ALAN WILSON
ATTORNEY GENERAL

September 7, 2012

The Honorable Joe Daning
Member, House of Representative
District 92
310-B Blatt Building
Columbia, SC 29211

Dear Representative Daning:

In a letter to this Office, you reference the provisions of S.C. Code Ann. §10-1-165, which provide that:

> [n]o Revolutionary War, War of 1812, Mexican War, War Between the States, Spanish-American War, World War I, World War II, Korean War, Vietnam War, Persian Gulf War, Native American, or African-American History monuments or memorials erected on public property of the State or any of its political subdivisions may be relocated, removed, disturbed, or altered. No street, bridge, structure, park, preserve, reserve, or other public area of the State or any of its political subdivisions dedicated in memory of or named for any historic figure or historic event may be renamed or rededicated. No person may prevent the public body responsible for the monument or memorial from taking proper measures and exercising proper means for the protection, preservation, and care of these monuments, memorials, or nameplates.

In your letter, you ask us for an opinion addressing whether the Patriot's Point Development Authority ("PPDA") may relocate the Cold War Submarine Memorial located at the Patriot's Point Naval and Maritime Museum in Mount Pleasant to accommodate the construction of a new Congressional Medal of Honor Museum.

Law/Analysis

The Legislature created the PPDA by statute in 1962. The PPDA is recognized as a "body politic and corporate" under the laws of South Carolina and has been given various corporate and other powers to enable it to govern. See S.C. Code Ann. §§ 51-13-710 *et seq*. Section 51-13-760 gives the PPDA "very broad and general powers 'to do and perform any act or function which may tend to or be useful toward the development and improvement of Patriots Point.'" Op. S.C. Atty. Gen., November 15, 1994. Further, §51-13-770 enumerates the various powers afforded to the PPDA by the Legislature in order to carry out

the PPDA's purposes as stated in §51-13-760. The PPDA's powers are enumerated in §51-13-770 as follows:

> (1) Shall have the powers of a body corporate, including the power to sue and be sued, to make contracts and to adopt and use a common seal and alter it as may be deemed expedient;
>
> (2) May rent, lease, buy, own, acquire, mortgage and dispose of such property, real or personal, as the Authority may deem proper to carry out the purposes and provisions of this article, all or any of them;
>
> (3) May acquire, construct, maintain, equip and operate docks, ships, piers, quays and other structures and any and all facilities needful for the convenient use of them in the aid of Patriot's Point development, including the dredging of approaches thereto and the construction of roads and highways thereon and bridges and causeways necessary or useful in connection therewith and transportation facilities incident thereto and useful or convenient for the use thereof, including a marina, except that these piers, ships, docks, quays or similar structures shall be used exclusively for fulfilling the educational, recreational and tourist missions of Patriot's Point and shall not be used for any active ocean-going cargo or passenger vessels;
>
> (4) Shall establish an office for the transaction of its business in the County of Charleston and such other offices within and without the State as may be deemed by the Board to be necessary or useful in carrying out the purposes of this article;
>
> (5) May create and operate such agencies and departments as the Board may deem necessary or useful for the furtherance of any of the purposes of this article;
>
> (6) May pay all necessary costs and expenses involved in and incident to the formation and organization of the Authority and incident to the administration and operation thereof and all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this article;
>
> (7) May apply for and accept loans and grants of money from any Federal agency, private sources or any other source for any and all of the purposes authorized in this article and expend such moneys in accordance with the directions and requirements attached thereto or imposed thereon by any such Federal agency and give such evidences of indebtedness as shall be required by any such Federal agency, except that no indebtedness of any kind incurred or created by the Authority shall constitute an indebtedness of the State, or any political subdivision thereof, and no such indebtedness shall involve or be

> secured by the faith, credit or taxing power of the State, or any political subdivision thereof;
>
> (8) May adopt, alter or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the powers granted to it may be enjoyed; may provide rules and regulations for the use of its facilities by the public, and may provide for the appointment of such committees, and the functions thereof, as the Authority may deem necessary or expedient in facilitating its business;
>
> (9) May do any and all other acts and things authorized or required to be done by this article, whether or not included in the general powers mentioned in this section;
>
> (10) May do any and all things necessary to accomplish the purposes of this article; and
>
> (11) May promulgate rules and regulations governing the use of or doing business on the Authority's property or facilities, including the adoption of safety standards and insurance coverage or proof of financial responsibility, and may provide for the licensing of or enter into concession and use contracts with persons, firms or corporations using or doing business on such property or facilities and require license or other fees therefor. Licenses or concession and use contracts may be revoked after notice and hearing by the Authority for willful breach of or failure to comply with such rules and regulations.

