



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

June 28, 1995

David G. Deering, Captain
South Carolina Department of Public Safety
Highway Patrol - District 7
5400 Broad River Road
Columbia, South Carolina 29210-4088

Re: Informal Opinion

Dear Captain Deering:

You have inquired regarding a common situation which the South Carolina Highway Patrol encounters from time to time. Your letter states as follows:

[w]e as State Troopers are dispatched to the scene of a serious accident. Upon arriving you find the operator of an automobile is injured and in need of medical treatment. Through investigation, it is determined that the operator is apparently under the influence. You are advised by E.M.S. personnel that the injured operator will be transported to the hospital some distance away (35 miles). Due to the injuries, the operator is physically unable to provide a breath sample. In addition, you as the investigating officer can not leave the scene of the accident until it is safe to do so and all investigative work is complete. Time in obtaining a blood sample to obtain blood alcohol content is critical. These circumstances present a problem. Often times we are unable to obtain blood samples in a timely manner.

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Question: when emergency medical personnel that are trained to take blood samples are present, is an ambulance considered a licensed medical facility as it relates to Section 56-5-2950 of the S.C. Code of Laws? ...

Please keep in mind that all hospitals and ambulances are licensed by the Department of Health and Environmental Control.

South Carolina Code Ann. Sec. 56-5-2950, the so-called "implied consent" statute, provides in pertinent part as follows:

[a] person who operates a motor vehicle in this State is considered to have given consent to chemical tests of his breath, blood or urine for the purpose of determining the presence of alcohol or drugs if arrested for any offense arising out of acts alleged to have been committed while the person was operating a motor vehicle while under the influence of alcohol or drugs or a combination of them.

Subsection (a) continues by further providing:

[i]f the person is physically unable to provide an acceptable breath sample because he has an injured mouth, is unconscious, dead, or for any other reason considered acceptable by the licensed medical personnel, a blood sample may be taken Blood and urine samples must be taken by physicians licensed by the State Board of Medical Examiners, registered nurses licensed by the State Board of Nursing, and other medical personnel trained to take the samples in a licensed medical facility. Blood samples or urine samples must be obtained and handled in accordance with procedures approved by SLED.

The issue raised by your letter is the meaning of this latter provision in the context of taking in a timely manner a sample of the blood of the injured driver who is suspected of driving under the influence.

When construing any statute, the paramount principle is to determine the intention of the Legislature. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d

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424 (1980). The courts will give a statute a reasonable and sensible construction, not one which is unreasonable or absurd. Stephens v. Hendricks, 226 S.C. 79, 83 S.E.2d 634 (1954). While punctuation in a statute is not controlling, it cannot be ignored where there is no patent ambiguity and the punctuation gives meaning and effect to the language used. Jackson v. South Carolina Tax Comm., 192 S.C. 350, 6 S.E.2d 745 (1940). The Court may consider the title of an act in aid of construction to show legislative intent, Lindsay v. Southern Farm Bureau Cas. Ins. Co., 258 S.C. 272, 188 S.E. 2d 374 (1974) as well as the history of the act to ascertain its meaning. Palmetto Lumber Co. v. Southern Ry., 154 S.C. 129, 151 S.E. 279 (1929).

It is my view that the statute provides that blood and urine samples may be taken by three groups of persons. The first is "physicians licensed by the State Board of Medical Examiners." The second is "registered nurses licensed by the State Board of Nursing." Finally, a third group is "other medical personnel trained to take the samples in a licensed medical facility." The phrase "in a licensed medical facility" modifies the verb "trained"; in other words, "other medical personnel" must be trained to take samples "in a licensed medical facility." Thus viewed, the statute regulates the competency required of the person taking the sample, not where the sample is taken. See, State v. Stacy, _____ S.C. _____, 431 S.E.2d 640, 641 (1993) ["... the statute requires a licensed physician, licensed registered nurse, or other medical personnel trained to take blood samples in a licensed medical facility, who is directed by an officer to take a blood sample, to determine whether an acceptable reason exists for finding that a person is unable to provide an acceptable breath sample."]

Two pieces of evidence further support this reading. First is the fact that reference to each of the three categories of medical personnel -- doctors, registered nurses and "other medical personnel", are separated by commas in the sentence. Thus, the phrase "in a licensed medical facility" refers to no other part of the sentence but the last clause. The symmetry of the sentence is thereby consistent; just as doctors must be "licensed by the Board of Medical Examiners", and registered nurses must be "licensed by the State Board of Nursing", "other medical personnel" must be "trained in a licensed medical facility."

