

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. ~~88-53~~ 454 July 14, 1988

SUBJECT: Taxation and Revenue - Expenditure Of That Part Of The Gasoline Tax Allocated For Water Recreational Resources.

SYLLABUS: Monies in the water recreational resources fund should not be appropriated to the Lake Murray Tourism and Recreational Association to be expended by the Association to promote Lake Murray.

TO: Honorable Ryan C. Shealy, Chairman
Lexington County Legislative Delegation

FROM: Joe L. Allen, Jr. *JLA*
Chief Deputy Attorney General

QUESTION: Can funds provided by Section 12-27-390 for water recreational resources be appropriated to the Lake Murray Tourism and Recreational Association?

APPLICABLE LAW: Section 12-27-390, South Carolina Code of Laws, 1976, as amended.

DISCUSSION:

Section 12-27-390 provides for the allocation of a portion of the gasoline tax levied by Section 12-27-230 to a "special water recreational resources fund." The fund is to be expended

subject to the approval of a majority of the county legislative delegation, including a majority of the resident senators, if any, for the purpose of water recreational resources.

The question is thus whether an appropriation to the association presumably to promote Lake Murray is for "water recreational resources." The statute does not define the phrase and hence we look to other authorities.

"Recreation" is defined in Webster's New Collegiate Dictionary to mean:

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A recreating, refreshment of strength and spirits after toil; diversion or a mode of diversion; play.

The same authority defines "resource" to be:

A new or a reserve source of supply or support. Available means; computable wealth in money, property, products, etc.; immediate and possible sources of revenue. Means of resort in exigency; expedient, stratagem, etc.; as, her usual resource was a smile. Possibility of relief or recovery;--in without resource. Skill in meeting a situation, rising to an occasion, etc.; resourcefulness.

Black's Law Dictionary, Fourth Edition, defines "resources" to mean:

Money or any property that can be converted into supplies; means of raising money or supplies; capabilities of raising wealth or to supply necessary wants; available means or capability of any kind. *Shelby County v. Tennessee Centennial Exposition Co.*, 96 Tenn. 653, 36 S.W. 694, 33 L.R.A. 717. *Cerenzia v. Department of Social Security of Washington*, 18 Wash. 2d 230, 138 P.2d 868, 871.

The expenditure of the fund is restricted and in our view requires more than the promotion of an existing resource. "Resource" as the term is here used means the physical property from which the water recreation is obtained or provided. It imports the acquisition or improvement of the actual water resource for recreational purposes.

Further support for this conclusion is found in the longstanding administrative interpretation of the term "water recreational resources". It is understood that the South Carolina Department of Wildlife and Marine Resources has interpreted the term to mean a physical improvement to naturally occurring bodies of water and associated wetlands. This interpretation is entitled to weight and should not be negated without cogent reasons. Emerson Electric Co. v. Wasson, 287 S.C. 394, 339 S.E.2d 118.

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Etiwan Fertilizer Co. v. South Carolina Tax Commission, 217
S.C. 354, 60 S.E. 2d 682.

The General Assembly has additionally provided a separate revenue source for the promotion of tourism. Such lends support to the conclusion that the General Assembly did not intend this fund to be so expended.¹

CONCLUSION:

Monies in the water recreational resources fund should not be appropriated to the Lake Murray Tourism and Recreational Association to be expended by the Association for the promotion of Lake Murray.

JLAJr/jws

¹This opinion does not address the issue of the prohibition contained in Article X, Section 11 of the South Carolina Constitution. The section provides in part that

The credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association, corporation, . . .

It was not necessary to address this issue because in our view the statute does not authorize the expenditure and hence there would be no constitutional issue.