinion that you cited in your letter, Op. S.C. Atty. Gen., 2001 WL 129338 (Jan. 24, 2001), we addressed whether the following use would qualify for a farm truck license:

Alexander Farms is engaged in the contract growing of poultry and the production of natural mulches and soil mixes, using wastes from the poultry operation, as an additive for these products. We also engage in the purchase of bedding products, being sawdust and waste bark, for our own use at our facility and for distribution to other farms like ours.

In the opinion, we reviewed a prior version of section 56-3-670:

For the purpose of this section, “farm truck” is defined as a truck used exclusively by the owner for agricultural, horticultural, and dairying operations or livestock, and poultry raising. However, farm trucks with an empty weight of less than 7,500 pounds may be used for ordinary domestic purposes and general transportation but must not be used to transport persons or property for hire . . .

S.C. Code Ann. § 56-3-670 (1996).

We considered that a farm truck was required to be used exclusively for particular farming purposes and concluded:

Clearly, the use of the trucks for the transport of poultry and soil additives would fall within the reach of the statute. A closer question may be presented as the use of the vehicle moves further away from the traditional activities associated with livestock and poultry raising or agricultural or horticultural uses. At first glance, the transport of sawdust and bark to your constituent's farm and others may not seem as obvious as the transport of chickens or fruits, for example. But sawdust, bought and used for the purpose of providing litter and bedding for the poultry, is a necessary part of the process of raising poultry. See generally Lipman Poultry Co. v. Johnson, 138 A.2d 631 (Maine 1958) If the person uses his truck solely for the business of transporting sawdust and bark to others' farms, then his use is probably too far removed from agricultural or poultry raising operations to qualify for the farm

truck tag. If, on the other hand, the person's transport of sawdust to himself and others is only one part of his larger overall operation, then it is our opinion that the statute would permit this kind of incidental use as part of "agricultural" operations or "poultry raising."

Op. S.C. Atty. Gen., 2001 WL 129338, supra.

The definition of "farm truck" in section 56-3-670 has been amended since our 2001 opinion. In 2002, the transport of farm processed horticultural products, including soil amendments and mulches, was added as a use of a farm truck:

For the purpose of this section, "farm truck" is defined as a truck used exclusively by the owner for agricultural, horticultural, and dairying operations or livestock and poultry raising and includes transporting farm processed horticultural products, including soil amendments and mulches, other than first market. However, farm trucks with an empty weight of less than seven thousand five hundred pounds may be used for ordinary domestic purposes and general transportation but must not be used to transport persons or property for hire.

2002 Act No. 340, § 7 (emphasis added).

In 2005, the phrase "other than first market" was changed to "including first market:"

For the purpose of this section, "farm truck" is defined as a truck used exclusively by the owner for agricultural, horticultural, dairying, livestock, and poultry operations and includes transporting farm processed horticultural products, including soil amendments and mulches, including first market. However, farm trucks with an empty weight of less than seven thousand five hundred pounds may be used for ordinary domestic purposes and general transportation but must not be used to transport persons or property for hire.

2005 Act No. 62, §1 (emphasis added).

In 2006, the definition of a "farm truck" was amended to provide for the transport of "soil amendments and mulches owned by the truck's owner or another person, including first market." 2006 Act No. 398 (emphasis added).

You are asking for clarification of the phrase “including first market.” In order to answer your questions, we must consider the rules of statutory construction. In a prior opinion, Op. S.C. Atty. Gen., 2012 WL 4459270 (Sept. 19, 2012), we stated:

[T]he cardinal rule of statutory interpretation is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statute must receive a practical, reasonable, and fair interpretation consonant with the purpose, design and policy of the lawmakers. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1990). Further, it is a general rule of construction with any statute that the Legislature is presumed to have intended by its action to accomplish something and not to have done a futile thing. State ex rel McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964).

After this Office’s 2001 opinion,² the Legislature added the following language to the definition of a farm truck: “and includes transporting farm processed horticultural products, including soil amendments and mulches, other than first market.” 2002 Act No. 340, § 7, supra (emphasis added). Since the word “include” and its variations were not defined, we shall review the definitions of these words in other resources. Several dictionaries concur that the word “include” means to comprise or contain as part of a whole. See Oxford Dictionary at <https://www.lexico.com/en/definition/include>; Merriam-Webster at <https://www.merriam-webster.com/dictionary/include>; Macmillan Dictionary at <https://www.merriam-webster.com/dictionary/include>; and Oxford Dictionary at <https://www.lexico.com/en/definition/including>.

Black’s Law Dictionary defines the word “include” as:

To contain as a part of something. • The participle including typically indicates a partial list (the plaintiff asserted five tort claims, including slander and libel). But some drafters use phrases such as including without limitation and including but not limited to — which mean the same thing . . .

Black’s Law Dictionary (11th ed. 2019).

