



HENRY McMASTER  
ATTORNEY GENERAL

September 13, 2010

Buford S. Mabry, Jr., Chief Counsel  
SC Department of Natural Resources  
P. O. Box 167  
Columbia, South Carolina 29202

Dear Mr. Mabry:

You have raised a question regarding the interpretation of S.C. Code Ann. § 50-21-30 which states:

(1) The provisions of Title 50 and other applicable laws of this State shall govern the operation, equipment, titling, numbering, and all other matters relating thereto for watercraft and water devices using or held for use on the waters of this State; but nothing in this chapter may be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of watercraft; provided, that the ordinances or local laws shall be operative only so long as and to the extent that they are identical to provisions of this chapter, amendments thereto, or regulations issued thereunder.

(2) Any subdivision of this State may, at any time, but only after three days' public notice make formal application to the department for special rules and regulations with reference to the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules and regulations necessary or appropriate.

(3) The department is hereby authorized to make special rules and regulations with reference to the operation of vessels on waters within the territorial limits of this State. (emphasis added).

You particularly questioned the reference to “special rules and regulations” as set forth in subsections (2) and (3) and whether such “special rules and regulations” come within the term “regulation” as defined by S.C. Code Ann. § 1-23-10(4) and, therefore, are subject to legislative and public review pursuant to the Administrative Procedures Act, S.C. Code Ann. §§ 1-23-10 et seq. Section 1-23-10(4) defines a “regulation” as “...each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency.” (emphasis added).

Prior opinions of this office dated April 26, 1990, March 16, 1978 and July 7, 1979 have determined that regulations that do not have “general public applicability” but are limited in their scope do not have to be promulgated pursuant to S.C. Code Ann. §§ 1-23-10 et seq. You have raised the question of the applicability of the need to promulgate a regulation pursuant to the Administrative Procedures Act as to local situations or conditions which necessitate “special rules and regulations” with regard to the operation of boating vessels as set forth in Section 50-21-30.

In the opinion of this office, inasmuch as Section 50-21-30 authorizes the Department of Natural Resources (hereinafter “DNR”) to make “special rules and regulations” regarding the operation of boating vessels on waters within the territorial limits of a political subdivision of this State, such “special rules and regulations”, inasmuch as they do not have general statewide applicability, would not have to be promulgated pursuant to the Administrative Procedures Act. This conclusion is reinforced by the Legislature’s insertion of the word “special”, indicating something other than APA promulgated rules and regulations. As referenced in Section 50-21-30, any political subdivision in making its application to DNR for special rules and regulations regarding the operation of vessels on any waters within its territorial limits shall set forth therein the reasons which make such “special rules and regulations” necessary or appropriate. Therefore, it is assumed that special circumstances exist which would necessitate such “special rules and regulations”. These special circumstances indicate that such regulations would not have general public applicability and, therefore, promulgation pursuant to the Administrative Procedures Act would not be necessary.

In its formal application for such “special rules and regulations”, there must be an articulation of the special and unique circumstances that would necessitate special consideration. Consideration by DNR would not simply be a “permission granted” type of approval but instead would be based upon the finding that special circumstances exist allowing for “special rules and regulations.”

Mr. Mabry  
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With kind regards, I am,

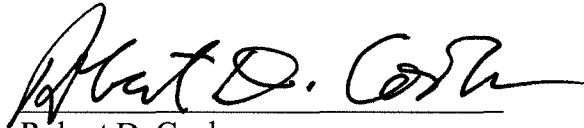
Very truly yours,

Henry McMaster  
Attorney General

A handwritten signature in cursive script, reading "Charles H. Richardson".

By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in cursive script, reading "Robert D. Cook".

Robert D. Cook  
Deputy Attorney General