

The State of South Carolina



Office of the Attorney General

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September 9, 1986

Donald Williams, Esquire
City Attorney, City of Isle of Palms
P. O. Box 1237
Charleston, South Carolina 29402

Dear Mr. Williams:

In a letter to this Office Isle of Palms Mayor Carmen Bunch questioned the authority of the City of Isle of Palms to ban swimming, fishing and wading in Breach Inlet below the low water mark. As described in your letter which followed up on the request of Mayor Bunch, Breach Inlet is a navigable body of water between Sullivan's Island and the Isle of Palms. In such letter you provided your opinion of the City's authority in such regard citing Section 5-7-140, which as you noted, was amended by Act No. 508 enacted this year, and Section 5-7-150 of the Code. Such provisions which are statutory bases of limited authority for municipalities to exercise police jurisdiction over certain bodies of water, state respectively:

(f) or the purpose of maintaining proper policing and to provide proper sanitation, the police jurisdiction and authority of any municipality bordering on the high-tide line of the Atlantic Ocean or the high-water mark of any other navigable body of water is extended to include all that area lying between the high-tide line and the low-tide line or between the high-water mark and the low-water mark. These areas, including areas bordering on navigable bodies of water running through a municipality or contained wholly within the municipality, are subject to all the ordinances and regulations that

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may be applicable to the areas lying within the corporate limits of the municipality, and the municipal courts have jurisdiction to punish individuals violating the provisions of the municipal ordinances where the misdemeanor occurred in the areas defined in this section.

Every coastal municipality shall have criminal jurisdiction over piers and other structures and the waters of the ocean within one mile of those portions of the strand within the municipal limits. Corporate limits of the municipality shall be extended in a straight line from the strand into the ocean from the point where the municipal limits of the municipality reach the high water mark of the strand.

In your letter, you indicated that it was your conclusion that the City of Isle of Palms does not have authority pursuant to Section 5-7-140 to enact an ordinance affecting the area below the low water mark of Breach Inlet. In reaching such conclusion you cited a prior opinion of this Office, 1971 Op. of the Atty. Gen. No. 3157, which concluded that the jurisdiction of the Isle of Palms police department extends only to the low water mark of Hamlin Creek and, therefore, the municipality does not have jurisdiction over the navigable waters of such tidal stream. As noted by you, the opinion particularly stated:

(t)he general rule is that when a municipality is bounded by a tidal, navigable water course its territorial limits extend only to the low water mark.

Other opinions of this Office have reached conclusions consistent with the above determination. See: Opinions of the Attorney General dated March 27, 1985; January 16, 1985; September 7, 1983; December 18, 1979. Therefore, I am in agreement with your conclusion that the City of Isle of Palms is not authorized pursuant to Section 5-7-140 to enact an ordinance which would ban swimming, fishing, and wading in Breach Inlet below the low water mark.

Referencing Section 5-7-150, you concluded that such provision appears to grant the City of Isle of Palms authority to enact an ordinance regulating activities in Breach Inlet.

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However, in a previous opinion of this Office dated August 5, 1961, a copy of which is enclosed, it was concluded that Breach Inlet is not a part of the Atlantic Ocean and, therefore, was not subject to the provisions now codified as Section 5-7-150.^{1/} It is the policy of this Office that a previous opinion remains valid unless found to be clearly erroneous. Such a conclusion cannot be made here. Therefore, Section 5-7-150 would not authorize the enactment by the City of Isle of Palms of an ordinance banning fishing, swimming, or wading in Breach Inlet.

While apparently present statutory provisions do not authorize the enactment of an ordinance regulating activities in Breach Inlet, in light of the obvious dangerous situation which currently exists at the Inlet, consideration could be given to seeking legislation which would authorize such an ordinance. Of course, any such legislation must avoid constitutional problems such as the provisions of Article III, Section 34 prohibiting special laws.

If there is anything further, do not hesitate to contact me.

Sincerely,

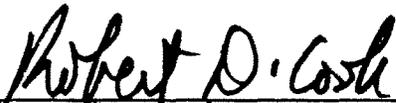


Charles H. Richardson
Assistant Attorney General

CHR/an

Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions

^{1/} Since the 1961 opinion was issued, the provision now codified as Section 5-7-150 has been amended. However, the only significant change in such amendment was the substitution of one mile for the one-half mile limitation provided in the previous provision. Such a change, however, would not affect the earlier opinion of this Office.