



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

June 5, 2003

Jack M. Scoville, Jr., Esquire  
Georgetown County Attorney  
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Georgetown, South Carolina 29442

Dear Mr. Scoville:

You have requested an advisory opinion from this Office regarding the legality of an active licensed pilot for the Port of Georgetown being appointed as a member of the Georgetown Pilotage Commission (GPC). By way of background, you have indicated that licensed pilots do serve on the pilotage commissions for the Port of Charleston and the Port of Little River. You further indicate that you believe that the statute envisions the pilots serving on the Georgetown Pilotage Commission because there is a specific provision in the statute which prohibits a licensed pilot from being elected to the chairmanship of the GPC. You have asked how the State Ethics Act relates to this matter, particularly as to the general prohibition in the Act against a person serving on a board or commission that regulates the business with which he is associated.

**Law/Analysis**

The question of whether a licensed harbor pilot could serve on a Commission of Pilotage without violating the State Ethics Act was directly addressed in an advisory opinion issued by the South Carolina Ethics Commission<sup>1</sup> on December 18, 1991. SEC AO92-033. In that opinion, the Ethics Commission cites Section 8-13-730 of the South Carolina Code of Laws, which also is the statute applicable to our present discussion:

Unless otherwise provided by law, no person may serve as a member of a governmental regulatory agency that regulates any business with which that person is associated.

Section 54-15-40 of the Code of Laws mandates that one of the six members of the Charleston Pilotage Commission must be a pilot licensed for the Port of Charleston. The opinion

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<sup>1</sup> The General Assembly has limited the jurisdiction of the Ethics Commission to applicability of the State Ethics Act. S.C. Code Ann. §8-13-100 et seq.

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stated that this authorizing legislation would clearly place such an appointed pilot within the exception noted in the phrase "unless otherwise provided by law." Accordingly, the Ethics Commission determined that a representative of the Charleston Branch Pilots' Association would not be prohibited from serving on the Commission of Pilotage for the Port of Charleston because the statute specifically authorized, and in this case mandated, such a relationship. However, the opinion did warn that, even if though this relationship was authorized by statute, a pilot so appointed would have to comply with the provisions of Section 8-13-700, on matters affecting his personal economic interest, by providing a written statement describing the nature of each potential conflict of interest. S.C. Code Ann. §8-13-700(1) and (5).

This Office defers to the State Ethics Commission's interpretation with respect to this matter. Accordingly, if the relevant statute specifically authorizes a licensed pilot for the Port of Georgetown to serve on the Georgetown Pilotage Commission, then the general prohibition in Section 8-13-730 of the State Ethics Act will not be violated by such a relationship. Accordingly, with this background, we turn to the question of whether the General Assembly has specifically authorized a licensed pilot to serve on the GPC.

As you stated in your March 6, 2003 letter to the Georgetown County Council, the Georgetown Pilotage Commission was established by the General Assembly pursuant to S.C. Code Ann. §54-15-10 et seq., along with pilotage commissions for the ports of Charleston, Little River, and Port Royal. In Section 54-15-20, the membership and qualifications therefor for each commission are listed as follows:

The commissioners of pilotage of Little River consist of three persons, two of whom are or have been seafaring men and one of whom is a full branch pilot for Little River.

The commissioners of pilotage of Georgetown consist of six persons appointed as provided by Section 54-15-10, two of whom are or have been seafaring men. The director of the port of Georgetown is a member ex officio.

The commissioners of pilotage of Port Royal consist of five persons. They have jurisdiction over St. Helena, Port Royal, Calibouge Sound, and the South Carolina side of the Savannah River.

Section 54-15-30 further addresses the GPC specifically providing that:

[t]he board of commissioners of pilotage for the port of Georgetown shall from time to time, elect from among its body a chairman and a secretary. Such officers shall serve until their successors have been duly elected by the board of commissioners of pilotage. **But no branch or licensed pilot for the port of Georgetown shall be elected or serve as chairman of such board.** [emphasis added]

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A number of principles of statutory construction are relevant in ascertaining whether the Legislature intended for licensed pilots to be authorized to serve on the GPC. First and foremost, is the cardinal rule that the primary purpose in interpreting statutes is to ascertain the intent of the General Assembly. 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. Cola. 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). However, our Supreme Court has cautioned against an overly literal interpretation of a statute which may not be consistent with legislative intent. In Greenville Baseball, Inc. v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942), the Court recognized that:

[i]t is a familiar canon of construction that a thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter. It is an old and well established rule that the words ought to be subservient to the intent and not the intent to the words. Id., at 368-369.

Different statutes in pari materia, even if enacted at different times must be construed together as one system and as explanatory of each other. Fishburne v. Fishburne, 171 S.C. 408, 172 S.E. 426 (1934). Further, it is a general rule of interpretation with any statute that the Legislature is presumed to have intended not to have done a futile thing. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). See also Op. S.C. Atty. Gen., dated May 31, 2002.

Applying the foregoing principles to your question, it appears that the General Assembly contemplated the possibility that licensed pilots be eligible for service on the Georgetown Pilotage Commission. The only limitation which Section 54-15-20 places upon the GPC is that two of the six members must be "seafaring men." A licensed pilot certainly is encompassed by this terminology. Furthermore, Section 54-15-30 specifically prohibits licensed pilots from being elected chairman of the GPC. Sections 54-15-20 and 54-15-30 must be read in pari materia. Fishburne. It is unreasonable to assume that the General Assembly included this specific prohibition in Section 54-15-30, if it did not contemplate the possibility of and intend for licensed pilots of the Port of Georgetown to be allowed to serve on the GPC pursuant to Section 54-15-20. Moreover, it is well recognized that a cardinal rule of statutory construction is "expressio unius est exclusio alterius" or "the enumeration of particular things excludes the idea of something else not mentioned." Pa. Natl. Mut. Cas. Ins. v. Parker, 282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984). Therefore, this Office advises that such an appointment is specifically authorized by statute. Accordingly, the appointment would not be a per se violation of the State Ethics Act pursuant to the aforementioned opinion of the State Ethics Commission from December 18, 1991.

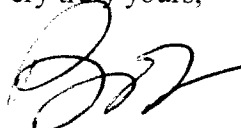
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**Conclusion**

In conclusion, it is the opinion of this Office that the General Assembly has authorized a licensed pilot to serve on the Georgetown Pilot Commission. This conclusion is consistent with a previous opinion of the State Ethics Commission which specifically dealt with a member of another pilotage commission. Thus, in view of the General Assembly's specific authorization, it would appear that such service on the GPC would not constitute a per se violation of the Ethics Act. However, in view of the fact that the Ethics Commission possesses primary authority with respect to any interpretation of the Ethics Act, it would be advisable to contact that agency as well with regard to this issue.

We would also advise, as has the Ethics Commission, that a pilot so appointed must comply with the requirements of § 8-13-700 regarding any potential conflicts of interest. In addition, the common law recognizes that "every public officer is bound to perform the duties of his office honestly, faithfully and to the best of his ability, in a manner so as to be above suspicion of irregularity, and to act primarily for the benefit of the public." O'Shields v. Caldwell, 207 S.C. 194, 35 S.E.2d 184 (1945). Such rule should also be complied with here. Only the courts, considering all the relevant facts and circumstances may consider whether this common law rule has been violated in a given instance. Again, with respect to any interpretation of the Ethics Act, as applied to this situation, the individual in question may wish to contact the Ethics Commission for additional guidance.

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General