



ALAN WILSON
ATTORNEY GENERAL

August 7, 2015

The Honorable Dennis K. Tyndall
Chief of Police
West Columbia Police Department
P.O. Box 4044
West Columbia, SC 29171

Dear Chief Tyndall:

We are in receipt of your opinion request concerning the interpretation of Section 17-13-40 of the South Carolina Code, known to some as the “hot pursuit statute.” Specifically, you ask “whether other charges, other than those witnessed in one’s formal jurisdiction, can be enforced while acting in one’s expanded jurisdiction.” Our response follows.

I. Law

Section 17-13-40(A) of the South Carolina Code addresses *a town or city law enforcement officer’s jurisdiction* when “in pursuit of an offender for a violation of a municipal ordinance or statute of this State committed within the [town or city’s] corporate limits[.]” S.C. Code Ann. § 17-13-40(A) (2014). Similarly, Section 17-13-40(B) of the Code discusses *a county law enforcement officer’s jurisdiction* when “in pursuit of an offender for a violation of a county ordinance or statute of this State committed within the county[.]” S.C. Code Ann. § 17-13-40(A) (2014); S.C. Code Ann. § 17-13-40(B) (2014). Meanwhile, subsection (C) of Section 17-13-40 deals with, “the authority, rights, privileges, and immunities” of law enforcement officers when acting within a county, city, or town’s expanded jurisdiction. See S.C. Code Ann. § 17-13-40(C) (2014) (“When a law enforcement officer’s jurisdiction is expanded pursuant to this section, the authority, rights, privileges, and immunities . . . that are applicable to an officer within the jurisdiction in which he is employed are extended to and include the expanded areas of jurisdiction granted pursuant to this section.”). We believe it is this portion of Section 17-13-40 which forms the basis of your question.¹

¹ Notably, while not included in your question, we note that a variety of other statutes provide extraterritorial jurisdiction under certain facts and circumstances which are not addressed in this opinion. See e.g., S.C. Code Ann. § 5-7-110 (2004) (permitting municipal police officers to exercise extraterritorial jurisdiction on property owned or controlled by a municipality “wheresoever situated” and further providing for the exercise of jurisdiction by contracting “with any public utility, agency, or with any private business” beyond a municipality’s “corporate limits” so long as the agreement is filed with the appropriate authorities); S.C. Code Ann. § S.C. Code Ann. § 5-7-120 (2004) (authorizing a municipality to send law enforcement officers to other political subdivisions upon request

II. Analysis

As we understand it, your question essentially asks whether Section 17-13-40(C)'s "authority, rights, privileges, and immunities" language permits law enforcement officers pursuing individuals within Section 17-13-40's extraterritorial jurisdiction to levy additional charges against such individuals where the crimes observed occurred outside of the officer's territorial jurisdiction, but inside his or her extraterritorial jurisdiction. Because the plain language of Section 17-13-40(C) explains law enforcement officers acting pursuant to Section 17-13-40(A) or (B) possess the same authority within their extraterritorial jurisdiction as they do within their own jurisdiction, we believe that it does.²

In order to determine whether Section 17-13-40(C)'s "authority, rights, privileges, and immunities" language permits law enforcement officers to levy additional charges for crimes observed while pursuing an individual within his or her extraterritorial jurisdiction, we must first look to the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible."). Indeed, "[w]hat a legislature says in the text of a statute is considered the best evidence of the legislative intent or will" and "courts are bound to give effect to the expressed intent of the legislature." Media General Communications, Inc. v. South Carolina Dept. of Revenue, 388 S.C. 138, 148, 694 S.E.2d 525, 530 (2010); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002). When determining the effect of words utilized in a statute, a court looks to the "plain meaning" of the words. City of Rock Hill v. Harris, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011). However, courts will reject the plain and ordinary meaning

in emergency situations); S.C. Code Ann. § 17-13-45 (2014) (addressing authority of a law enforcement officer responding to a distress call or request for assistance in an adjacent jurisdiction); S.C. Code Ann. § 23-1-210 (2014 Supp.) (authorizing law enforcement officers to exercise extraterritorial jurisdiction when temporarily transferred to work in another municipality or county); S.C. Code Ann. § 23-21-215 (2014 Supp.) (granting law enforcement extraterritorial jurisdiction where law enforcement agencies have executed a multi-jurisdictional agreement for purposes of criminal investigations); S.C. Code Ann. § 23-20-10, *et seq.* (2014 Supp.) (allowing law enforcement to exercise extraterritorial jurisdiction via contractual agreement pursuant to the terms of the Law Enforcement Assistance and Support Act).

