

1981 WL 158014 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 15, 1981

*1 The Honorable Frank Powell
Sheriff of Richland County
Post Office Box 143
Columbia, South Carolina 29201

Dear Sheriff Powell:

Attorney General McLeod has referred your letter of September 3, 1981, to me for reply.

Your first question deals with the applicability of the homestead exemption appraisal procedures (found in Section 15-41-10 through Section 15-41-70) to the newly established and enlarged homestead exemption found in Act H90, S120, codified as Section 15-41-200. As you are aware, the previous homestead exemption of one thousand dollars (\$1,000.00) was created by Section 15-41-10, and the other pertinent sections established various procedures to be used in determining and securing this exemption for a debtor. Specifically, Section 15-41-20 requires the appointment of three (3) appraisers to ‘. . . appraise impartially and set off by metes and bounds a homestead not to exceed in value one thousand dollars.’

Section 15-41-200, effective May 5, 1981, increases the homestead exemption to five thousand dollars (\$5,000.00) as well as establishing specific other protected interests in both real and personal property of a debtor which are exempt from attachment, levy or other court process. However, Section 15-41-200 does not provide for any method of appraising this larger homestead exemption and it neither specifically incorporates nor specifically repeals the appraisal procedures established for the previous one thousand dollar exemption. Thus, as your first question recognizes, it must be determined if those appraisal procedures are still effective and are to be used when determining the new exemption.

It is clear from the sections of the Code dealing with the homestead exemption that the Legislature has intended for qualified citizens to be assured a home and the basic living necessities regardless of the debt collection processes of the Courts. To this end, the Legislature has established a detailed process for determining, by way of appraisal, an individual's one thousand dollar (\$1,000.00) homestead exemption. Although not specifically addressed in the new section increasing the exemption, it does not seem reasonable to assume that the Legislature, by increasing the exemption and thus providing greater protection to qualified citizens, intended at the same time to eliminate or make inapplicable those sections of the Code which established the procedure for determining this exemption and securing it for debtors. Further, Section 4 of Act R90, S120 provides as follows:
In the event any provisions of this act are deemed to be in conflict with existing law relating to the same matters, the provisions of this act shall prevail.

Since the one thousand dollar (\$1,000.00) provision of the existing law conflicts with the five thousand dollar (\$5,000.00) provision of the new Act, the five thousand dollar (\$5,000.00) exemption obviously prevails. However, the appraisal provisions of the existing law do not conflict with the new act, and thus they remain the law, and in effect there is a substitution of five thousand dollars (\$5,000.00) everywhere one thousand dollars (\$1,000.00) appears in those provisions. Thus, it is the opinion of this office that in determining the homestead exemption under Section 15-41-200, the appraisal and other procedures as outlined in Section 15-41-10 through 15-41-130 are still applicable and must be followed.

*2 Your second question addresses the problem of how to handle a situation in which a debtor, who is entitled to an exemption of twelve hundred dollars (\$1,200.00) for a motor vehicle (Section 15-41-200(2)), owns a vehicle with a value exceeding twelve

hundred dollars (\$1,200.00). Your specific question is whether, in this situation, the entire vehicle is exempt from attachment or whether the twelve hundred dollar (1,200.00) exemption can be paid to the debtor in cash.

It is clear that the motor vehicle exemption is limited to twelve hundred dollars (\$1,200.00), and allowing a debtor to retain a vehicle in excess of this value would violate the statute to the detriment of creditors. Further, the statute only exempts the debtors 'interest' in one motor vehicle, which interest can be protected by payment of the exemption in cash. Thus, it is the opinion of this office that if a debtor's motor vehicle has a value in excess of twelve hundred dollars (\$1,200.00), the statute is satisfied by paying the debtor the twelve hundred dollar (\$1,200.00) motor vehicle exemption in cash.

Your third question is whether the motor vehicle appraisal procedures as outlined in Section 15-41-310, 15-41-20 and 15-41-40 are mandatory. Section 15-41-310 provides in pertinent part as follows:

In case the right of such exemption be disputed by the creditors, the officer in whose hands the process is lodged shall cause it to be ascertained and appraised, subject to the right of either creditor or debtor to accept to such ascertainment and appraisal, as provided by law. All exempted property, so ascertained and appraised by appraisers appointed and sworn for that purpose and the return of which has been duly made, filed and recorded, as provided in Sections 15-41-20 and 15-41-40 shall vest absolutely in the debtor . . . [emphasis added].

Thus, if the right to an exemption is disputed by the creditors, then, and only then, must an appraisal be made under Section 15-41-310, and filed and recorded as provided for in Sections 15-41-20 and 15-41-40. It is only in the situation in which the right to an exemption is disputed by the creditors that the appraisal procedures as provided for in these sections become mandatory.

I hope this letter has been of some benefit to you, and if I can be of any further assistance, please do not hesitate to contact me.
Sincerely,

John M. Barton
Assistant Attorney General

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