



ALAN WILSON
ATTORNEY GENERAL

May 17, 2016

The Honorable Glenn G. Reese
Senator, District No. 11
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Reese:

You have asked our Office to “explain every situation where scrap metal dealers buy metal, and a signature from the seller is necessary and also where a photo ID is necessary.” You also ask us to identify “all situations where a signature or photo ID is not necessary, and if a photo ID and signature on file counts—instead of signing each time or getting a photo each time.”

Law / Analysis

We begin with the following caveat. As purchases made by a scrap metal dealer would have to be reviewed on a case by case basis to determine if a signature or a copy of a photo ID is necessary, we are not able to comment specifically on “*every situation* where scrap metal dealers buy metal, and a signature from the seller is necessary and also where a photo ID is necessary” and also “*all situations* where a signature or photo ID is not necessary, and if a photo ID and signature on file counts—instead of signing each time or getting a photo each time.” As we provided in a prior opinion of this Office:

this opinion should not be construed as commenting upon any particular set of facts. In a previous opinion of this office dated October 31, 1994, we addressed whether a scrap metal dealer could lawfully purchase scrap copper if the identifications of the individual seller the copper was “questionable.” Pursuant to § 16-17-680 [that has since been amended], a purchaser of copper (in excess of 10 pounds) was required to obtain and verify the name and address of the seller. We advised that:

[t]o ask whether a particular purchase would be “legal” is to effectively ask whether one would be criminally liable in such a situation. This Office must respectfully decline to undertake an opinion on such issues, as we do not provide advice or an opinion which would subsequently foreclose prosecution in an appropriate case. Even if we were to undertake an opinion, a change in even one or two of the facts could alter the conclusion as to legality or

lack of legality. Thus, we cannot advise you as to the legality of the purchases you have described.

Op. S.C. Att’y Gen., 2012 WL 1561870 (April 20, 2012) (quoting Op. S.C. Att’y Gen., 1994 WL 649319 (Oct. 31, 1994)).

Therefore, while we cannot provide a blanket statement of when a signature or photo ID would or would not be necessary for a scrap metal dealer to obtain from a seller during a particular transaction, we will provide our opinion of the requirements for purchases of nonferrous metals, as set forth in S.C. Code Ann. § 16-17-680 (2015); purchases of disposed vehicles, pursuant to S.C. Code Ann. §§ 56-5-5670 and 56-5-5945 (Supp. 2015); and purchases of junk that consists of nonferrous metals or vehicles, pursuant to Section S.C. Code Ann. § 40-27-10 (Supp. 2015).

In reviewing each of these statutes, compliance with the rules of statutory construction is necessary. In construing any statute, the primary objective is to ascertain and effectuate the intent of the legislature. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 37, 267 S.E.2d 424, 425 (1980). Words used in statutes should be given their plain and ordinary meanings and applied literally in the absence of ambiguity. McCullum v. Snipes, 213 S.C. 254, 265-66, 49 S.E.2d 12, 16 (1948). “What 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.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

It is also well understood that statutory provisions do not stand alone but must be read in the context of the statutory scheme as a whole. Hinton v. South Carolina Dep’t of Prob., Parole and Pardon Servs., 357 S.C. 327, 333, 592 S.E.2d 335, 338 (Ct. App. 2004). Further, the statutory language in question “must be read in a sense which harmonizes with its subject matter and accords with its general purpose.” Multi-Cinema, Ltd. v. S.C. Tax Comm’n, 292 S.C. 411, 413, 357 S.E.2d 6, 7 (1987).

I. The Purchase of Nonferrous Metals

S.C. Code Ann. § 16-17-680 (2015) governs the purchase, transportation and sale of nonferrous metals. “Nonferrous metals” and “Secondary metals recycler[s],” *i.e.* purchasers of nonferrous metals, are defined by S.C. Code Ann. § 16-17-680(A)(3)-(4) (2015) as follows:

- (3) “Nonferrous metals” means metals not containing significant quantities of iron or steel, including, but not limited to, copper wire, copper clad steel wire, copper pipe, copper bars, copper sheeting, aluminum other than aluminum cans, a product that is a mixture of aluminum and copper, catalytic converters, lead-acid batteries, steel propane gas tanks, and stainless steel beer kegs or containers.
- (4) “Secondary metals recycler” means a person or entity who is engaged, from a fixed site or otherwise, in the business of paying compensation for nonferrous metals that have served their original economic purpose, whether or not the person is engaged in the business of performing the manufacturing process by

which nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value.