Moreover, this portion of the statute dates back at least to 1987. In 1988, this portion of the statute was amended by Act No. 348 of 1988. The title to that Act is as follows:

AN ACT TO AMEND SECTION 56-5-2950, AS AMENDED,
CODE OF LAWS OF SOUTH CAROLINA, 1976,
RELATING TO IMPLIED CONSENT TESTS TO
DETERMINE THE ALCOHOLIC OR DRUG CONTENT OF

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BLOOD, SO AS TO DEFINE PERSONS WHO ARE PERMITTED TO TAKE BLOOD AND URINE SAMPLES INSTEAD OF ADMINISTERING TESTS TO DETERMINE THE PRESENCE OF ALCOHOL OR DRUGS OR A COMBINATION OF THEM IN THE SYSTEMS OF PERSONS ARRESTED FOR DUI AND TO EXEMPT THEM FROM CRIMINAL PROSECUTION BY THE ARRESTED PERSON. (emphasis added).

It may be seen from the above that the intent of the amendment was "TO DEFINE PERSONS WHO ARE PERMITTED TO TAKE BLOOD AND URINE SAMPLES ...", not to specify where such samples be taken.

Accordingly, it is my opinion that § 56-5-2950 requires that "other medical personnel", such as EMT's, etc. receive their training or are trained to take blood samples in a "licensed medical facility" and if so qualified, may take blood samples. The statute does not address, however, the physical location where such samples must be taken.¹

You asked specifically whether such blood samples could be taken in an ambulance at the scene. The statute does not comment thereupon, but does not expressly prohibit this. In previous opinions, we have stated that the United States Supreme Court in Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966), implies that a blood test "must be performed by trained personnel in a proper medical environment." (emphasis added). The case of Keenan v. State, 700 S.W.2d (Ct. App. Tex. 1985), suggests that where properly trained medical personnel extracted blood in an ambulance at the scene, such is proper. Upholding a conviction for DUI, the Court stated:

[t]he blood sample was taken from appellant by Dr. Steve Del Judice in an ambulance at the scene of the accident. Highway Patrol Trooper Gary Davis testified that he gave a blood alcohol specimen kit to the doctor for that purpose and then left the ambulance to conduct his investigation of the accident. He later returned and received from the doctor a vial

¹ Indeed Section 56-5-2950 seems to anticipate that samples will be taken not only in a hospital, but in other places as well. The Section further states that "[a] hospital, physician, qualified technician, chemist, or registered nurse who takes the samples ..." is not subject to various causes of action. Clearly, this provision is not limited to a sample being taken only in a hospital.

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containing blood. Apparently, it is the time period during the trooper's absence from the ambulance that appellant finds most objectionable. Dr. Del Judice did not testify, but Linda Montoya, a volunteer Emergency Medical Technician, did testify that she assisted Dr. Del Judice in extracting blood from appellant into the vial given him by a law enforcement officer. She further testified that after extraction, the doctor gave the vial back to the officer. Trooper Davis testified that he placed the vial he received from Dr. Del Judice in the glove compartment of his car until he hand-delivered it to Mr. Murphy ..., a chemist with the Amarillo District Office of the Department of Public Safety. Mr. Murphy testified that he received the blood vial from Gary Davis. He also testified that he knew the vial offered into evidence was the same one he received from Gary Davis because the laboratory number assigned to it was unique. These facts sufficiently establish that the sample offered into evidence was the same one extracted from appellant.

700 S.W.2d at 15.

Moreover, in People v. Ford, 4 Cal.App. 4th 32, 5 Cal.Reptr.2d 189 (1992), the Court upheld the extraction of blood by a licensed medical technologist from a driver, where the blood was withdrawn at the city jail. The defendant, charged with DUI, argued that withdrawing blood at the jail rather than at the local hospital constituted a violation of equal protection. The Court disagreed, stating:

[a]lthough Schmerber was concerned about the environment in which the test took place, nothing in this record suggests that the location in which this test occurred was unsafe or unsanitary or that the personnel present would fail to respond properly in the unlikely event of a medical problem resulting from the test.

4 Cal.App. 4th at 37. In addition, the Court noted that "... society's interest in prosecuting driving under the influence cases has increased since Schmerber." Supra at 38.

Accordingly, it is my opinion that emergency medical personnel trained to take blood samples or other medical personnel (licensed doctor or registered nurse) could take blood samples at the scene of an accident, consistent with the above reasoning. Because

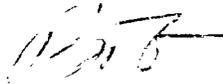
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Section 56-5-2950 does not specify where a blood sample test must be taken, so long as the blood or urine sample taken in accordance with Section 56-5-2950, is taken in a proper medical environment, that is, not taken in unsafe or unsanitary circumstances, or in such circumstances that personnel present would fail to respond properly to a medical problem, it would appear that such withdrawal of the sample would be valid. Clearly, the circumstance you outline, where a sample is taken in an ambulance, would meet this standard.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an