² While we believe Section 17-13-40(C) permits law enforcement acting pursuant to Section 17-13-40(A) or (B) to levy additional charges against individuals who are first observed committing legal infractions within an officer's territorial jurisdiction and subsequently commit additional infractions observed during the course of an extraterritorial pursuit or stop, we do not address the question of venue for the legal infractions observed during an extraterritorial pursuit or stop as this would be a factual question. See Op. S.C. Att'y Gen., 2013 WL 3479876 (June 26, 2013) (explaining this Office does not investigate facts, but instead only issues legal opinions). As an example, since state law explains venue may be proven by the mere inference that the alleged offense occurred in a given county, and since state law further dictates that venue may be appropriate in more than one county, a lone driver pursued in accordance with Section 17-13-40(A) or (B) who is stopped and then reveals he is in unlawful possession of illegal drugs, may under these principles, be tried in either the officer's jurisdiction or in the county where extraterritorial jurisdiction was exercised. See State v. Brisbon, 323 S.C. 324, 327-28, 474 S.E.2d 433, 435 (1996) (discussing generally the law of venue). By contrast, if the same individual in the first example subsequently resisted arrest, venue would only be appropriate in the county where extraterritorial jurisdiction was exercised since there is no evidence the crime occurred anywhere other than the extraterritorial jurisdiction.

of the words used in a statute when doing so would defeat the intent of the legislature. Greenville Baseball v. Bearden, 200 S.C. 363, 368, 20 S.E.2d 813, 815 (1942).

In analyzing Section 17-13-40(C), we must also remember to consider the statute as a whole. See Mid-State Auto Action of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (“In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole.”). This is because “[a] statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent.” 2A Norman J. Sing & J.D. Shambie Singer, Sutherland Statutes and Statutory Construction, § 46.5 (7th ed. 2007).

As mentioned above, Section 17-13-40(C) discusses “the authority, rights, privileges, and immunities” of law enforcement officers when acting within a county, city, or town’s expanded jurisdiction. Specifically, the statute states:

When a law enforcement officer’s jurisdiction is expanded pursuant to this section, the authority, rights, privileges, and immunities, including coverage under the workers’ compensation laws, and tort liability coverage obtained pursuant to the provisions of Chapter 78, Title 15, that are applicable to an officer within the jurisdiction in which he is employed are extended to and include the expanded areas of jurisdiction granted pursuant to this section.

S.C. Code Ann. § 17-13-40(C) (emphasis added).

Applying these principles of statutory construction to Section 17-13-40(C), we believe the Legislature clearly intended to give law enforcement officers pursuing individuals into an adjacent jurisdiction the same authority they possess within their respective territorial jurisdiction so long as the factual predicate for the exercise of extraterritorial jurisdiction continues to exist. Indeed, it is indisputable that the statute expressly provides as much stating that when a law enforcement officer’s jurisdiction is expanded, the officer’s authority “applicable within the jurisdiction in which he is employed . . . extend[s] to and include[s] the expanded areas of jurisdiction.” See S.C. Code Ann. § 17-13-40(C) (“When a law enforcement officer’s jurisdiction is expanded pursuant to this section, the authority, rights, privileges, and immunities . . . that are applicable to an officer within the jurisdiction in which he is employed are extended to and include the expanded areas of jurisdiction granted pursuant to this section.”). Thus, by granting law enforcement officers authorized to engage in an extraterritorial pursuit pursuant to the terms of Section 17-13-40(A) or (B) the same authority they possess within their territorial jurisdiction, it follows that so long as the factual predicate for initiating the pursuit and subsequent stop exists, law enforcement may levy additional charges against the individual whose conduct initiated such a pursuit and stop.

Moreover, while it could be argued the extraterritorial jurisdiction discussed in Sections 17-13-40(A) and (B) apply only within the limited context of an extraterritorial pursuit and do not allow for the exercise of jurisdiction for any additional violations of law occurring during the pursuit or the ensuing traffic stop, such a construction would be inconsistent with the plain meaning of the statute. For instance, while it is true law enforcement's exercise of extraterritorial jurisdiction is in fact premised upon observing an infraction within the officer's territorial jurisdiction, subsection (C) clearly explains that once the officer's jurisdiction has been expanded, the "authority, rights, privileges, and immunities . . . applicable to an officer within the jurisdiction in which he is employed are extended to and include the expanded areas of jurisdiction[.]" S.C. Code Ann. § 17-13-40(C). This of course means that not only may law enforcement engage in an extraterritorial pursuit and perform an extraterritorial stop of an individual who initially violates the law within the officer's territorial jurisdiction, but it further confirms that once the officer does so, that officer possesses the same law enforcement authority as he does within his own jurisdiction.