In addition to the powers listed above, §51-13-780 affords the PPDA the power to acquire property by purchase or eminent domain. The PPDA may also exchange property, transfer property to the United States government, borrow money, and accept contributions of money or property. See §§51-13-790 through 820.

The PPDA established the Patriots Point Naval and Maritime Museum, and maintains a fleet of National Historic Landmark ships, including the U.S.S. Yorktown (CV-10), and a replica of a Vietnam War Naval Support Base Camp. Patriots Point is also headquarters to the Congressional Medal of Honor Society and that organization's official Medal of Honor Museum, which is located on board the Yorktown. According to the PPDA website (www.patriotspoint.org), the PPDA oversees the stewardship over hundreds of acres of property on Charleston Harbor, much of which is under lease for a golf course, a hotel, and an athletic complex for the College of Charleston.

The Cold War Submarine Memorial was subsequently dedicated in 2002. According to the PPDA's website:

> [t]he Cold War Submarine Memorial is an enduring tribute to the dedicated men who served in our naval submarines during the Cold War from 1947-1989.

> The Cold War Memorial is designed to give overall size and shape of the sub, and incorporates the actual sail [*i.e.*, the tower structure above the hull of a submarine] and rudder of the USS Lewis and Clark SSBN 644. Additionally, the memorial gives thanks to the men and women, both civilian and military, who provided outstanding support assuring the remarkable success of each mission.

At intervals along the plaza surrounding a full-sized replica of a Benjamin Franklin Class Fleet Ballistic Missile submarine, the Cold War Submarine Memorial has seven educational stations recognizing the contributions of:

> [t]he citizens of South Carolina and the Lowcountry - and their role in support of submarines during the Cold War.
>
> Submarine families and children who remained behind and managed alone during long absences of their husbands, fathers and sons while at sea on patrol during the Cold War.
>
> The Fleet Ballistic Missile submarines and the dedicated and gallant men who served in them during the Cold War.
>
> To the dedicated men and women, both military and civilian, who manned the submarine support infrastructure that allowed our submarines to sail with confidence, fully ready every time.
>
> The Attack Submarines and the dedicated and daring men who served in them during the Cold War.
>
> The officers and men of the Submarine Force who served during the Cold War and has given their lives for their country.
>
> The officers and men of the British Royal Navy Submarine Service - reliable friends and loyal comrades always - who were standing against a common threat throughout the Cold War.

The undersigned notes that a memorial honoring the 52 submarines of the United States Navy and their crews lost during World War II is also incorporated on the plaza of the Cold War Submarine Memorial.

As an historical aside, we note that the Cold War is widely recognized as indicating the conflict between the United States and the Soviet Union from 1945 to 1991.[1] During this time, the Cold War dominated international affairs. The global competition between the United States, the Soviet Union, and

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[1]Some historians believe the Cold War ended with the fall of the Berlin Wall in 1989, while others find the Cold War was over on December 21, 1991, when the Soviet Union ceased to exist.

their respective allies took many forms: political, economic, ideological, cultural. At times, the constant arms race and international and ideological tensions burst into armed conflict such as the Korean War, the Vietnam War, and dozens of proxy wars fought around the globe. But overshadowing all of this was the threat of nuclear war, which defined the Cold War. On several occasions, such as during the Berlin Crisis and the 1962 Cuban Missile Crisis, the world was brought to the brink of nuclear war. Planners in the Soviet Union accepted the possibility of fighting and winning a nuclear war, but United States policy stressed deterrence - discouraging the use of nuclear weapons by threatening mutually assured destruction in retaliation. Because only secure retaliatory forces could make the threat of nuclear annihilation credible, the United States developed the so-called "Strategic Triad" - long-range bombers, land-based missiles, and submarines, each force being able to react independently to inflict catastrophic damage on any attacker. Clearly, the buildup of submarines, particularly the nuclear ballistic missile submarine, lurking beneath the seas was a key component in deterring the Soviet Union and winning the Cold War. Tens of thousands of submarine crews, including those stationed at the North Charleston Naval Base, were deployed to every region of the world throughout the Cold War, where they patrolled silently for weeks and months at a time, providing the shield of a strong deterrence to protect our country. No patrol was routine. Submarines were constantly in harm's way, often playing cat-and-mouse with Soviet submarines. Many submariners lost their lives during their service to this country.[2] Submariners served with distinction in the Cold War, including the Korean War and the Vietnam War, and during other crises and patrols conducted around the world. In their books, The Silent War: The Cold War Battle Beneath the Sea (Simon & Schuster, 2001), and Blind Man's Bluff: The Untold Story of American Submarine Espionage (Harper Torch, 1999), authors John P. Craven and Sherry Sontag, respectively, recount the clandestine special operations conducted by submarines and their invaluable contribution to the defense of our country during the Cold War. Submariners are truly unsung heroes of the Cold War.

