



ALAN WILSON
ATTORNEY GENERAL

May 12, 2014

Chief David W. Jennings
Flint Hill Fire Department
1950 Highway 21
Fort Mill, SC 29715

Dear Chief Jennings:

This Office received your request for an opinion on several issues regarding authorized emergency vehicles. Each issue and its analysis follows.

LAW/ANALYSIS:

I. Does the Authority Having Jurisdiction¹ (AHJ) have the authority to determine which vehicles associated with the AHJ are authorized emergency vehicles?

The Legislature determines which vehicles are authorized emergency vehicles in the Uniform Act Regulating Traffic on Highways, S.C. Code Ann. § 56-5-10 *et seq.* (1976 Code, as amended). Authorized emergency vehicles in regards to a fire department constitute the following:

- (1) fire department vehicles. . .
- (5) emergency vehicles designated by the fire department or the chief of police of a municipality. . .
- (8) public and private vehicles while transporting individuals actually engaged in emergency activities because one or more occupants belong to a fire department, volunteer fire department, police department, sheriff's office, authorized county government litter enforcement office, rescue squad, or volunteer rescue squad. . .

S.C. Code Ann. § 56-5-170(A) (1976 Code, as amended). Regarding its definitions in the Uniform Act Regulating Traffic on Highways, the Legislature stated that “[f]or the purposes of this chapter [the Act] the words, phrases and terms defined in this article shall have the meanings thereby attributed to them.” S.C. Code Ann. § 56-5-110 (1976 Code, as amended).

¹ You explain that an “Authority Having Jurisdiction” refers to the entity authorizing a fire department to exist (ex. Municipal Government, Local Special Tax District, State Special Tax District, etc.) and/or the governing body of the fire department (i.e. Fire Chief, Fire Board, Fire Commission, department officers, etc.).

The Legislature also provided:

The provisions of this chapter shall be applicable and uniform throughout this State and in all political subdivisions and municipalities therein, and no local authority² shall enact or enforce any ordinance, rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, subject to the limitations prescribed in § 56-5-930³, adopt additional traffic regulations which are not in conflict with the provisions of this chapter.

S.C. Code Ann. § 56-5-30 (1976 Code, as amended).

The Legislature is clear about the types of vehicles that are “authorized emergency vehicles.” The Legislature does grant the fire department the authority to designate emergency vehicles but explicitly states that any vehicle, publicly or privately owned, engaged in the discharge of the function of a fire, police, or rescue agency is an authorized emergency vehicle. For the sake of uniformity, the types of vehicles specifically designated as authorized emergency vehicles by the Legislature can not be restricted or abrogated by the entity authorizing a fire department to exist or the governing body of a fire department.

II. Does section 56-5-170 grant the RIGHT or ABILITY to vehicles enumerated in subsection (A) to be an authorized emergency vehicle? If it is the ABILITY who determines which vehicle is actually an authorized emergency vehicle?

We believe that this question was answered in our response to Question I above. Please let us know if this is not the case.

III. Does the AHJ have the ability to promulgate policies, guidelines, rules and regulations that it determines are in the best interest of the public and/or the organization that restrict a member of the organization from performing tasks otherwise allowed by law? For example, can the AHJ have a policy which states a firefighter cannot enter a hazardous environment until the firefighter has received a level of training the department deems necessary for safety (based on national standards) even though state law may allow a lesser minimum level of training? If so, does this include restricting the use of red lights and sirens?

In our response to question I, we explain that for the sake of uniformity, the Legislature has decreed that counties, municipalities, and local boards can not enact or enforce ordinances, rules, or regulations which are in conflict with the provisions of the Uniform Act Regulating Traffic on Highways. We discuss in our response to question VII below how county or municipal ordinances which conflict with statutes or with the State Constitution are void. We believe our responses to these questions demonstrate that the AHJ can not promulgate rules or regulations which are in conflict with state law.

² Section 56-5-380 provides that “[e]very county and municipality in this State and any other local board or body having authority to maintain any public highways or to regulate the traffic thereon, but not including the Department of Public Safety, is a ‘local authority.’” S.C. Code Ann. § 56-5-380 (1976 Code, as amended).

³ Section 56-5-930 concerns the Department of Transportation placing and maintaining traffic-control devices on State highways.

IV. Can the AHJ determine the use of red lights and sirens by junior members is a public safety concern and restrict the use of such by its members?

As demonstrated above, public and private vehicles while transporting individuals actually engaged in emergency activities because one or more occupants belong to a fire department or volunteer fire department are authorized emergency vehicles. Every authorized emergency vehicle must be equipped with an audible signal and a visual signal. The Legislature provided:

(A) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this chapter, be equipped with a siren, exhaust whistle, or bell capable of giving an audible signal.

(B) Every school bus and every authorized emergency vehicle, in addition to any other equipment and distinctive markings required by this chapter, must be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which must be capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level, and these lights must have sufficient intensity to be visible at five hundred feet in normal sunlight. However, vehicles of a fire department or funeral home when equipped with a mounted, oscillating, rotating, or flashing red light, visible in all directions for a distance of five hundred feet in normal sunlight, are not required to have additional signal lamps. . .