Subsection (D)(1) criminalizes purchasing nonferrous metals for purposes of recycling “unless the purchaser is a secondary metals recycler” with a valid permit to purchase nonferrous metals issued under subsection (B) and the seller has a “valid permit to transport and sell nonferrous metals” issued under subsection (C). S.C. Code Ann. § 16-17-680(D)(1) (2015). Furthermore, 16-17-680(D)(2) requires secondary metals recyclers to maintain a record of each transaction entered into. Specifically, subsection (D)(2) reads as follows:

[a] secondary metals recycler shall maintain a record containing, at a minimum, the date of purchase, the name and address of the seller, a photocopy of the seller's identification, a photocopy of the seller's permit to transport and sell nonferrous metals, if applicable, the license plate number of the seller's motor vehicle, if available, the seller's photograph, the weight and size or other description of the nonferrous metals purchased, the amount paid for the nonferrous metals, and a signed statement from the seller stating that the seller is the rightful owner or is entitled to sell the nonferrous metals being sold. If the secondary metals recycler has the seller's photograph on file, the secondary metals recycler may reference the photograph on file without making a photograph for each transaction; however, the secondary metals recycler shall update the seller's photograph on an annual basis. A secondary metals recycler may use a video of the seller in lieu of a photograph provided the secondary metals recycler maintains the video for at least one hundred twenty days. A secondary metals recycler may maintain a record in an electronic database provided that the information is legible and can be accessed by law enforcement upon request.

S.C. Code Ann. § 16-17-680(D)(2) (2015).

Pursuant to the plain language of Section 16-17-680, we believe it is the intent of the legislature to require secondary metals recyclers to maintain a current record of purchases of nonferrous metals to be available to law enforcement, in an effort to deter to crime of nonferrous metal theft. Therefore, we interpret the requirements of Section 16-17-680(D)(2) with this intent in mind.

As the plain language of subsection (D)(2) reads, a secondary metals recycler “shall maintain a record” that, “at a minimum,” must include the following nine requirements: (1) the date of purchase; (2) the name and address of the seller; (3) a photocopy of the seller's identification; (4) a photocopy of the seller's permit to transport and sell nonferrous metals, if applicable; (5) the license plate number of the seller's motor vehicle, if available; (6) the seller's photograph; (7) the weight and size or other description of the nonferrous metals purchased; (8) the amount paid for the nonferrous metals; and (9) a signed statement from the seller stating that the seller is the rightful owner or is entitled to sell the nonferrous metals being sold. S.C. Code Ann. § 16-17-680(D)(2) (2015).

In regards to the seller's identification, the statute also provides as follows:

[f]or purposes of this section, the only acceptable identification is a valid:

- (1) South Carolina driver's license issued by the Department of Motor Vehicles;
- (2) South Carolina identification card issued by the Department of Motor Vehicles;
- (3) driver's license from another state that contains the licensee's picture on the face of the license; or
- (4) military identification card.

S.C. Code Ann. § 16-17-680(H) (2015).

In line with our belief of the intent of the statute and the plain language therein, it is our opinion that any transaction that must meet the requirements of Section 16-17-680 would require the secondary metals recycler to comply with the requirements of subsection (D)(2). Accordingly, in regards to your questions, it is our opinion that a court would find a signed statement from the seller stating that the seller is the rightful owner or is entitled to sell the nonferrous metals being sold and a photocopy of the seller's "acceptable" identification, as defined pursuant to subsection (H), must be obtained for each transaction. To interpret the statute otherwise would be contrary to the plain language of S.C. Code Ann. § 16-17-680 (2015).

We also point out that, in review of the statute as a whole, it is our opinion that obtaining the seller's photograph is a separate requirement from obtaining a photocopy of the seller's identification. This is indicated by the plain language of the statute where the legislature provides that a photograph on file can be used in the place of "*making a photograph for each transaction.*" S.C. Code Ann. § 16-17-680(D)(2) (2015) ("[T]he secondary metals recycler may reference the photograph on file without making a photograph for each transaction."). In addition, this conclusion is further strengthened by the requirement that the photographs kept on file must be updated on an annual basis. *Id.* ("[T]he secondary metals recycler shall update the seller's photograph on an annual basis."). Thus, we believe the legislative intent is clear that the seller either "make" a photograph of the seller of the nonferrous metals at the time of the transaction or have on file a current photograph of the seller within the last year.¹ While the acceptable means of identification as defined in subsection (H) would contain a picture of the seller, we know of no requirement that one must annually update the picture on a driver's license, identification card, or military identification card.

