ALAN WILSON
ATTORNEY GENERAL

August 3, 2012

The Honorable Glenn F. McConnell
Lieutenant Governor
P.O. Box 142
Columbia, SC 29202

Dear Lt. Governor McConnell:

We received your letter requesting an opinion of this Office to address the geographical limits applicable to lawful gambling ship activity along South Carolina's coast pursuant to South Carolina's Gambling Cruise Act ["Act"], as codified at S.C. Code Ann. §§3-11-100 *et seq.* You note the Act provides that, with local permission, gambling vessels are permitted to operate along the South Carolina coast provided such vessels travel outside of South Carolina territorial waters to conduct gambling operations before returning to berth. Specifically, you ask how far beyond the coastline do South Carolina's territorial waters extend for purposes of the Act.

Law/Analysis

A number of important principles of statutory construction are pertinent to your inquiry. First and foremost, is the time-honored tenet that the primary guideline to be used in the interpretation of statutes is to ascertain and give effect to the intention of the Legislature. Belk v. Nationwide Mut. Ins. Co., 271 S.C. 24, 244 S.E.2d 744 (1978). All rules of statutory interpretation are subservient to the one that legislative intent must prevail if it can reasonably be discovered in the language used, and such language must be construed in light of the Act's intended purpose. State v. Hudson, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999). A statute as a whole must receive a practical, reasonable and fair interpretation, consonant with the purpose, design and policy of the lawmakers. Caughman v. Columbia Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). The words used therein should be given their plain and ordinary meaning. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). The interpretation should be according to the natural and obvious significance of the wording without resort to subtle and refined construction for the purpose of either limiting or expanding the Act's operation. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942).

The Legislature explicitly outlined the intent of the Act as follows:

> [i]t is the intent of the General Assembly to delegate to counties and municipalities of this State the authority to prohibit or regulate the operation of gambling vessels that are engaged in voyages that depart from the territorial

> waters of the State, sail into United States or international waters, and return to the territorial waters of the State without an intervening stop.

2005 S.C. Acts No. 104, §1.[1]

"Territorial waters" is not defined in the Act, however. In construing the Act, when faced with an undefined statutory term, a court will interpret the term in accordance with its usual and customary meaning. State v. Morgan, 352 S.C. 359, 370, 574 S.E.2d 203, 208 (Ct. App. 2002). The Legislature, in enacting a law, is presumed to use words of current, contemporary meaning. Op. S.C. Atty. Gen., August 8, 2005 [citing Town Court *et al.* v. Miller, 83 Misc.2d 118, 373 N.Y.S.2d 312 (1975)]. Where the meaning of words in a statute have evolved, the court will ascribe to the statute the contemporary meaning. Id. [citing Koohi v. United States, 976 F.2d 1328 (9th Cir. 1992) (court construed phrase "time of war" not to require Congressional declaration of war; phrase had acquired a broader meaning)]; S.C. Pipeline Corp. v. Lone Star Steel Co., 345 S.C. 151, 546 S.E.2d 654, 656 (2001) [South Carolina Supreme Court applied "contemporary definitions of 'improvement'"]. Of course, the Court will reject a meaning - even though the ordinary meaning - if such meaning would defeat the plain legislative intention. Miller v. Aiken, 364 S.C. 303, 613 S.E.2d 364 (2005).

The term "territorial waters" has been used synonymously and interchangeably with "territorial sea," "intervening waters," "marginal sea," and "marine belt." See Application of Island Airlines, Inc., 47 Haw. 87, 384 P.2d 536, 575 (1963). In seeking to define South Carolina's seaward boundary, it is important to look at federal law. Historically, the territorial waters of most states are determined to extend three geographical miles from the coastline. See, *e.g.*, Cunard S.S. Co. v. Mellon, 262 U.S. 100, 122 (1923) ["It now is settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control, the ports, harbors, bays and other enclosed arms of the sea along its coast and a marginal belt of the sea extending from the coast line outward a marine league, or three geographic miles"]. The discovery of oil and other natural resources in submerged lands in the open sea, however, caused controversy regarding states' boundaries and ownership of such submerged lands and, thus, the resources within those boundaries. The United States claimed all minerals beneath the submerged lands. In United States v. California, 332 U.S. 19 (1947), the United States Supreme Court rejected California's claim to dominion over the waters three miles off its coast and ownership of the land underneath those waters. The Court concluded the federal government possessed paramount rights to the land seaward of the low-water mark on California's coast and beyond inland waters. Id., 332 U.S. at 36.[2] That holding was somewhat tempered by the Court's holding in Toomer v. Whitsell, 334 U.S. 385, 393 (1948) confirming that states retain jurisdiction to exercise their

