HENRY MCMASTER
ATTORNEY GENERAL

January 2, 2008

The Honorable David R. Hiott
Member, House of Representatives
P. O. Box 997
Pickens, South Carolina 29671

Dear Representative Hiott:

In a letter to this office you requested an opinion concerning the State Department of Natural Resources (DNR) permitting bear-baying as referenced in S.C. Code Ann. § 16-27-80. You stated that clarification is needed as to whether or not DNR is responsible for bear-baying permits or whether or not a permit is actually required.

S.C. Code Ann. §§ 16-27-10 et seq. is "The Animal Fighting and Baiting Act". Section 16-27-30 states that

> [a]ny person who:
> (a) owns an animal for the purpose of fighting or baiting;
> (b) is a party to or causes any fighting or baiting of any animal;
> (c) purchases, rents, leases, or otherwise acquires or obtains the use of any structure, facility, or location for the purpose of fighting or baiting any animal;
> or
> (d) knowingly allows or permits or makes available any structure, facility, or location to be used for the purpose of fighting or baiting any animal is guilty of a felony...

Additionally, Section 16-27-40 states that

> [a]ny person who:
> (a) is present at any structure, facility, or location where preparations are being made for the purpose of fighting or baiting any animal with knowledge that those preparations are being made, or
> (b) is present at any structure , facility, or location with knowledge that fighting or baiting of any animal is taking place or is about to take place there is guilty of a misdemeanor....

Section 16-27-80 provides that

> (A) [t]his chapter does not apply to dogs used for the purpose of hunting, including, but not limited to, hunting on shooting preserves or wildlife management areas authorized pursuant to Title 50, or to dogs used in field trials, including events more commonly known as "water races", "treeing contests", "coon-on-a-log", "bear-baying", or "fox-pen-trials".

S.C. Code Ann. § 50-11-2100 states that DNR "...shall promulgate regulations to permit and regulate field trials during the year including the closed season." DNR Regulation 123-96 dealing with "field trial regulations" states that "[i]t shall be unlawful for any person to conduct or participate in any field trial unless a permit for such trial has been obtained from the Department."

In reviewing your question, this office contacted the legal counsel for DNR and was informed that DNR does not and will not issue permits for bear-baying. According to a memorandum from the chief bear biologist for DNR, permits are not issued for bear-baying because DNR does not consider bear-baying a field trial. According to a definition set forth in The American Heritage Dictionary, 2nd college edition, the term "field trial" is defined as "[a] test for young, untried hunting dogs to determine their competence in pointing and retrieving." According to the explanation provided me as to the practice of bear-baying whereby a bear is leashed and attached to some type of stake and a dog is released and then attempts to keep the bear at bay, such activity does not appear to qualify as a field trial as such term is commonly understood. For instance, it is my understanding that there is no tracking or retrieving involved in a bear-baying. See also: definition of "field trial" as set forth in Wikipedia ("A field trial is a highly competitive event at which hunting dogs usually compete against one another.").

As set forth above, while animal fighting and baiting is prohibited, the prohibitions set forth in Sections 16-27-10 et seq. are inapplicable to "dogs used in field trials, including...bear-baying". (emphasis added). As stated, you have questioned whether or not DNR is responsible for bear-baying permits or whether or not a permit is actually required.

While consistent with the provisions of Section 50-11-2100 and DNR Regulation 123-96, "field trials" are required to be permitted by DNR, in the opinion of this office, the term "field trial" as commonly defined as set forth above, would not include bear-baying. There is no indication that the Legislature intended the definition of "field trial" for purposes of Section 50-11-2100 and Regulation 123-96 to apply to the term "field trial" as used in Section 16-27-80. See: Clemson University v. Speth, 344 S.C. 310, 543 S.E.2d 572 (Ct.App. 2001) (a definition from another part of the Code will ordinarily not be incorporated, particularly where there is no legislative intent for such incorporation). Therefore, DNR would not be responsible for bear-baying permits nor is there a requirement that a bear-baying permit be obtained from DNR.

As to your request concerning DNR permitting bear-baying as referenced in Section 16-27-80, as set forth, such statute provides that the Animal Fighting and Baiting Act

> (A)...does not apply to dogs used for the purpose of hunting, including but not limited to, hunting on shooting preserves or wildlife management areas authorized pursuant

> to Title 50, or to dogs used in field trials, including events more commonly known as "water races", "treeing contests", "coon-on-a-log", "bear-baying", or "fox-pen-trials".

As a result, bear-baying would be excluded from the prohibitions of Sections 16-27-10 et seq. However, while bear-baying may be excluded from these provisions, nevertheless, the practice of bear-baying would fall within the prohibitions of S.C. Code Ann. §§ 47-1-10 et seq. dealing with cruelty to animals. In particular, Section 47-1-40 states that:

> (A) [w]hoever knowingly or intentionally overloads, overdrives, overworks, ill-treats any animal, deprives any animal of necessary sustenance or shelter, inflicts unnecessary pain or suffering upon any animal, or by omission or commission knowingly or intentionally causes these things to be done, for every offense is guilty of a misdemeanor...
>
> (B) [w]hoever tortures, torments, needlessly mutilates, cruelly kills, or inflicts excessive or repeated unnecessary pain or suffering upon any animal or by omission or commission causes the acts to be done for any of the offenses is guilty of a felony....

The term "animal" for purposes of such provision is defined by Section 47-1-10 as "...all living vertebrate creatures except homo sapiens." Therefore, even though the referenced prohibitions against animal fighting and baiting may not be applicable to bear-baying, in the opinion of this office, the practice of bear-baying would be included within the prohibitions of statutes dealing with cruelty to animals.

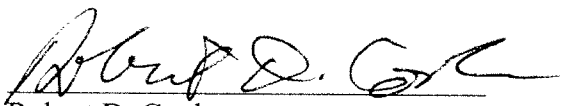
If there are any questions, please advise.

Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General