II. The Purchase of Vehicles by a Demolisher or Secondary Metals Recycler

Title 56, Chapter 5, Article 41 governs the disposition of abandoned or derelict vehicle on public or private property to a demolisher or secondary metals recycler. Pursuant to S.C. Code Ann. § 56-5-5945 (Supp. 2015), subject to certain exceptions, a vehicle² cannot be disposed to a

¹ We also note that the statute permits a secondary metals recycler to video the seller in place of making a photograph for a particular transaction: "[a] secondary metals recycler may use a video of the seller in lieu of a photograph provided the secondary metals recycler maintains the video for at least one hundred twenty days." S.C. Code Ann. § 16-17-680(D)(2) (2015).

² For purposes of S.C. Code Ann. § 56-5-5945 (Supp. 2015) the term "vehicle" is defined by S.C. Code Ann. § 56-5-120 (2006) as "[e]very device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices

demolisher or secondary metals recycler unless the person or entity disposing of the vehicle has a title certificate for the vehicle in the person or entity's name, a magistrate's order of sale, or a sheriff's disposal authority certificate. However, a person or entity may dispose of a vehicle to a demolisher or a secondary metals recycler without a title certificate, a magistrate's order of sale, or a sheriff's disposal authority certificate if:

- (a) the vehicle is abandoned upon the person or entity's property or into the person or entity's possession, or if the person or entity is the owner of the vehicle and the vehicle's title certificate is faulty, lost, or destroyed; and
- (b) the vehicle:
 - (i) is lawfully in the person or entity's possession;
 - (ii) is twelve model years old or older;
 - (iii) does not have a valid registration plate affixed; and
 - (iv) has no engine or is otherwise totally inoperable.

S.C. Code Ann. § 56-5-5945(E)(1) (Supp. 2015). For transactions falling under Section 56-5-5945(E)(1), "[t]he person or entity shall complete and sign a form affirming that the vehicle complies with the requirements of subsection (E)(1)" and "[t]he demolisher or secondary metals recycler shall maintain the original form affidavit in the transaction records as required by this section." S.C. Code Ann. § 56-5-5945(E)(2) (Supp. 2015). Thus, in this instance, a signature of the seller would be required on the form affidavit.

Furthermore, for all transactions governed by Section 56-5-5945, subsection (G)(1) requires that:

[a] demolisher or secondary metals recycler shall keep an accurate and complete record of all vehicles purchased or received by the demolisher or secondary metals recycler in the course of business. A demolisher, but not a secondary metals recycler, also shall keep an accurate and complete record of all vehicle parts with a total weight of twenty-five pounds or more purchased or received by the demolisher in the course of business. These records must contain, at a minimum:

- (a) the demolisher or secondary metals recycler's name and address;
- (b) the name of the demolisher or secondary metals recycler's employee entering the information;
- (c) the name and address of the person or entity from whom the vehicle or vehicle parts, as applicable, were purchased or received;

moved by human power or used exclusively upon stationary rails or tracks. . . ." Furthermore, the term includes, but is not limited to, a "trailer", as defined by Section 56-5-240, a "semitrailer", as defined by Section 56-5-250, and a "pole trailer", as defined by Section 56-5-260." S.C. Code Ann. § 56-5-5945(A) (Supp. 2015).

(d) a photo or copy of the person's driver's license or other government issued picture identification card that legibly shows the person's name and address. If the vehicle or vehicle parts, as applicable, are being purchased or received from an entity, the demolisher or secondary metals recycler shall obtain a photo or copy of the entity's agent's driver's license or other government issued picture identification card. If the demolisher or secondary metals recycler has a photo or copy of the person or entity's agent's identification on file, the demolisher or secondary metals recycler may reference the identification on file without making a photocopy for each transaction;

(e) the date when the purchases or receipts occurred;

(f) the year, make, model, and identification number of the vehicle or vehicle parts, as applicable and if ascertainable, along with any other identifying features; and

(g) a copy of the title certificate, magistrate's order of sale, sheriff's disposal authority certificate, or an original form affidavit, as applicable.

In accordance with the rules of statutory construction as noted above, the plain language of Section 56-5-5945 requires, in part, that a demolisher or secondary metals recycler obtain a photo or copy of the person's or entity's agent's driver's license or other government issued picture identification card that legibly shows the person or entity agent's name and address. However, the statute permits a demolisher or secondary metals recycler to reference a photo or copy of a person or entity's agent's identification on file "without making a photocopy for each transaction." S.C. Code Ann. § 56-5-5945(G)(1)(d) (Supp. 2015). Accordingly, should the demolisher or secondary metals recycler have a photo or copy of the person or entity's agent's driver's license on file, a reference may be made to it and an additional photocopy would not be required.