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[1]Before the Act was signed into law, counties and municipalities were not able to prohibit or regulate these gambling cruises, also known as "cruises to nowhere." See Palmetto Princess, LLC v. Town of Edisto Beach, 369 S.C. 50, 631 S.E.2d 76, 78 n.2 (2006); cf. Stardancer Casino, Inc. v. Stewart, 347 S.C. 377, 556 S.E.2d 357, 361-62 (2001); Op. S.C. Atty. Gen., September 18, 2002.

[2]The Court rendered similar rulings with regard to the claims of Texas and Louisiana to the submerged lands in the Gulf of Mexico. United States v. Louisiana, 339 U.S. 699 (1950); United States v. Texas, 339 U.S. 707 (1950).

police power in the three-mile belt of "territorial waters." In 1953, Congress responded to the California decision by adopting the Submerged Lands Act ("SLA"). See 43 U.S.C. §1301 *et seq*. The SLA transferred to the affected individual states title to and management of all lands and resources in or under the navigable waters within their respective "boundaries." Furthermore, the "boundaries" of coastal states were therein defined as those which existed at the time of the state's admission into the Union or which were thereafter approved by Congress or established by the SLA itself.

In conformity with the then traditional federal view of international sea limits, the SLA "approved and confirmed" the "boundaries" of each coastal state as terminating three geographical (nautical) miles seaward from the coast. Id. at §1312 ["The seaward boundary of each original coastal State is approved and confirmed as a line three geographical miles distant from its coast line.... Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line...."]. The codification of 43 U.S.C. §1312 was recognition of the accepted fact of the three geographic mile seaward boundary of the states. See id. at §1301(b) ["boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 1312 of this title but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico. . .]; cf. United States v. Louisiana, *et al*., 363 U.S. 1, 84 (1960) [under the SLA, Texas is entitled, by virtue of prior treaties, to extend its seaward boundary three marine leagues, *i.e.*, nine nautical miles, from its coastline into the Gulf of Mexico].[3] In prior opinions of this Office, we recognized the three-mile seaward limit of South Carolina's territorial waters pursuant to the SLA. See Ops. S.C. Atty. Gen., October 20, 1995; February 16, 1982.

Accordingly, it is the opinion of this Office that "territorial waters" as applied to the Act would extend three geographic miles from South Carolina's coastline.[4] See City Of Charleston, South Carolina v. A Fisherman's Best, Inc., 310 F.3d 155, 160 (4th Cir. 2002) ["Waters from the South Carolina coastline seaward for three miles are state waters"].[5]

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[3]The Court rejected claims of Louisiana, Mississippi, and Alabama that their boundaries also extended three leagues offshore. Id., 363 U.S. at 64. Other than Texas, upon information and belief only Florida's seaward boundaries extend beyond three miles. See United States v. Florida, 363 U.S. 121, 123 (1960) [noting the SLA permitted boundaries outside three miles if the state had claimed the boundary when it came into the Union or such was "approved by Congress"]

[4]Significantly, the Court in United States v. California, 381 U.S. 139, 166-67 (1965) made clear that future changes in United States' foreign policy would have no effect on the grant to the states under the SLA. Accordingly, the Court indicated it would take a new act of Congress extending state jurisdiction beyond the existing three-mile limit before a state legally could claim such jurisdiction.

[5]For purposes of criminal jurisdiction, Congress has extended the seaward boundary of the United States twelve nautical miles from the coast. See Pub. L. No. 104-132, §901(a) (1996), reprinted in 18 U.S.C. §7, Notes (Supp. V 1999); see also In re: Air Crash Off Long Island, 209 F.3d 200 (2nd Cir. 2000). We note,

In addition, we believe the three-mile limit of South Carolina's "territorial waters" should be measured from the low water line of the coastline. Significantly, the SLA defines "coast line" as the line of ordinary low water mark where the coast "is in direct contact with the open sea," otherwise, as "the line marking the seaward limit of inland waters." 43 U.S.C. §1301(c). Further, the United States Supreme Court in United States v. Maine, 469 U.S. 504, 512-13 (1985), describing the operation of the SLA, explained that:

> [u]nder [43 U.S. C. §1312] a coastal State's boundary is measured from its legal coastline. the coastline is defined as "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters. §1301(c). A State's seaward boundary generally is set as a line three geographical miles distant from its coastline. §1312. Waters landward of the coastline therefore are internal waters of the State, while waters up to three miles seaward of the coastline are also within a State's boundary as part of the 3-mile ring referred to as the marginal sea.

