



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

November 25, 1998

The Honorable William D. Witherspoon  
Member, House of Representatives  
111 Sherwood Drive  
Conway, South Carolina 29526

**Re: Informal Opinion**

Dear Representative Witherspoon:

You state that you have been contacted by a constituent who need clarification on the law regarding fishing licenses. Your constituent has spoken with several different people regarding this matter. You indicate that each person he has spoken with interprets this section differently. Thus, you seek an opinion regarding this provision.

**Law / Analysis**

S. C. Code Ann. Sec. 50-17-250 provides as follows:

[t]he department may deny issuance of any license or permits for commercial fishing equipment or activities to residents of any coastal state which denies the same privileges to South Carolina residents. The department may limit the type of fishing equipment used, seasons, and areas where nonresidents may fish in accordance with comparable limitations placed upon South Carolina fishermen by the nonresident's state."

On January 8, 1998, this Office had the occasion to review § 50-17-250. I am

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enclosing the Opinion for the benefit of your constituent's information. Therein, we referenced a number of case authorities and prior opinions of this Office concluding as follows:

[b]ased upon the foregoing authorities, it would appear that § 50-17-250 is constitutionally suspect. Such provision requires that where a nonresident's state charges South Carolina residents commercial license fees in excess of the amounts provided for like activities in South Carolina, "the nonresident must pay the same total license fees which his state charges South Carolina residents." The various authorities cited above would clearly indicate that such a provision would violate the Privileges and Immunities Clause.

However, this Office must presume the validity of this provision as it does with respect to any other statute enacted by the General Assembly. As stated in a recent opinion of this Office with respect to another statute, "[a] declaratory judgment or legislative clarification would be advisable to determine the constitutionality of this statute or to take corrective legislative measures. Until such legislative or judicial action is taken, however, it would appear that [the statute in question] should be followed." This same advice would be applicable here as well. Until the Legislature or the courts act or rule to the contrary, I must advise that the statute continue to be followed.

I note that your letter does not specify the interpretation of § 50-17-250 by the Department of Natural Resources with which your constituent is concerned. Let me say, however, that as a matter of policy this Office typically defers to the administrative interpretation by the agency charged with enforcement of the statute in question. As was emphasized in an earlier Opinion,

"construction of a statute by the agency charged with executing it is entitled to the most respectful consideration [by the courts] and should not be overruled absent cogent reasons."

Op. Atty. Gen., October 20, 1997, quoting Logan v. Leatherman, 290 S. C. 400, 351 S.E.2d 146, 148 (1986). The courts have stated that it is not necessary that the administrative

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agency's construction be the only reasonable one or even the reading the court would have reached if the question initially had arisen in a judicial proceeding. Ill. Commerce Comm. v. Interstate Commerce Commission, 749 F.2d 825 (D. C. Cir. 1984). Moreover, the agency interpretation which might render a statute constitutional is given particular deference. Cf. Henderson v. Evans, 268 S.C. 127, 232 S.E.2d 331 (1977).

Thus, we would need a specific question regarding § 50-17-250 in order to render advice to you. However, typically, so long as DNR's administrative interpretation was reasonable, this Office would defer to it.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General

RDC/ph  
Enclosure