

1983 WL 182062 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 21, 1983

**\*1 Re: Voting Rights in Upcoming Marketing Order Referendum for Peach Producers**

Larry Yonce  
President  
S.C. Peach Council & Promotion Bd., Inc.  
Post Office Box 11280  
Columbia, South Carolina 29211

Dear Mr. Yonce:

You have asked for an opinion regarding voting rights in the upcoming marketing order referendum for peach producers. Your three questions and the answers thereto are set out separately below:

1. Where a corporation or partnership owns or leases land which is used in the production of peaches in commercial quantities, will the stockholders or partners vote separately as 'producers' or will the legal entity itself vote?

The Agricultural Commodities Marketing Act (§ 46-17-10, *et seq.*, SOUTH CAROLINA CODE OF LAWS [1976]) provides for producer referenda to determine if sufficient support exists among producers for the establishment of marketing orders. Each affected producer is entitled to vote with his acreage being factored in by use of the statutory formula. The Act defines 'producer' as 'any person engaged in the business of producing any agricultural commodity for market in commercial quantities.' In light of this definition the question becomes whether the legal entities themselves are 'producers' as defined by the Act. Of course, 'commercial quantities' will be defined in the marketing order itself. [Section 46-17-40\(K\)\(CODE\)](#).

At first blush it may appear that 'person' as used in the above-cited definition might exclude legal entities. However, it is well settled that a corporation has the same rights under the law as a natural person. [Section 2-7-30, CODE](#). [C & A Railroad Co. v. Gibbes](#), 125 S.Ct. 255, 142 U.S. 386, 35 L.Ed. 1051 (1892); 18 C.J.S. 'Corporations' § 1. Therefore, the corporation is the 'person' engaged in the act of producing peaches within the meaning of the Agricultural Commodities Marketing Act. For this reason it is the opinion of this office that a corporation owning or leasing land used in the production of peaches in commercial quantities will have one vote in the upcoming referendum. The stockholders of that corporation would not have a separate right to vote.

A partnership is defined as 'an association of two or more persons to carry on as co-owners of a business for profit,' [Section 33-41-210, CODE](#), and as a 'contract of one or more competent persons to place their money, efforts, labor and skill, or some or all of them, in lawful commerce or business.' [Stephens v. Stephens](#), 213 S.C. 525, 531, 50 S.E.2d 577 (1948). In a partnership, there is a community of interest in capital or property and in control and management. [Wyman v. Davis](#), 223 S.C. 172, 74 S.E.2d 694 (1953). In South Carolina the property brought into the partnership by the partners or acquired in the name of the partnership is partnership property. [Section 33-41-230, CODE](#). Also, each partner acts as the agent of the partnership in conducting the partnership business. [Section 33-41-310, CODE](#). A third party engaged in business with a partnership (*i.e.*, entering into a contract) deals with the partnership as an entity distinct from its members. [Chitwood v. McMillan](#), 189 S.C. 262, 1 S.E.2d 162 (1939). A partnership, as an association, is given rights as a person by [Section 2-7-30, CODE](#). The partnership itself would be the producer, as it would be the 'person engaged in the business of producing any agricultural commodity' under [Section 46-7-40\(j\), CODE](#). For these reasons, the partnership as an entity, rather than the individual partners, would be entitled to one vote. The partners would not have a separate right to vote. <sup>1</sup>

\*2 2. Who would have voting rights in the upcoming referendum if the corporation or partnership owned only the packing shed and the partners or stockholders individually owned or leased the land producing the peaches?

Again, the answer is found in the definition of 'producer' found in the Agricultural Commodities Marketing Act. If the physical act of producing the peaches in this scenario is a separate and distinct function from the packing of those peaches by the corporation or partnership, then the individual partners or shareholders will be entitled to one vote each. The corporation or partnership would not be entitled to vote.

3. Who will have voting rights where the corporation or partnership owns or leases land producing peaches in commercial quantities and the partners or stockholders own other land producing peaches in commercial quantities?

Applying the definition discussed above, it becomes evident that both the legal entity and the principals thereof are engaged in the physical act of producing the affected commodity. Therefore, the corporation or partnership would be entitled to one vote. The stockholders or partners who actually own land producing peaches in commercial quantities are entitled to one vote each.

I trust that the above has sufficiently answered your questions. If not, I will be available to consult with you before the referendum. In closing, I would emphasize that references in this opinion to persons or legal entities possessing voting rights in the upcoming referendum were made under the assumption that such persons or legal entities actually produced peaches in commercial quantities as defined by the marketing order in the final form approved by the Agriculture Commission and that such production was within the qualification period which is to be set by the Agriculture Commission.<sup>2</sup>

With kind regards,

Clifford O. Koon, Jr.  
Assistant Attorney General

#### Footnotes

- 1 It should be noted that a partnership is not considered such an entity for all purposes. Cases expressing the contrary view include [Marvil Properties v. Fripp Island Development Corporation](#), 273 S.C. 620, 258 S.E.2d 106 (1979); [White v. Jackson](#), 252 S.C. 274, 166 S.E.2d 211 (1969); and [Whitfield v. Hovey](#), 30 S.C. 117, 8 S.E. 840 (1889).
- 2 This Opinion addresses only the questions raised about the method of voting and does not address any additional problems which may be raised by the Act.

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