² Op. S.C. Atty. Gen., 2001 WL 129338, supra.

Courts have considered the word “include” in their construction of statutory law. In Samantar v. Yousuf, 560 U.S. 305, 130 S. Ct. 2278, 176 L. Ed. 2d 1047 (2010), the United States Supreme Court found that “[u]se of the word ‘include’ in a statute can signal that the list that follows is meant to be illustrative rather than exhaustive.” The Fourth Circuit Court of Appeals has stated that “[w]hen term ‘include’ is utilized in a statute, it is generally improper to conclude that entities or items not specifically enumerated are excluded.” United States v. Helton, 944 F.3d 198 (4th Cir. 2019), as amended (Dec. 4, 2019). The Fourth Circuit explained:

Because “include” and its variations are more often than not the introductory term for an incomplete list of examples, their use before a list is afforded a presumption of nonexclusively in statutory interpretation.

Id. The Fourth Circuit has also found that “[a] statute’s use of the term ‘including’ is not one of all-embracing definition, but connotes simply an illustrative application of the general principle.” Id. See also US. v. Hawley, 919 F.3d 252 (4th Cir. 2019).

The Legislature added the language “includes transporting farm processed horticultural products, including soil amendments and mulches . . .”³ The use of the word “includes,” which means part of a whole, can only lead to the conclusion that the Legislature intended the transport of farm processed horticultural products, including soil amendments and mulches, to be a legitimate part of farming operations. Furthermore, we believe that the following use of the word “including” shows that soil amendments and mulches are an illustrative, but not an exclusive, list of farm products which can be transported by a farm truck.

The Legislature subsequently replaced the phrase “other than first market” with “including first market.” 2005 Act No. 62, §1, supra. The term “other than” has been defined as: “with the exception of; except for; besides.” Merriam-Webster at <https://www.merriam-webster.com/dictionary/other%20than>; The Free Dictionary at <https://www.thefreedictionary.com/other+than>; Your Dictionary at <https://www.yourdictionary.com/other-than>. Oxford Dictionary states that the meaning is “apart from; except; differently or different from; otherwise than.” Oxford Dictionary at <https://www.lexico.com/en/definition/other>. Cambridge Dictionary simply defines the term as “except.” Cambridge Dictionary at <https://dictionary.cambridge.org/us/dictionary/english/other-than>.

Black’s Law Dictionary does not define the term “other than.” However, it does provide the meaning of the word “exception.” Included in the definition of “exception” is “[s]omething that is excluded from a rule’s operation (employers with fewer than five employees are

³ 2002 Act No. 340, § 7, supra.

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an exception to the rule).” Black's Law Dictionary (11th ed. 2019). The definition also provides that a “statutory exception” is “[a] provision in a statute exempting certain persons or conduct from the statute's operation.” Id.

The word “including,” which means a partial list or an example, means the opposite of the term “other than.” It is our opinion that the Legislature replaced the phrase “other than first market” with “including first market” to make clear that the transport of farm processed horticultural products, including soil amendments and mulches, is not restricted or limited to first market. This conclusion is supported by the subsequent amendment of the statute to allow the transport of “soil amendments and mulches owned by the truck's owner or another person.” 2006 Act No. 398, supra (emphasis added).

As to your question regarding payment, the language of section 56-3-670 plainly provides that “farm trucks with an empty weight of less than seven thousand five hundred pounds . . . must not be used to transport persons or property for hire.” S.C. Code Ann. § 56-3-670, supra. Accordingly, it is our opinion that farm trucks can be used for transporting free or donated farm processed horticultural products, including soil amendments and mulches.

CONCLUSION:

According to section 56-3-670, a farm truck must be used exclusively for particular farming operations. Because of the use of the variations of the word “include” in the statute, we believe that legislative intent was for the transport of farm processed horticultural products, including soil amendments and mulches, to be a legitimate part of these farming operations. It is also our opinion that soil amendments and mulches are an illustrative, but not an exclusive, list of farm products which can be transported by a farm truck. We believe that the Legislature intended for the transport of farm processed horticultural products, including soil amendments and mulches, to not be restricted or limited to first market.

Because of the provision in section 56-3-670 that farm trucks of a certain weight are not permitted to transport property for compensation, it is our opinion that farm trucks can be used for transporting free or donated farm products.

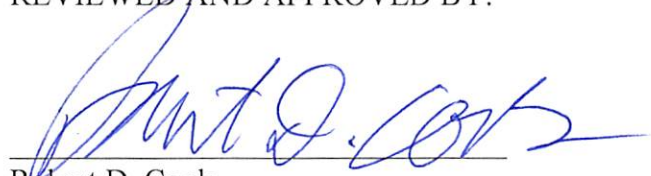
Sincerely,



Elinor V. Lister
Assistant Attorney General

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REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook", is written over a horizontal line.

Robert D. Cook
Solicitor General