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## STATE of SOUTH CAROLINA

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July 18, 2001

The Honorable Charles R. Sharpe  
Member, House of Representatives  
Box 652  
Wagener, South Carolina 29164

Dear Representative Sharpe:

You have asked that we clarify what is meant in our Informal Opinion to you dated November 3, 2000 by the phrase "body having oversight" of a particular historic monument or memorial.

### LAW / ANALYSIS

In an opinion to you, dated November 3, 2000, we commented upon Act No. 292 of 2000 (R-331), codified at S.C. Code Ann. Sec. 10-1-165. That statute makes it a misdemeanor for a person willfully and maliciously to deface, vandalize, damage, destroy, or to attempt to do so, any monument, flag, flag support, or memorial located on the Capitol grounds. In addition, Section 3 of the Act provides as follows:

(A) No 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.

(B) The provisions of this section may only be amended or repealed upon passage of an act which has received a two-thirds vote on the third reading of the bill in each branch of the General Assembly.

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The Honorable Charles R. Sharpe

Page 2

July 18, 2001

The Act took effect on July 1, 2000. Now raised is the question what is meant by that portion of Subsection (A) which states that "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?" That question is critical because it is stated in our earlier opinion to you that "[i]f the body having oversight with respect to a particular monument or memorial authorizes the placement of flags at that memorial, then such placement would fall within the protection of the Act." (emphasis added). Thus, in the context of the preservation of the numerous Confederate monuments and memorials located throughout South Carolina, the pivotal question becomes who is "the body having oversight?"

Several principles of statutory construction must be kept in mind in addressing this inquiry. First and foremost, in interpreting a statute, the primary purpose is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). An enactment should be given a reasonable and practical construction, consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 832 (1979). Words therein should be given their plain and ordinary meaning. First South Sav. Bank v. Gold Coast Associates, 301 S.C. 158, 390 S.E.2d 486 (Ct. App. 1990).

Furthermore, a court will reject the meaning of the words of a statute which lead to absurd consequences. Robson v. Cantwell, 143 S.C. 104, 141 S.E. 180 (1928). While the plain meaning and literal language rule normally is controlling, the real purpose and intent of the lawmakers must prevail over the literal import of the words actually used. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). The context of the statute must be examined as part of the process of determining the intent of the General Assembly. Hancock v. Southern Cotton Oil Co., 211 S.C. 432, 45 S.E.2d 850 (1948). The Court presumed that the Legislature intended by its action to accomplish something and not to do a futile thing. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964).

Based upon these foregoing tenets of interpretation, it is evident that the language of the provision in question, "public body responsible for the monument or memorial" must be broadly construed in this context. The Legislature's purpose was obviously to protect and preserve historic monuments. A principal aim of the statute is to insure that presently existing monuments, including those dedicated to service in the War Between the States, and which are located on property of the State or its political subdivisions may not be relocated, removed, disturbed or altered. In that context, the Legislature sought to insure that the body responsible for the monument or memorial is free to take "proper measures" and "exercise proper means for the protection, preservation, and care of these monuments, memorials, or nameplates." Accordingly, while the language of the Act is written in terms of a "public body" having oversight, it is evident that the term "public body" when used in the context of the preservation of and care for Confederate monuments, must necessarily include the several non-profit groups devoted to and whose recognized purpose is the preservation of Confederate heritage and history.

It is well established that the State may use non-profit corporations to carry out a valid public purpose. In OP. ATTY. GEN., Op. No. 93-44 (June 23, 1993), we noted that "... the courts of this State have looked favorably at the use of public funds with respect to non profit (eleemosynary) corporations serving public purposes ...." Indeed, the promotion of historical development is a valid public purpose. OP. ATTY. GEN., January 16, 1997.

Moreover, it should be acknowledged that a "public body" may, in certain situations, include non-profit groups which promote a public purpose and fulfill public functions. See, e.g., State v. Nicholls College Foundation, 564 So.2d 682 (La. 1990). While this use of the term "public body" is not always employed, it certainly is not unusual for the Legislature to do so.

Turning now to the background of the establishment of the many Confederate monuments in South Carolina, it is noteworthy that the placement of monuments and memorials honoring the Confederate sacrifices made during the War Between the States began shortly after the War's end. Private organizations like the United Confederate Veterans (U.C.V.), the Sons of Confederate Veterans and the United Daughters of the Confederacy played a major role in the establishment of these memorials and monuments all over the State. These groups raised funds and devoted considerable energy and effort to honor Confederate Veterans. One example of the seriousness and solemnity with which these monuments were placed in town squares, public parks and other public places was stated in the Greenwood Index on October 22, 1903. There, it was stated "Let us of this generation and of those yet to come, see in this marble shaft a daily reminder of that heroism and endurance which was yours in battle and in the trying after-battle days and may we learn the lesson it teaches, not a lesson of hostility or boasting, but the worth of duty." See, Seigler, A Guide To Confederate Monuments In South Carolina: "Passing The Silent Cup," pp. 15-16.

Over one hundred and seventy Confederate monuments and markers were erected throughout South Carolina. Id. at 13. Virtually all were presented to South Carolina towns and villages by private groups such as the United Daughters of the Confederacy, SCV or other similar groups devoted to the preservation of Confederate heroism and heritage. Typically, the particular political subdivision involved was not given legal title to the monument itself, but in cooperation with private heritage groups provided the real property upon which the monument rests. It is our understanding that the usual rule was that the particular city did not care for or maintain the monument, but such was done by private Confederate heritage groups. See, City of Abbeville v. S.C. Insurance Reserve Fund, 323 S.C. 60, 448 S.E.2d 579 (Ct. App. 1994). This important fact was obviously within the General Assembly's knowledge when it enacted Act No. 292 of 2000.

#### CONCLUSION

Accordingly, in our opinion, it would be far too restrictive a reading of the statute to limit the meaning thereof only to governmental bodies per se. To exclude the various Confederate heritage groups which often provide the day-to-day care and upkeep of these monuments would disregard legislative intent. Instead, we believe the better reading of the Act would be to include within the


The Honorable Charles R. Sharpe  
Page 4  
July 18, 2001

meaning of the phrase "body having oversight" those groups dedicated to and devoted to Confederate heritage and history.

In other words, when the General Assembly speaks of the "public body responsible for the monument or memorial," it is not alluding to particular individuals, but is including bona fide nonprofit groups such as the UDC, the SCV and other similar organizations which are devoted to the preservation of Confederate history and to honoring the Confederate men and women who gave their lives in service to their State.

This reading of the statute is, in our judgment, entirely reasonable in light of the specific context. Moreover, our interpretation herein recognizes that those bona fide groups, such as the UDC, SCV and other similar organizations which have sought to preserve Confederate and Southern heritage and history, possess a significant role as a "public body responsible for the monument or memorial," as referenced in Section 10-1-165(A).

Sincerely,

  
Charlie Condon  
Attorney General

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