As explained above, for transactions that do not require a title certificate, magistrate's order of sale, or sheriff's disposal authority certificate made pursuant to S.C. Code Ann. § 56-5-5945(E)(1), a signed form affirming the vehicle complies with the requirements of subsection (E)(1) must be completed by the person or entity disposing of the vehicle. S.C. Code Ann. § 56-5-5945(E)(2) (Supp. 2015). Furthermore, "[t]he demolisher or secondary metals recycler shall maintain the original form affidavit in the transaction records as required by this section." *Id.* The Legislature directs that the form affidavit be developed by the Department of Motor Vehicles and made available for distribution to demolishers and secondary metals recyclers. S.C. Code Ann. § 56-5-5945(E)(3).

An identical statute imposes the same requirements as Section 56-5-5945 for the disposition of abandoned motor vehicles on highways. See S.C. Code Ann. § 56-5-5670 (Supp. 2015).

III. Purchase of Junk Containing Nonferrous Metals or Vehicles

Finally, we note that S.C. Code Ann. § 40-27-10 (Supp. 2015) relates to junk dealers. In part, such provision states that “[a] person or entity buying junk that consists of nonferrous metals, as defined by Section 16-17-680, is subject to the provisions of Section 16-17-680. A person or entity buying junk that consists of vehicles is subject to the provisions of Sections 56-5-5670 and 56-5-5945.” The requirements of S.C. Code Ann. §§ 16-17-680, 56-5-5945, and 56-5-5670 are set forth above.

Conclusion

We are not able to comment specifically on “*every situation* where scrap metal dealers buy metal, and a signature from the seller is necessary and also where a photo ID is necessary” and also “*all situations* where a signature or photo ID is not necessary, and if a photo ID and signature on file counts—instead of signing each time or getting a photo each time” as the facts and circumstances of each case would need to be analyzed. However, in line with the rules of statutory interpretation outlined above, it is our opinion that the requirements related to obtaining a signature and photo ID for purchases of nonferrous metals, as set forth in S.C. Code Ann. § 16-17-680; disposed vehicles, pursuant to Sections 56-5-5945 and 56-5-5670; and junk that consists of nonferrous metals or vehicles, pursuant to Section S.C. Code Ann. § 40-27-10, are as follows:

1. Nonferrous metals: For each transaction, we believe a secondary metals recycler would have to adhere to the requirements set forth in S.C. Code Ann. § 16-17-680(D)(2) (2015). The plain language of such provision requires that a secondary metals recycler shall maintain a record that includes a photocopy of the seller’s identification and a signed statement from seller stating that he or she is the rightful owner or is entitled to sell the nonferrous metals sold. The plain language of subsection (D)(2) also requires that a photograph of the seller be taken which is to be included as part of the record of the transaction. While a photograph is not required to be made during each transaction if a photograph is already on file, the seller must update the photograph on an annual basis.
2. Abandoned or Derelict Vehicles: The same requirements apply to the disposition of an abandoned or derelict vehicle on public and private property pursuant to S.C. Code Ann. § 56-5-5945 (Supp. 2015) and the disposition of abandoned motor vehicles on highways pursuant to S.C. Code Ann. § 56-5-5670 (Supp. 2015). In both instances, a demolisher or secondary metals recycler shall keep an accurate and complete record of all vehicles purchased or received by the demolisher or secondary metals recycler in the course of business. Among the things the record must contain is a photo or copy of person’s driver’s license or government issued picture ID, or if an entity, the entity’s agent’s driver’s license or government issued picture ID, that legibly shows the person’s name and address. However, if the person or entity’s agent’s driver’s license or government issued picture ID is already on file, reference can be made to such without having to make an additional photocopy.

In an instance that a transaction is made pursuant to S.C. Code Ann. § 56-5-5945(E)(1) (Supp. 2015) or S.C. Code Ann. § 56-5-5670(E)(1) (Supp. 2015) without a title

certificate, a magistrate's order of sale, or a sheriff's disposal authority certificate, "[t]he person or entity shall complete and sign a form affirming that the vehicle complies with the requirements of subsection (E)(1)" and "[t]he demolisher or secondary metals recycler shall maintain the original form affidavit in the transaction records."

3. Junk: Finally, pursuant to S.C. Code Ann. § 40-27-10 (Supp. 2015), a person or entity buying junk that consists of nonferrous metals, as defined by Section 16-17-680, is subject to the provisions of Section 16-17-680, and a person or entity buying junk that consists of vehicles is subject to the provisions of Sections 56-5-5945 and 56-5-5670, as outlined above.

Very truly yours,



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REVIEWED AND APPROVED BY:



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