ALAN WILSON
ATTORNEY GENERAL

January 18, 2012

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

Dear Mr. Mabry:

We received your letter on behalf of the South Carolina Department of Natural Resources ("DNR") requesting an opinion regarding our interpretation of S.C. Code Ann. §50-11-310(B). You ask us whether or not §50-11-310(B) prohibits hunting or taking deer over bait, or simply prohibits baiting for deer.

Law/Analysis

Prior to amendments in 2008, §50-11-310(B) provided that:

> [i]n Game Zones 1 and 2,[1] and on WMA lands,[2] the [DNR] may promulgate regulations in accordance with the Administrative Procedures Act to establish the methods for hunting and taking of deer and for other restrictions for hunting and taking deer.

In 2008 S.C. Acts No. 286, §9, the Legislature rewrote §50-11-310(B) to now read as follows:

> [i]n Game Zones 1 and 2, it is unlawful to pursue deer with dogs, and it is unlawful to bait for deer. [Emphasis added].

Additionally, the Legislature redesignated subsection (C) as subsection (D), and added the following as subsection (C):

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[1]The Legislature divided the State into several zones "[f]or the purpose of protection and management of wildlife."See §51-1-60(1) & (2) [designating the boundaries of Game Zone 1 and Game Zone 2].

[2]Wildlife Management Areas ("WMA") are areas designated by the DNR for purposes of wildlife management. See §§50-11-2200 *et seq*. Various provisions of the Code and regulations protect WMA from damage or destruction, regulate hunting and fishing thereupon, and provide for special permits issued by the DNR for privileges upon such lands.

> [o]n WMA lands, the department may promulgate regulations in accordance with the Administrative Procedures Act to establish the methods for hunting and taking of deer and for other restrictions for hunting and taking deer.

In reviewing §50-11-310(B), it is imperative that there be compliance with the rules of statutory construction. South Carolina Coastal Conservation League v. South Carolina Dept. of Health and Environmental Control, 390 S.C. 418, 702 S.E.2d 246 (2010). Statutory interpretation is a question of law. City of Newberry v. Newberry Elec. Co-op., Inc., 387 S.C. 254, 692 S.E.2d 510 (2010). The primary rule of statutory construction is to ascertain and give effect to the intent of the Legislature. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000); Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 476 S.E.2d 690 (1996). The best evidence of intent is in the statute itself. Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their plain and ordinary meaning. Id.

> If the [L]egislature's intent is clearly apparent from the statutory language, a court may not embark upon a search for it outside the statute. When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the [L]egislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning.
>
> While it is true that the purpose of an enactment will prevail over the literal import of the statute, this does not mean that [a] Court can completely rewrite a plain statute.

Hodges, 533 S.E.2d at 582. What the Legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the 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, 694 S.E.2d 525 (2010); Wade v. State, 348 S.C. 255, 559 S.E.2d 843 (2002); see also Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E. 2d 166, 168 (1966) ["There is no safer nor better rule of interpretation then when language is clear and unambiguous it must be held to mean what it plainly states"]. Finally, we note that when a statute is penal in nature, it will be construed strictly against the State and in favor of a defendant. Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001); State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991).

South Carolina deems it a criminal offense to hunt certain game over a baited area. See, *e.g.*, §50-11-10 [waterfowl]; §50-11-430 [bear]; §50-11-510 [wild turkey]; §50-9-1120(2) [point system for illegally hunting over bait]. We believe the Legislature was particularly clear and unambiguous in the 2008 amendments to §50-11-310(B) that baiting for deer in Game Zones 1 and 2 is proscribed. The rules of statutory construction dictate that if the Legislature had intended otherwise, or had also specifically intended to prohibit hunting or taking deer over bait in these areas, then it would have said so. This is a choice which the Legislature freely made and we are constrained to interpret the statute accordingly. Any change in the law must come from the Legislature and not an opinion of this office. See Ops. S.C. Atty. Gen., December 22, 2011; March 29, 2011.

Importantly, we note §50-11-310(C), which provides that on WMA lands, the DNR "may promulgate regulations . . . to establish the methods for hunting and taking of deer and for other restrictions for hunting and taking deer." See also §50-11-2200(C) [stating the DNR may "promulgate regulations allowing any of the acts or conduct by prescribing acceptable times, locations, means, and other appropriate restrictions not inconsistent with the protection, preservation, operation, maintenance, and use of such lands [including] hunting or taking wildlife"]. Chapter 123 of the South Carolina Code of Regulations is dedicated to the DNR. Specifically, 27 S.C. Code Ann. Reg. 123-40 (2.6) (Supp. 2010) provides:

> [o]n all WMA lands, baiting or hunting over a baited area is prohibited. As used in this section, "bait" or "baiting" means the placing, depositing, exposing, distributing, or scattering of shelled, shucked, or unshucked corn, wheat, or other grain or other food stuffs to constitute an attraction, lure, or enticement to, on, or over any area. "Baited area" means an area where bait is directly or indirectly placed, deposited, exposed, distributed, or scattered and the area remains a baited area for ten (10) days following the complete removal of all bait. Salt/minerals are not considered bait. [Emphasis added].

Conclusion

Based on a plain reading of §50-11-310(B), as amended by the Legislature in 2008, it is the opinion of this office that the provision expressly prohibits baiting for deer in Game Zones 1 and 2, but not hunting or taking deer over bait. However, we note that baiting or hunting deer over baited areas is prohibited on all WMA lands pursuant to Reg. 123-40 (2.6), and in accordance with DNR's authority to regulate "the methods for hunting and taking of deer and for other restrictions for hunting and taking deer" under §50-11-310(C).

If you have any further questions, please advise.

Very truly yours,

N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General