

The State of South Carolina



Opinion No. 88-13
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Office of the Attorney General

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February 5, 1988

The Honorable Joseph J. Watson
Solicitor, Thirteenth Judicial Circuit
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Greenville, South Carolina 29601-2192

Dear Solicitor Watson:

In a letter to this Office a question was raised on your behalf as to the applicability of Section 55-3-50 of the Code to property owned by a political subdivision. Such provision states in part that "(t)he landing of an aircraft on the lands or waters of another without his consent is unlawful, except in the case of a forced landing." The question specifically asked was whether pursuant to Section 55-3-50 is it unlawful to land an aircraft on the lands or waters of a water commission reservoir owned by a political subdivision that is of restricted access for watershed and water purity preservation.

Your question was raised in part due to the holdings of the State Supreme Court in State v. Hanapole, 255 S.C.258, 178 S.E.2d 247 (1970) and In the Interest of Joseph B., 278 S.C. 502, 299 S.E.2d 331 (1983) which dealt with the construction of this State's trespass statute, Section 16-11-620 of the Code. Such statute prohibits trespass "into the dwelling house, place of business or on the premises of another person." In Hanapole, the Court held that Section 16-11-620 applies only to a trespass on private property. As a result, such provision was inapplicable to conduct at the Columbia Metropolitan Airport, which, as described by the Court, was owned by the Richland-Lexington Airport District, a political subdivision of this State, and which was, therefore, public property.

In the case of In the Interest of Joseph B., the Court ruled that Section 16-11-620 does, however, prohibit trespassing on public school property. While acknowledging its ruling in

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Hanapole, the Court referenced Section 16-11-530 of the Code which states:

(f)or the purpose of determining...whether or not there has been a trespass upon...(school)...property as this offense is defined in Section 16-11-600 and for all prosecutions under...other statutes of a like nature, the trustees of the respective school districts in this State in their official capacity shall be deemed to be the owners and possessors of all school property.

Noting that Section 16-11-530 was applicable to prosecutions for trespass under Section 16-11-620, the Court determined that for purposes of a trespass prosecution under the latter provision, public school property is "owned and possessed" by the particular school district trustees pursuant to Section 16-11-530. As described by the Court, "...a trespass upon school lands is a trespass 'on the premises of another'" as provided in Section 16-11-620.

Additionally, in the case of Herald Publishing Co., Inc. v. Barnwell, 291 S.C.4, 351 S.E2d 878 (1986), the State Court of Appeals dealt with the construction of Section 16-11-470 of the Code which states in part.

(i)t shall be unlawful for any person to be an eavesdropper or a Peeping Tom on or about the premises of another or to go about or upon the premises of another for the purposes of becoming an eavesdropper or a Peeping Tom.

In its decision, the Court held that such statute was inapplicable to individuals who were on public property and not "on or about the premises of another."

Consistent with Section 55-3-50 is the statement that "(o)rdinarily, the landing of a plane or other aircraft upon the premises of another without any contractual or prescriptive right to do so constitutes a trespass." 8 Am.Jur.2d, Aviation Section 8 p.347. However, as described by you, the water commission reservoir is owned by a political subdivision. I am unaware of any statute similar to Section 16-11-530 noted above which states that such a water commission reservoir is "owned or possessed" by a particular body for purposes of determining whether a trespass has occurred. Moreover, as shown by the

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decision in Herald Publishing, the courts have not restricted the inapplicability to public property of the phrase "premises of another" to just trespassing cases. Instead, such phrase as used in the statute prohibiting eavesdropping was determined to be inapplicable to public property.

Referencing the above, it appears that the provision of Section 55-3-50 prohibiting the landing of aircraft on lands or waters of another should be construed as being inapplicable to public property. Therefore, such provision would appear to be inapplicable to the landing of an aircraft on the lands or waters of a water commission reservoir, which, as described by you, is owned by a political subdivision.

If there is anything further, please advise.

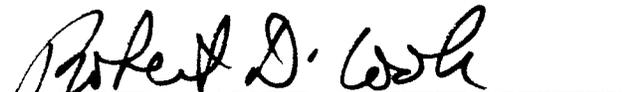
Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY



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