

1984 WL 249971 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 31, 1984

*1 James A. Timmerman, Jr.
Executive Director
South Carolina Wildlife and Marine Resources Department
Post Office Box 167
Columbia, South Carolina

Dear Dr. Timmerman:

You have asked several questions of this office concerning Section 174, the aviation proviso in the 1984-1985 Annual Appropriations Act. Your questions are taken up in the order posed to this office.

You have inquired whether or not the South Carolina Wildlife and Marine Resources Department (hereafter SCWMRD) is considered to be 'furnishing transportation,' as that term is utilized in Section 174 of the 1984-1985 Annual Appropriations Act, when its law enforcement officers are assigned to fly in Department aircraft to perform duties on law enforcement flights as aerial observers.

Generally, words in a statute should be taken in their plain and ordinary meaning. [State v. Hardee, 279 S.C. 409, 308 S.E.2d 521 \(1983\)](#). 'Furnish' generally means to supply, provide or equip for the accomplishment of a particular purpose. [Black's Law Dictionary](#), 5th Ed., 1979. 'Transportation' is defined as the act of transferring or conveying from one person or place to another. [Webster's Third New International Dictionary](#), unabridged (1976).

As I understand it, Wildlife Law Enforcement Officers performing crew member duties on patrol flights are usually picked up at an airport in the locality to be patrolled and returned to the same airport at the termination of the flight. This would not constitute 'transportation' as the term is commonly defined, and would not therefore constitute transportation under Section 174 of the Appropriations Act. Moreover, the clear intent of Section 174 is to impose its requirements upon state officials utilizing state aircraft for air transportation. Officers assigned to fly as aerial observers on wildlife department patrols are not utilizing the aircraft for air transportation, but are rather functioning as flight crew members. Therefore, no sworn statement is required for law enforcement flights during which law enforcement officers are serving as aerial observers.

Your second question asks who must prepare a sworn statement when SCWMRD provides air transportation to State officials who are neither members of the Wildlife Commission nor employees of your Department. The applicable portion of Section 174 is as follows:

... Provided, Further, That no member of the General Assembly, no member of a state board, commission or committee, and no state official shall be furnished air transportation by a state agency other than the Aeronautics Commission unless such agency prepares and maintains in its files a sworn statement from an appropriate official of the agency certifying that the member's or state official's trip was in conjunction with the official business of the agency. Official business shall not include routine transportation to and from meetings of the General Assembly or committee meetings for which mileage is authorized.

*2 The question as to who must prepare a sworn statement for an aircraft-operating agency other than the Aeronautics Commission turns on how the legislature intended to use the term 'agency' in the last sentence of the section above quoted. Several rules of statutory construction are useful in making that determination.

The paramount rule of statutory construction is to discern and give effect to the intent of the legislature in enacting a statute, [Anders v. S.C. Parole and Community Corrections Board](#), 279 S.C. 206, 305 S.E.2d 229 (1983); [Bankers Trust of S.C. v. Bruce](#), 275 S.C. 35, 267 S.E.2d 424 (1980). In seeking legislative intent in statutory construction, our courts have not considered themselves necessarily bound by the apparent meaning of words but have instead considered statutes as a whole in light of conditions existing at the time of enactment and the purpose sought to be accomplished. [Fulghum v. Bleakley](#), 177 S.C. 286, 181 S.E. 30 (1935).

Applying these principles to the paragraph quoted above, in light of the questions posed, it becomes apparent that the primary thrust of Section 174 is that aircraft owned and operated by the State of South Carolina be utilized only for official business of the State. There is also a clear intention, expressed in the second sentence quoted above, that agencies owning and operating aircraft (such as SCWMRD) be able to furnish air transportation to the Governor, Constitutional Officers, members of the General Assembly, and members of State boards, commissions and agencies. This language is modified by the last sentence in the section cited, beginning with 'provided further.' A proviso such as this generally must be read together with the main provisions of the body of the act. [State v. Standard Oil Company of New Jersey](#), 195 S.C. 267, 10 S.E.2d 778 (1940).

Utilizing these rules of construction, it appears that the legislature simply intended to impose some additional steps to insure that flights in agency-owned and operated aircraft are for official state business. In order to furnish transportation to a state official, an agency owning the aircraft must prepare and maintain in its file a statement that the flight was in connection with the 'official business of the agency.'

As to who must actually execute the sworn statement, there are two possible readings of the Act. One possible interpretation is that an official of the agency owning and operating the aircraft must certify that the flight is in connection with the official business of the agency operating the aircraft. However, when read together with the provision expressly authorizing agencies to furnish transportation to various state officials, this construction appears inappropriate. Where transportation is to be provided state officials not employed by an agency owning aircraft, it appears consistent with the intent and purpose of the act to require an official of the agency requesting such transportation to execute a sworn statement that the flight would be in conjunction with the official business of the agency. The term 'agency' as it is used the last two times in the proviso, refers to the Office of the Governor, Constitutional Officers, legislative bodies, or the various State boards, commissions and agencies for which air transportation may be furnished. This construction gives full effect to all provisions of Section 174, and is reasonable in that it requires those officials with particular knowledge of the need for a flight or the purpose for which it is intended. To subject an official of the aircraft-operating agency to the sanctions provided in the act, when that official might have no basis for knowledge of the purpose of another state official's flight, would be unfair and unreasonable. Statutes should be sensibly construed so as to avoid absurd or unreasonable application. [Stephens v. Hendricks](#), 226 S.C. 79, 83 S.E.2d 634 (1954).

*3 Therefore, although a final answer to this question can only be provided by our Supreme Court, it is the opinion of this office that Section 174 of the 1984-1985 Appropriations Act requires an official with the agency requesting a flight upon an aircraft owned by a separate agency to certify in a sworn statement that the flight is in conjunction with the official business of the requesting agency.

Your final question asks whether or not a prohibition in the statute against travel to and from meetings of the General Assembly or committee meetings would preclude air transportation of Commissioners to meetings of the South Carolina Wildlife and Marine Resources Commission. The pertinent language reads as follows:

Official business shall not include routine transportation to and from meetings of the General Assembly or committee meetings for which mileage is authorized.

Obviously, the Legislature intended that this language apply only to meetings of the General Assembly and legislative committee meetings. Elsewhere in Section 174, when the authors of this section wished to include other State agencies, boards and committees, the phrase'. . . State board, commission, or committee. . .' has been utilized. Having previously employed such

language, the fact that the legislature here referred only to 'meetings of the General Assembly' and 'committee meetings' in the same sentence, implied that other state boards and commissions were intended to be excluded. The language would not, therefore, include meetings of the Wildlife and Marine Resources Commission in its prohibition.

Yours very truly,

M. Richbourg Roberson
Sr. Assistant Attorney General

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