

9312-9862



ALAN WILSON
ATTORNEY GENERAL

March 16, 2015

Mr. Fred Payne, Chairman & President
Greenville County Economic Development Corporation
301 University Ridge, Suite 2400
Greenville, SC 29601

Dear Chairman Payne:

Attorney General Alan Wilson has referred your letter dated December 1, 2014 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue (as quoted from your letter):

GDEDC [Greenville County Economic Development Corporation] is requesting an opinion from the S.C. Attorney General's Office indicating which state agencies will be responsible for regulating, licensing, inspecting, etc. automated transport networks in South Carolina. For example, the ATN system has been referred to as a "horizontal elevator" and as a "taxi on a monorail." Thus, it may be that at the state level that [the] Office of Elevators and Amusement Rides regulations could apply and that they would provide inspections and approvals for vehicles and guideways.

Law/Analysis:

By way of background, it is this Office's understanding the Greenville County Economic Development Corporation (hereinafter "Corporation") is a nonprofit corporation registered with the South Carolina Secretary of State. Let us examine some statutes to determine if there is authority regulating an automated transport network. As you mention in your question, the Office of Elevators and Amusement Rides, under the South Carolina Department of Labor, Licensing, and Regulation (hereinafter "LLR"), could have regulations that apply. However, after examination of the terms "elevator" and "amusement ride," it does not appear the automated transport network meets those definitions. "Elevator" is defined as "a hoisting and lowering mechanism equipped with a car or platform which moves guides in a substantially vertical direction and which serves two or more floors of a building or structure." S.C. Code § 41-16-20(5) (1976 Code, as amended). Based on the information you provided us, the network would operate primarily in a horizontal direction. Moreover, you said the network would serve to transport people to a different location, not within the same building. "Amusement device" is defined as "any mechanical device or combination of devices which carries or conveys passengers on, along, around, over or through a fixed or restricted course or within a defined area for the purpose of giving its passengers amusement, pleasure, or excitement." S.C. Code § 41-18-40(1) (1976 Code, as amended). As you mentioned in your letter, the purpose of such a transport network is to improve urban mobility and connectivity, not for amusement or pleasure. Therefore, based on the information provided to us at this time, the automated transport network you have described does not appear to meet the statutory definitions of either an elevator or an amusement device. Nevertheless, this Office defers to

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administrative agencies to reasonably interpret their statutes and regulations. As this Office has previously opined, “[i]t is this Office’s longstanding policy ... to defer to [the interpretation of] the administrative agency charged with the regulation [of] ... the subject matter.” Ops. S.C. Atty. Gen., 2013 WL 4497164 (August 9, 2013); 2013 WL 4873939 (September 5, 2013). As this Office stated in a previous opinion:

[A]s a general matter, it is well recognized that administrative agencies possess discretion in the area of effectuating the policy established by the Legislature in the agency’s governing law. As our Supreme Court has recognized, ‘construction of a statute by the agency charged with executing it is entitled to the most respectful consideration [by the courts] and should not be overruled absent cogent reasons.’ Op. S.C. Atty. Gen., [1997 WL 783366] October 20, 1997 quoting Logan v. Leatherman, 290 S.C. 400, 351 S.E.2d 146, 148 (1986). The Courts have stated that it is not necessary that the administrative agency’s construction be the only reasonable one or even one the court would have reached if the question had initially arisen in a judicial proceeding. Ill. Commerce Comm. v. Interstate Commerce Comm., 749 F.2d 825 (D.C.Cir. 1984). Typically, so long as an administrative agency’s interpretation of a statutory provision is reasonable, we defer to that agency’s construction.

Op. S.C. Atty. Gen., 2006 WL 269609 (January 20, 2006). Moreover, our United States Supreme Court has recognized deference to administrative agencies. See, e.g., Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). Thus, this Office would defer to the administrative agency for reasonable interpretation of its statutes and regulations to determine if the automated transport network would be subject to it. Therefore, we suggest you check with each appropriate agency for their interpretation.

As to your question concerning which agencies an automated transport network would be subject to, that list is dependent on how it chooses to run its business and if, and how, the legislature determines to address automated transport networks. See, e.g., 2013 S.C. House Bill No. 4015; 2013 S.C. House Bill No. 4621 (proposed legislation addressing autonomous motor vehicles, both proposed bills requiring special registration with the S.C. Department of Motor Vehicles (hereinafter “S.C. DMV”) and giving the S.C. DMV the authority to establish additional requirements through regulation in consultation with the S.C. Department of Public Safety). Thus, it is possible such an automated transport network could also be subject to regulation by the S.C. DMV, the S.C. Department of Public Safety, the S.C. Department of Transportation, etc. While an autonomous motor vehicle differs from a personal rapid transport system, the law regarding innovations in transportation is developing alongside the technology. Therefore, while we agree with your assertion that operation of such a transportation system would subject it to regulation by the Public Service Commission, that is subject to change if the legislature addresses these systems or if federal law preempts regulation. Furthermore, the list of State agencies that would be responsible for regulating, licensing, etc. an automated transport network could be endless, depending on how it is run. For example, if the automated transport network is a private employer, it would be subject to S.C. LLR (for OSHA, labor regulations, etc.), Worker’s Compensation Commission, the Secretary of State (for registration as a corporation in S.C.), the S.C. Department of Revenue, the S.C. Department of Health and Environmental Control, etc.¹

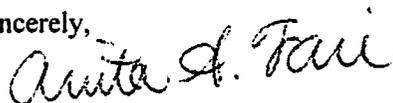
¹ While you only asked about State agencies, we must note that an automated transport network would still be subject to federal regulation (e.g., possibly under the National Highway Transportation Safety Administration and possibly the Geneva Convention on Road Traffic under Article 8). Andrew R. Swanson, “*Somebody Grab the*

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Conclusion:

Any agency whose regulations and statutes the automated transport network falls under would make it subject to that agency. While we are able to opine on whether an agency's interpretation is reasonable, this Office is not able to make factual determinations. This is only a legal opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General