(E) The use of the signal equipment described herein shall impose upon drivers of other vehicles the obligation to yield right-of-way and stop as prescribed in Sections 56-5-2360 and 56-5-2770.

S.C. Code Ann. § 56-5-4700 (1976 Code, as amended). This indicates that an authorized emergency vehicle must have lights and sirens to use in emergency situations.

Other statutes support this. Drivers of authorized emergency vehicles are granted certain privileges when responding to an emergency. They are permitted to (1) park or stand; (2) proceed past a red or stop signal or stop sign but only after slowing down as may be necessary for safe operation; (3) exceed the maximum speed limit if they do not endanger life or property; and (4) disregard regulations governing direction of movement or turning in specified directions. See S.C. Code Ann. § 56-5-760 (1976 Code, as amended). However, the drivers are only permitted these privileges when the authorized emergency vehicle is making use of an audible signal (meeting the requirements of section 56-5-4970) and a visual signal (meeting the requirements of section 56-5-4700).⁴ Id.

Additionally, drivers of other vehicles and pedestrians are required to give authorized emergency vehicles the right-of-way, but only if the authorized emergency vehicle has an audible signal and a visual signal. See S.C. Code Ann. § 56-5-2360 (1976 Code, as amended); S.C. Code Ann. § 56-5-3260 (1976 Code, as

⁴ An exception is an authorized emergency vehicle used as a police vehicle performing certain functions.

amended). This leads to the conclusion that authorized emergency vehicles must utilize their lights and sirens while responding to an emergency; this requirement can not be restricted by the AHJ.

V. Is it lawful for a volunteer firefighter in the State of South Carolina to operate a motor vehicle with only a red light (no siren) even if that red light meets the requirements of section 56-5-4700(B)?

As stated above, drivers of authorized emergency vehicles are granted certain privileges as long as they are making use of the audible signal meeting the requirements of section 56-5-4970 and a visual signal meeting the requirements of section 56-5-4700. Section 56-5-4970 states that a “siren shall not be used except when such vehicle is operated in response to an emergency call. . . .” S.C. Code Ann. § 56-5-4970 (1976 Code, as amended). This indicates that sirens must be operated when an authorized emergency vehicle is responding to an emergency.

In a former opinion, we determined that “use of red lights and sirens in private automobiles by full-time and volunteer firemen engaged in emergency activities would not only be appropriate but also required by statute.” Op. S.C. Atty. Gen., No. 84-17, February 15, 1984 (1984 WL 159825). Also see Op. S.C. Atty. Gen., February 2, 1990 (1990 WL 599174).

Based upon section 56-5-4970 and our prior opinions, it appears that it is not lawful for a volunteer fireman to operate a motor vehicle with only a red light and no siren in an emergency situation.

VI. If a motorist is operating their personal vehicle as an authorized emergency vehicle due to their membership in a fire department and they are involved in a vehicle accident or break the law does the AHJ or its representatives share in any liability?

As stated above, drivers of authorized emergency vehicles are granted certain privileges when responding to an emergency. They are permitted to (1) park or stand; (2) proceed past a red or stop signal or stop sign but only after slowing down as may be necessary for safe operation; (3) exceed the maximum speed limit if they do not endanger life or property; and (4) disregard regulations governing direction of movement or turning in specified directions. S.C. Code Ann. § 56-5-760, supra.

In spite of these privileges, the driver of an authorized emergency vehicle is not relieved from the “duty to drive with due regard for the safety of all persons.” Id. Also see S.C. Code Ann. § 56-5-2360 (1976 Code, as amended) (driver of an authorized emergency vehicle has a “duty to drive with due regard for the safety of all persons using the highway”); S.C. Code Ann. § 56-5-3260 (1976 Code, as amended) (driver of an authorized emergency vehicle has “the duty to drive with due regard for the safety of all persons using the highway” and to “exercise due care to avoid colliding with any pedestrian”).

Two of our former opinions considered this question. In Op. S.C. Atty. Gen., December 13, 2012 (2012 WL 6720260), we opined:

Such authorized emergency vehicles must, therefore, take into account the safety of the motoring public. Any liability resulting from an accident involving an authorized emergency vehicle and a civilian motorist would, however, depend on an examination of the particular fact situation. Of course, this Office does not conduct fact-finding inquiries in the issuance of a legal opinion. See, e.g., Op. S.C. Atty. Gen., April 16, 1997(1997 WL 255957).

We refer to the December 7, 1976, opinion, which predates the 1990 legislative amendment to § 56-5-760(D).⁵ Therein we provided the following guidelines which could be applied by an investigating officer in the event of an accident involving an authorized emergency vehicle and a civilian motorist:

- (1) Was there an emergency?
- (2) Was emergency vehicle displaying light and siren?
- (3) Was operation of emergency vehicle reasonable in view of circumstances then and there existing?
- (4) Was the civilian vehicle in compliance with all traffic laws relating to the presence of emergency vehicles?
- (5) Was the civilian vehicle operated in a reasonable manner in view of the circumstances then and there existing?