In examining your particular question, several principles of statutory construction must be kept in mind. First and foremost, is the cardinal rule that the primary purpose in interpreting statutes is to ascertain the intent of the Legislature. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 577 S.E.2d 202 (2003); State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statute 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). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1990). Any statute must be interpreted with common sense to avoid unreasonable consequences. United States v. Rippetoe, 178 F.2d 735 (4h Cir. 1950). A sensible construction, rather than one which leads to irrational results, is always warranted. Sloan Const. Co., Inc. v. Southco Grassing, Inc., 659 S.E.2d 158, 377 S.C. 108 (2008); see State *ex rel.* McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778, 782 (1964) ["In seeking the intention of the legislature, we must presume that it intended by its action to accomplish something and not to do a futile thing"].

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[2]For example, in 1963 the U.S.S. Thresher (SSN-593), with 129 crew members, sank off the coast of Cape Cod. In 1968, the U.S.S. Scorpion (SSN-589) was lost while on patrol in the Atlantic Ocean with a crew of 99 on board. There are several theories regarding the loss of the Scorpion, including hostile action by the Soviet Navy. See Kenneth Sewell and Jerome Preisler, All Hands Down : The True Story of the Soviet Attack on the USS Scorpion, Simon and Schuster (2008).

The context of the statute must also be examined as part of the process of determining the intent of the Legislature. Hancock v. Southern Cotton Oil, Co., 211 S.C. 432, 45 S.E.2d 850 (1948). As the Court acknowledged in Southern Mutual Church Ins. Co. v. S. C. Windstorm and Hail Underwriting Assn., 306 S.C. 339, 412 S.E.2d 377, 379 (1991):

> [c]learly, words in a statute must be construed in context. Hancock, [supra]. According to the doctrine of *noseitur a sociis*, the meaning of particular terms in a statute may be ascertained by reference to words associated with them in the statute. 73 Am.Jur.2d Statutes, §213 (1974). We have previously stated that "[t]he Court may not, in order to give effect to particular words, virtually destroy the meaning of the entire context; that is, give the particular words a significance which would be clearly repugnant to the statute, looked at as a whole, and destructive of its obvious intent." Creech v. S.C. Public Service Commission, 200 S.C. 127, 20 S.E.2d 645, 649 (1942).

In addition, it is proper to consider the title or caption of an act in aid of construction to show the intent of the legislature. Lindsay v. Southern Farm Bureau Casualty, 258 S.C. 272, 188 S.E.2d 374 (1972); Father v. S.C. Dept. of Social Services, 345 S.C. 57, 545 S.E.2d 523 (Ct. App. 2001). In Father, even though the statutory scheme appeared to limit the recovery by a party against a governmental entity for fighting an adverse claim brought against it by that entity, the South Carolina Court of Appeals consulted the title or caption of the chapter to conclude otherwise. According to the Court, the "very fact that the legislature entitled this chapter the 'South Carolina Frivolous Proceedings Sanctions Act' indicates the chapter was not enacted solely to compensate an aggrieved party for expenses incurred to fight a baseless claim." Id., 545 S.E.2d at 528. The Court concluded:

> [i]n view of the designation of sections 15-36-10 through -50 as a "sanctions" act and the stringent requirements for recovery under these provisions, we hold an award of sanctions against the South Carolina Department of Social Services in a child abuse and neglect action is not necessarily barred by section 15-77-300. Although awards under the South Carolina Frivolous Proceeding Sanctions Act are limited to attorneys fees and costs, this limitation serves only as a measure of the sanctions allowable under the Act and does not undermine the fundamental objective of deterring egregious misuses of the court system by governmental agencies as well as by private parties ....

Id.

