

July 22, 2009

Michael S. Pitts, Esquire
Anderson County Attorney
P O. Drawer 10648
Greenville, South Carolina 29603-0648

Dear Mr. Pitts:

In a letter to this office on behalf of Anderson County you questioned whether Anderson County may contractually require a contractor entering into a services contract with the county covered by S.C. Code Ann. § 8-14-20, a provision of this State's Illegal Immigration Reform Act, Act No. 280 of 2008, to use the federal work authorization program (E-Verify Program) as the sole means of establishing compliance with that section. Such provision states:

(A) On or after January 1, 2009, every public employer shall register and participate in the federal work authorization program to verify the employment authorization of all new employees.

(B) A public employer may not enter into a services contract with a contractor for the physical performance of services within this State unless the contractor agrees:

(1) to register and participate in the federal work authorization program to verify the employment authorization of all new employees; and require agreement from its subcontractors, and through the subcontractors, the sub-subcontractors, to register and participate in the federal verification of the employment authorization of all new employees; or

(2) to employ only workers who:

(a) possess a valid South Carolina driver's license or identification card issued by the South Carolina Department of Motor Vehicles;

Mr. Pitts
Page 2
July 22, 2009

(b) are eligible to obtain a South Carolina driver's license or identification card in that they meet the requirements set forth in Sections 56-1-40 through 56-1-90; or
(c) possess a valid driver's license or identification card from another state where the license requirements are at least as strict as those in South Carolina, as determined by the Executive Director of the South Carolina Department of Motor Vehicles, or his designee. The Executive Director of the South Carolina Department of Motor Vehicles, or his designee, shall publish on its website a list of states where the license requirements are at least as strict as those in South Carolina.

As stated in your letter, “[t]he aforementioned statute contemplates three (3) methods of verifying worker eligibility, one of which is through E-Verify. The issue then becomes whether the County can as a matter of contract mandate the use of one (1) of the three (3) methods set forth in the statute.”

When interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

A prior opinion of this office dated November 18, 2008 dealt with a construction of another provision of Act No. 280 of 2008, S.C. Code Ann. §8-29-10. The specific question raised was whether public agencies and political subdivisions were limited to use of the Systematic Alien Verification of Entitlement System (“SAVE”) to verify the lawful presence in this country of all applicants for state or local public benefits. The opinion concluded that “...we read 8-29-10(E) to require agencies and political subdivisions to use the SAVE program to verify the lawful presence of an alien applying for benefits.” Such provision was contrasted with S.C. Code Ann. § 41-8-20, also included in Act No. 280 of 2008, which requires private employers in this State to maintain a

Mr. Pitts
Page 3
July 22, 2009

State employment license and allows alternatives to registration or participation in the E-Verify federal work authorization program. Such provision states that

(B) On and after July 1, 2009, all private employers of one hundred or more employees who are required by federal law to complete and maintain federal employment eligibility verification forms or documents must:

(1) register and participate in the E-Verify federal work authorization program, or its successor, to verify information of all new employees, and verify the work authorization of every new employee within five business days after employing a new employee; or

(2) employ only workers who, at the time of employment:

(a) possess a valid South Carolina driver's license or identification card issued by the South Carolina Department of Motor Vehicles;

(b) are eligible to obtain a South Carolina driver's license or identification card in that they meet the requirements set forth in Sections 56-1-40 through 56-1-90; or

(c) possess a valid driver's license or identification card from another state where the license requirements are at least as strict as those in South Carolina, as determined by the director. The Executive Director of the Department of Motor Vehicles, or his designee, shall determine which states have driver's license requirements that are at least as strict as those in South Carolina, and shall develop and periodically update a list of the states. The Department of Motor Vehicles shall provide the director with a copy of the list and all updates to the list. The director shall publish the list on the Department of Labor, Licensing and Regulation's website. (emphasis added).

As stated, the statute uses the disjunctive “or” in establishing such alternative criteria. The opinion concluded that as a condition to receiving such license pursuant to Section 41-8-20, private employers may register or participate in the E-Verify federal work authorization program to verify an employee’s authorization to work but “...alternatively...allows employers to employ only workers who possess or are eligible to obtain a South Carolina driver’s license or identification card or a valid driver’s license or identification card issued by another State whose requirements are at least as strict

Mr. Pitts
Page 4
July 22, 2009

as South Carolina's standards for issuance of such a license or identification." Therefore, alternatives were available as to private employers.

As set forth above, Section 8-14-20 also uses the disjunctive "or" in describing the methods by which a public employer may enter into a services contract with a contractor by using the federal work authorization program (E-Verify Program) or employing workers who possess or are eligible for a South Carolina driver's license or identification card or who possess a driver's license or identification card from another state.

Pursuant to 1A Sutherland Statutory Construction § 21:14 (6th ed.), "[g]enerally, courts presume that "or" is used in a statute disjunctively unless there is clear legislative intent to the contrary. According to 82 C.J.S. Statutes § 331,

[t]he word "or" normally is presumed to be used in the disjunctive sense, in the absence of a clear legislative intent to the contrary. The use of the word "or" ordinarily establishes a relationship of contrast, and evidences a clear legislative intent of separability.

Similarly stated in 73 Am.Jur.2d Statutes § 156,

[i]n its elementary sense the word "or," as used in a statute is a disjunctive particle indicating that the various members of the sentence are to be taken separately. In this regard, where a statute contains two clauses that prescribe its applicability, and clauses are connected by a disjunctive, the application of the statute is not limited to cases falling within both clauses, but will apply to cases falling within either of them.

As noted in an opinion of the Virginia Attorney General dated February 28, 2001, the "...disjunctive 'or' usually separates words in alternate relationship, indicating that either of separated words may be used without...(the)...other." See also: Op. Va. Atty. Gen. dated May 21, 1997 ("use of 'or' in statute indicates disjunctive; each statutory provision stands alone and is not modified by others). As similarly stated in an opinion of the Kansas Attorney General dated June 18, 1997,

[i]n its elementary sense the word "or," as used in a statute, is a disjunctive particle indicating that the various members of the sentence are to be taken separately..(noting that the term "or" is defined as)...a disjunctive particle used to express an alternative or to give a choice of one among two or more things."

Consistent with the above, in the opinion of this office, Anderson County may not contractually require a contractor entering into a services contract with the county covered by S.C.

Mr. Pitts
Page 5
July 22, 2009

Code Ann. § 8-14-20 to use the federal work authorization program (E-Verify Program) as the sole means of establishing compliance with that section. Such provision authorizes the use of other methods, such as drivers' licenses or identification cards from this State or other states, in order to establish compliance.

With kind regards, I am,

Very truly yours,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General