See Civil Aeronautics Board v. Island Airlines, Inc., 235 F.Supp. 990, 1003 (D. Haw. 1964) [territorial waters include those waters within three miles of the low-water mark of the coastline]; Ocean Industries, Inc. v. Greene, 15 F.2d 862, 862 (N.D. Cal. 1926) [the territorial jurisdiction of the State of California extends only three miles into the waters of the Pacific Ocean from the low-water mark]; cf. Ross v. McIntyre, 140 U.S. 453, 471 (1891) ["The term 'high seas' includes waters on the sea-coast without the boundaries of low-water mark"]. In an opinion dated January 7, 1964, we also recognized that "[t]he State boundary lies three (3) miles from any point along [the] low water mark on the coast."

We further note Black's Law Dictionary 1585 (7th ed. 1999) provides that "territorial waters" are "[t]he waters under a state's or nation's jurisdiction, including both inland waters and surrounding sea (traditionally within three miles of the coastline). . ." The New Oxford American Dictionary 1792 (2010) states that "territorial waters" means ". . . the waters under the jurisdiction of a state, esp. the part of the sea within a stated distance of the shore (traditionally three miles from the low water mark)." Webster's Third New International Dictionary 2361 (1986) defines "territorial waters" as "the waters under the territorial jurisdiction of a nation or state including both inland waters and marginal sea as measured from mean low-water mark or from the seaward limit of a bay or river mouth." In III Cyclopedia of American Government 536 (1914), we also find the following: "Three-Mile-Limit. This is a phrase used to denote the extent of a state's jurisdiction over the open sea. The marginal sea with the shore-bottom under it for a distance of at least three marine miles beyond low-water mark is recognized as a part of the territory of

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however, that the Federal Gambling Ship Act excepts gambling on vessels that is conducted more than three nautical miles from the United States coastline. See 18 U.S.C. §§1081, 1082; see also United States v. One Big Six Wheel, 166 F.3d 498 (2nd Cir. 1999) [holding that 12-mile territorial limit established by the Federal Antiterrorism and Effective Death Penalty Act of 1996 does not affect the Gambling Ship Act, and concluding that for purposes of the Gambling Ship Act "'territorial waters' extend three nautical miles from the U.S. coastline"].

the adjacent state. . ." 22 Collier's Encyclopedia 179 (1997) further states: "[t]he limits of a state's territorial waters are established by measurement from the low water line on its shore."

Further support for our conclusion is found in South Carolina's Underwater Antiquities Act of 1991, which is intended to control shipwreck salvage and to benefit from the significant wealth such wrecks might represent. Pursuant to such legislation, South Carolina asserts ownership of shipwrecks on submerged lands in its territorial waters. See §§54-7-620 *et seq*. Therein, "territorial waters" is defined therein as "the navigable waters of the State, namely, all tidal waters within the boundaries of the State up to, but not above, the line of mean low tide and seaward to a line three geographical miles distant from the coastline of the State measured by reference to mean low tide elevation as defined in the Geneva Convention, Article 11, and such other waters of the State as may be included within the term "lands beneath navigable waters" as defined in the Federal Abandoned Shipwreck Act of 1987." Section 54-7-620(47). We think a reasonable and fair interpretation similarly construing the term "territorial waters" as used in the Act is consistent with the purpose, design, and policy of the Legislature.

Conclusion

It is apparent that the Legislature intended to extend enforcement of the Gambling Cruise Act to the limit of the territorial waters of South Carolina. Applying the common and ordinary definition - as we must here - we are of the opinion that South Carolina's "territorial waters" are those waters in the Atlantic Ocean out to three geographic miles extending from the mean low-water mark of South Carolina's naturally-occurring coastline. Of course, we cannot opine with certainty whether a court will necessarily concur with our opinion. Ops. S.C. Atty. Gen., June 5, 2008; November 17, 2000. Ultimately, clarification from the courts would be necessary to determine your question with finality. Ops. S.C. Atty. Gen., January 10, 2012; January 10, 2012; June 5, 2008.

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