Accordingly, the literal text is not necessarily controlling in the interpretation of a statute if such literal language is in conflict with the overarching intent of the Legislature. As the South Carolina Supreme Court recognized in Greenville Baseball, Inc. v. Bearden, 200 S.C. 363, 20 S.E.2d 813, 815 (1942), "[c]ourts will reject the ordinary meaning of the words used in a statute however plain it may be, when to accept such meaning would defeat the plain legislative intent." [Emphasis added]. In Greenville Baseball, the Court cited with approval Bruner v. Smith, 188 S.C. 75, 198 S.E. 184 (1938). In Bruner, the

Court refused to read the words "or major fraction of them" as used in the statute, literally. Petitioner had been appointed Comptroller of Oconee County upon the recommendation of the Senator and one of the two House members in the delegation. Respondent, the holdover Comptroller, refused to surrender the Office to Petitioner, contending that the literal language of the statute referred to a "major fraction" of the two House members. Since there could be no " major fraction" of two, Respondent thus argued that the literal words in the statute required unanimous approval of the delegation. Rejecting this interpretation, the Court read the statute as requiring a "major fraction" of the entire delegation, and thus the new Comptroller was validly appointed. Id., 198 S.E. at 188. Quoting Stackhouse v. County Bd. Of Commissioners, 86 S.C. 419, 68 S.E. 561 (1910), the Bruner Court further stated:

> [h]owever plain the ordinary meaning of the words used in a statute may be, the Courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the legislature, or would defeat the plain legislative intent, and if possible will construe the statute so as to escape the absurdity and carry the intention into effect.

Bruner, 198 S.E. at 188.

Finally, we note that in enacting the Act, it must be presumed the Legislature acted with deliberation and with full knowledge of the effect of the Act and with full information as to the subject matter, existing conditions, and relevant facts. See Op. S.C. Atty. Gen., August 5, 2010 [citing 82 C.J.S. Statutes §361; 73 Am.Jur.2d Statutes §28]. Moreover, pursuant to principles of statutory construction, when comparing statutory provisions applicable to a given situation, "[i]f an irreconcilable conflict exists, the statute later in time will prevail as the later expression of legislative will." Feldman v. S.C. Tax Commission, 203 S.C. 49, 26 S.E.2d 22, 24 (1943); see Ops. S.C. Atty. Gen., October 31, 2005; June 13, 2003. In addition, "... later specific statutes will prevail over earlier general ones." Langley v. Pierce, 313 S.C. 401, 438 S.E.2d 242, 243 (1993); Ops. S.C. Atty. Gen., October 12, 2010; April 29, 2003; November 20, 1997.

Having set forth the applicable rules of statutory interpretation, we turn now to §10-1-165. The Legislature enacted §10-1-165 as part of legislation mandating the particular flags flown atop the State House and at the south side of the Confederate Memorial Monument. See 2000 S.C. Acts No. 292, §3 (the "Act"). The Act also governs the display of the flags on the Capitol grounds and the permanent display of the actual Confederate Flag at the South Carolina State Museum. Op. S.C. Atty. Gen., November 3, 2000. Although §10-1-165 includes Revolutionary War, War of 1812, Mexican War, War Between the States, Spanish-American War, World War I, World War II, Korean War, Vietnam War, Persian Gulf War, Native American, and African-American History monuments or memorials, the provision is intended to protect monuments and memorials erected on public property. While §10-1-165 provides protection for certain monuments and memorials, we believe the Legislature clearly intended to protect other officially established public monuments and memorials dedicated to the men and women who served with distinction in defense of our country, including those who served on submarines during the Cold War. It seems reasonable these, too, are memorials and monuments contemplated by the Act. Any other reading of §10-1-165 to limit the meaning of the Act thereof would be far too restrictive to the obvious mandate

by the Legislature and render the underlying purpose of the Act absurd. Indeed, the Title of the Act aids our determination of legislative intent. The Title reads as follows:

> AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 1-10-10 SO AS TO PROVIDE FOR PERMANENT PLACEMENT OF THE UNITED STATES FLAG, THE SOUTH CAROLINA STATE FLAG, AND THE SOUTH CAROLINA INFANTRY BATTLE FLAG OF THE CONFEDERATE STATES OF AMERICA, PROVIDE FOR THE REPLACEMENT OF THESE FLAGS AT APPROPRIATE INTERVALS AS MAY BE NECESSARY DUE TO WEAR, AND DEFINE THE TERM "CHAMBERS" FOR PURPOSES OF THIS SECTION; TO AMEND SECTION 10-1-160, RELATING TO DISPLAY OF CERTAIN FLAGS, SO AS TO PROVIDE FOR THE PLACEMENT OF ONLY THE UNITED STATES FLAG AND THE STATE FLAG ABOVE THE ROSTRUM IN THE CHAMBERS OF THE HOUSE OF REPRESENTATIVES AND THE SENATE AND IN THE STATE HOUSE, AND DEFINE THE TERM "CHAMBERS" FOR PURPOSES OF THIS SECTION; <u>TO PROVIDE FOR THE PROTECTION OF MEMORIALS, MONUMENTS</u>, STREETS, PARKS, AND OTHER PUBLIC AREAS; TO ESTABLISH SPECIFIC VOTE REQUIREMENTS FOR THE AMENDMENT OR REPEAL OF THESE PROVISIONS; TO PROVIDE THAT THE CONFEDERATE FLAGS (NAVAL JACK) REMOVED FROM THE ROSTRUM IN THE CHAMBERS OF THE HOUSE OF REPRESENTATIVES AND THE SENATE AND FROM THE DOME OF THE STATE HOUSE MUST BE PLACED AND PERMANENTLY DISPLAYED IN A SUITABLE LOCATION IN THE STATE MUSEUM; PROVIDE THAT ALL PAID IN FULL ORDERS FOR CONFEDERATE FLAGS PLACED WITH THE SERGEANT AT ARMS OF THE HOUSE AS OF MAY 31, 2000, MUST BE FILLED; BY ADDING SECTION 10-11-315 SO AS TO MAKE IT A MISDEMEANOR FOR A PERSON WILFULLY AND MALICIOUSLY TO DEFACE, VANDALIZE, DAMAGE, OR DESTROY OR ATTEMPT TO DEFACE, VANDALIZE, DAMAGE, OR DESTROY ANY MONUMENT, FLAG, FLAG SUPPORT, MEMORIAL, STRUCTURE, OR FENCE LOCATED ON THE CAPITOL GROUNDS, AND PROVIDE A PENALTY FOR VIOLATIONS; AND PROVIDE A SEVERABILITY CLAUSE. [Emphasis added].

Conclusion

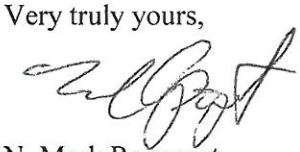
The Patriot's Point Development Authority is given broad authority to develop and improve Patriot's Point in Mount Pleasant. Accordingly, the PPDA established the Patriot's Point Naval and Maritime Museum. The Cold War Submarine Memorial was later dedicated to honor those who served on submarines during the Cold War and sacrificed themselves in defense of our country. We believe that the Legislature intended to cast the broadest possible construction upon S.C. Acts. No 292, including §10-1-

165. The Legislature's obvious purpose is to protect and preserved historic monuments and memorials, and to ensure that officially established and presently existing public monuments and memorials may not be removed or relocated. Op. S.C. Atty. Gen., December 13, 2004. Clearly, the World War II submarine memorial located on the site of the Cold War Submarine Memorial may not be removed or relocated. A better reading of the Act would be to also include the Cold War Submarine Memorial and other monuments and memorials erected on public property as a tribute to servicemen and servicewomen who serve and protect this country: past and present. In our judgment, such a reading of the statute is entirely reasonable in light of the specific context of the Act and intent of the Legislature. Any other reading of §10-1-165 to limit the meaning of the Act would be far too restrictive to the legislative mandate and render the underlying purpose of the Act meaningless. In addition, we note that Cold War submariners served during the Korean War and the Vietnam War. The Cold War Submarine Memorial, therefore, is as much a tribute to their service as it is dedicated to all submariners who served our country during the Cold War. Accordingly, it is the opinion of this Office that the Cold War Submarine Memorial may not be relocated, removed, disturbed, or altered.

Although we conclude that §10-1-165 would not appear to exclude the Cold War Submarine Memorial from the provisions, you may nevertheless want to seek legislative clarification. In addition, we cannot opine with certainty whether a court will necessarily concur with our opinion. Ultimately, clarification from the courts may be necessary to determine your question with finality. Ops. S.C. Atty. Gen., August 9, 2012; March 9, 2012.

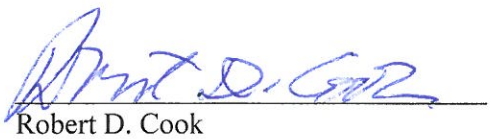
If you have any further questions, please advise.

Very truly yours,



N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General