We advised, however, that:

[t]hese general guidelines are not designed to decide every issue of negligence when an emergency vehicle is involved in an accident. However, the investigating patrolman can use these guidelines as a first step when he begins to investigate an accident between an emergency vehicle and a civilian vehicle.

In Op. S.C. Atty. Gen., June 11, 1980 (1980 WL 120703), we stated:

With reference to your question concerning the liability of the individual, the fire department or the municipality . . . every case involving an accident between an emergency vehicle and a civilian motorist must be evaluated under its own circumstances. Each of the entities described above may be sued by an individual for negligence. The liability of municipalities is controlled by statute. Individual liability would be governed by traditional tort theories if he is not absolved from liability exposure and suit. The outcome of such a suit will depend on the facts and legal theories which were applicable in a given fact situation, and an opinion as to whom is responsible without the benefit of those facts and circumstances would be inappropriate.

Whether the AHJ or its representatives would share in any liability if a member of a fire department is involved in an accident while operating his vehicle as an authorized emergency vehicle depends on the facts and circumstances of each individual case. This Office does not conduct such fact-finding inquiries.

⁵ Prior the 1990 amendment, the former version stated its provisions “shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.” [emphasis added]. Case law interpreting this former version applied a “reckless conduct” standard. See, e.g., Jones v. Way, 278 S.C. 295, 294 S.E.2d 432 (1982).

VII. Can York County enact an ordinance restricting the use of red lights and sirens by volunteer firefighters?

Per statute, public and private vehicles while transporting individuals actually engaged in emergency activities because one or more occupants belong to a fire department or volunteer fire department are authorized emergency vehicles. It is our opinion, as stated above, that the statutes also require authorized emergency vehicles to utilize their lights and sirens while responding to an emergency.

You appear to ask whether York County can restrict these statutes by ordinance. In a prior opinion, we stated:

it has been long recognized that political subdivisions cannot enact an ordinance repugnant to the State Constitution or statutes. Central Realty Corp. v. City of Sptg., 218 S.C. 435, 63 S.E.2d 153 (1951); Law v. City of Sptg., 148 S.C. 229, 146 S.E. 12 (1928). Even though the Home Rule Act expressly authorizes local governments to adopt ordinances, regulations and resolutions,” such must not be inconsistent with the Constitution and general laws of this State. See, § 4-9-30 (counties); § 5-7-30 (municipalities).

Op. S.C. Atty. Gen., September 9, 2002 (2002 WL 31341825).

We quoted Law v. City of Sptg., supra in a prior opinion, as follows:

In the latter case [Law], applicable here by analogy, a municipal ordinance conflicted with the applicable state statutes; therein, the South Carolina Supreme Court stated:

An ordinance which is repugnant either to the Constitution or general laws is ipso facto void.... “All ordinances or by-laws adopted by” a municipality “contrary to the laws of the land are void.” ... “An ordinance is the product of legislative power conferred upon the municipality. One essential to its validity is that it shall not conflict with the laws of the State.” ... A statute will override a conflicting city ordinance, whether it precedes or follows the ordinance in point of time.... “A State law is paramount to a conflicting city ordinance, where they both relate to a subject with reference to which the right to legislate is concurrent.” ... City ordinances conflicting with State Constitution or statute are void.

148 S.C. at 234.

Op. S.C. Atty. Gen., February 5, 1987 (1987 WL 342791) (quoting Law v. City of Sptg., supra).

In our opinion, York County can not enact an ordinance restricting the use of red lights and sirens by volunteer firefighters.

CONCLUSION

In conclusion, this Office believes that the law is as follows:

1. The Legislature, not the AHJ, has the authority to determine which vehicles are authorized emergency vehicles. The Legislature does grant the fire department the authority to designate emergency vehicles but explicitly states that any vehicle, publicly or privately owned, engaged in the discharge of the function of a fire, police, or rescue agency is an authorized emergency vehicle. For the sake of uniformity, the types of vehicles specifically designated as authorized emergency vehicles by the Legislature can not be restricted or abrogated by the entity authorizing a fire department to exist or the governing body of a fire department.
2. The AHJ can not promulgate rules or regulations which are in conflict with state law.
3. Authorized emergency vehicles must utilize their lights and sirens while responding to an emergency; this requirement can not be restricted by the AHJ.
4. It appears that it is not lawful for a volunteer fireman to operate a motor vehicle with only a red light and no siren in an emergency situation.
5. Whether the AHJ or its representatives would share in any liability if a member of a fire department is involved in an accident while operating his vehicle as an authorized emergency vehicle depends on the facts and circumstances of each individual case. This Office does not conduct such fact-finding inquiries.
6. In our opinion, York County can not enact an ordinance restricting the use of red lights and sirens by volunteer firefighters.

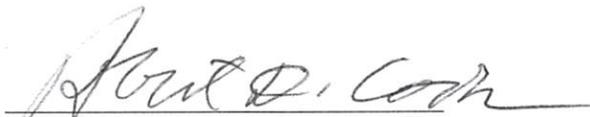
Please be aware that this is only an opinion as to how this Office believes a court would interpret the law in this matter.

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General