In fact, this Office, when interpreting Section 17-13-45's parallel provision³ regarding the "authority, rights, privileges and immunities" of a law enforcement officer when responding to a "distress call or request for assistance" came to the same conclusion. Op. S.C. Att'y Gen., 2009 WL 580559 (February 26, 2009). There we explained that since Section 17-13-45's "authority, rights, privileges, and immunities" language provides law enforcement responding to a distress call or request for assistance with the same authority they enjoyed within their respective territorial jurisdiction, it follows that officers responding to a distress call or request for assistance could arrest an individual outside of their territorial jurisdiction under Section 17-13-45. Op. S.C. Att'y Gen., 2009 WL 580559 (February 26, 2009). As a result, because there is no question that a law enforcement officer acting within his or her territorial jurisdiction is authorized to charge and arrest an individual for violating the law during the course of a pursuit as well as the ensuing traffic stop, Section 17-13-40(C)'s grant of authority means what it says—that officers engaged in an extraterritorial pursuit authorized pursuant to Sections 17-13-40(A) or (B) have the same authority that they do within their own jurisdiction. See e.g., Op. S.C. Att'y Gen., 2009 WL 580559 (February 26, 2009) (interpreting Section 17-13-45's "authority, rights, privileges, and immunities" language as authorizing law enforcement officers to arrest an individual outside of the officer's territorial jurisdiction when responding to "a distress call or request for assistance"). Indeed, if the Legislature had intended otherwise it would have limited law enforcement's exercise of extraterritorial jurisdiction to the violation of law observed within their territorial jurisdiction, rather than granting additional extraterritorial authority to enforce the law within the "expanded jurisdiction." However, it did not, and with this in mind, we believe the canon of construction known as "*expressio unius est exclusio alterius* or *inclusio unius est*

³ Section 17-13-45 of the South Carolina Code states: "[w]hen a law enforcement officer responds to a distress call or a request for assistance in an adjacent jurisdiction, the authority, rights, privileges, and immunities, including coverage under the workers' compensation laws, and tort liability coverage obtained pursuant to the provisions of Chapter 78, Title 15, that are applicable to an officer within the jurisdiction in which he is employed are extended to and include the adjacent jurisdiction." (emphasis added).

exclusio alterius” meaning “to express or include one thing implies the exclusion of another or the alternative,” applies in the present situation. See e.g., Rainey, 341 S.C. at 86-87, 533 S.E.2d at 582 (relying on the canon of *expressio unius est exclusio alterius* or *inclusio unius est exclusio alterius* to conclude the General Assembly did not intend to limit the Governor’s discretionary power of removal over the Board of Santee Cooper because it failed to include the Board of Santee Cooper in a statute with other specifically designated governmental bodies limiting the Governor’s exercise of such power). Accordingly, law enforcement officers, when engaged in an extraterritorial pursuit authorized pursuant to the terms of Section 17-13-40(A) or (B), can levy additional charges against an individual for legal infractions observed during the course of a pursuit as well as the subsequent traffic stop resulting from the pursuit.

III. Conclusion

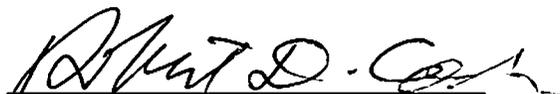
In conclusion, Section 17-13-40(C) clearly and unambiguously states that a law enforcement officer exercising extraterritorial jurisdiction pursuant to subsection (A) or (B) of Section 17-13-40 possesses the same “authority, rights, privileges, and immunities . . . that are applicable to an officer within the jurisdiction in which he is employed[.]” S.C. Code Ann. § 17-13-40(C). In light of this, we believe Section 17-13-40(C) permits law enforcement officers engaging in the extraterritorial pursuit or apprehension of an individual believed to have committed a criminal offense within the officer’s territorial jurisdiction with the authority to charge such an individual for additional offenses observed during the course of an extraterritorial pursuit and stop so long as the factual predicate for the initial exercise of extraterritorial jurisdiction continues to exist.

Sincerely,



Brendan McDonald
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General