



ALAN WILSON
ATTORNEY GENERAL

September 12, 2024

Sterling M. Busbee, Esq.
Haynesworth Sinkler Boyd, P.A.
Post Office Box 340
Charleston, SC 29402

Dear Ms. Busbee:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

On behalf of the South Carolina Conservation Bank (the “Bank”), we request additional guidance and confirmation regarding administration of The Working Farmland Protection Fund. S.C. Code Ann. § 48-59-150 (the “Act”).

It is our understanding the qualifications for an “eligible trust fund recipient” are intended to follow the same definitions and qualifications as the Internal Revenue Service for purposes of defining farming income to calculate the fifty-percent derivation requirement. Please confirm that all income from farming reported on Schedule F of a taxpayer’s Form 1040, including amounts received from cultivating, operating or managing a farm for gain or profit, as an owner or tenant, may be included as income derived from farmland.

Additionally, please confirm the phrase “interests in farmland in which a landowner derives at least fifty percent of his income,” as used in Subsection (B) of the Act, is intended to be broadly construed. It is our understanding the intent of the Act is to preserve properties actively engaged in the business of farming. It is our interpretation that if a landowner owns or otherwise uses multiple parcels for farming operations, the fifty-percent income threshold does not apply to each parcel individually, but rather applies to the landowner’s operations as a whole.

For example, an individual (“Farmer A”) owns or leases four separate parcels of farmland, each generating \$50,000 in income per year. Farmer A additionally makes \$50,000 per year working a part-time job. Farmer A would not qualify as an eligible trust fund recipient regarding any one of the separate parcels, but does derive at least fifty percent of his income for the year from farming. It is our interpretation and understanding, that the intent of the Act is to include Farmer A, and similarly situated persons, as “eligible trust fund recipients.”

Law/Analysis

It is this Office’s opinion that the income requirement in South Carolina Code § 48-59-150(B) should be interpreted to apply to a landowner’s total farmland holdings to determine whether the income percentage threshold is satisfied, rather than considering each parcel separately. As a matter for first impression, this opinion will interpret section 48-59-150 according to the rules of statutory construction. When interpreting a statute, the primary goal is to determine the General Assembly’s intent. See Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) (“The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible.”). Where a statute’s language is plain and unambiguous, “the text of a statute is considered the best evidence of the legislative intent or will.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Further, “[a] statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers.” State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh’g denied* (Aug. 5, 2015). With these principles in mind, this opinion will next look to specific provisions within the text of section 48-59-150 to guide its analysis.

Subsection (B) states, “The Working Farmland Protection Fund must be used by the bank only for the purpose of awarding grants to eligible trust fund recipients for the purchase of interests in farmland in which a landowner derives at least fifty percent of his income.” *Id.* (emphasis added). Initially, we note that “farmland” is a statutorily defined term within Chapter 59 of Title 48 for all statutes related to the South Carolina Conservation Bank Act. “Farmland” is defined to mean “land used for the production of food, fiber, or other agricultural products.” S.C. Code § 48-59-30. Neither this definition nor the plain language of subsection (B) use the terminology “parcel” or “tract” in reference to farmland. Rather, farmland is described in relation to its productive use and a landowner’s income. Therefore, if a landowner owns farmland and derives income therefrom, it would be reasonable to interpret the statute to consider those lands collectively when determining whether the threshold income percentage is satisfied.

The express purpose of the Legislature in establishing the Fund was to “provid[e] permanent protection to working farmland properties whose continued availability to commercial agricultural businesses is essential to the long-term future of the economic sector.” S.C. Code §

48-59-150(A). Moreover, the criteria the Bank is directed to employ when evaluating applications for grants from the Fund include consideration of the landowner's authority to "to make the subject farmland available via lease or transfer of the protected property to another farmer or other farmers." S.C. Code § 48-59-150(C)(1). Given the purpose of protecting working farmland and that the listed criteria expressly contemplate a landowner's authority to lease to other farmers, it is this Office's opinion that a court would likely find legislative intent to include income derived from farmland through direct operations of the landowner as well as income derived through leasing the property to another farmer or farmers within the calculation to determine the threshold income percentage.

Conclusion

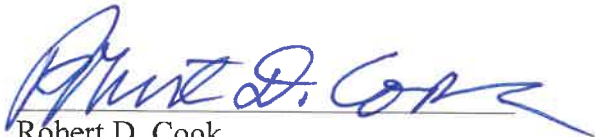
As is discussed more fully above, it is this Office's opinion that the income requirement in South Carolina Code § 48-59-150(B) should be interpreted to apply to a landowner's total farmland holdings to determine whether the income percentage threshold is satisfied, rather than considering each parcel separately. Further, it is this Office's opinion that a court would likely find legislative intent to include income derived from farmland through direct operations of the landowner as well as income derived through leasing the property to another farmer or farmers within the calculation to determine the threshold income percentage.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew Houck", with a long horizontal flourish extending to the right.

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook", with a long horizontal flourish extending to the right.

Robert D. Cook
Solicitor General