7651 Library

The State of South Carolina
# OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

February 24, 2004

Marvin N. Davant, Executive Director
South Carolina Conservation Bank
Post Office Box 167
Columbia, South Carolina 29202

Dear Mr. Davant:

You seek an opinion regarding funds accruing to the South Carolina Conservation Bank. By way of background, you provide the following information:

> [t]he South Carolina Conservation Bank Act was passed by the General Assembly and signed into law by the Governor in April, 2002. This law is codified under Section 48-59-10 S.C. Code of Laws.
>
> Section Three of this Act funds the South Carolina Conservation Bank by crediting the South Carolina Bank Trust Fund with twenty-five cents of the one-dollar thirty cent state deed recording fee effective July 1, 2003.
>
> Section Four of this Act was an amendment to Section Three to change the effective date of the deed recording fee transfer to July 1, 2004.
>
> Since the passage of the Act the South Carolina Conservation Bank and its Board have been granted State Agency status and has been operating on private, dedicated funds. There has not yet been any transfer of revenue or appropriated funds from the State to the Bank.
>
> Section Five of this Act states: "In a fiscal year when the General Assembly in the annual general appropriations act provides less appropriations than what was provided the previous year to at least one-half of the State agencies or departments contained therein the act or in any year when the Budget and Control Board orders across the board cuts to state agencies and departments in the manner provided by law, no further transfer of deed recording fees or other appropriated funds, state or local, may be credited to the trust fund for the fiscal year or the balance of the fiscal year, but existing balances in the trust fund may be used as provided by Chapter 59 of Title 48 of the 1976 Code.

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, S.C. 29211-1549 • TELEPHONE: 803-734-3970 • FACSIMILE: 803-253-6283

Legislative Library

Currently the Conversation Bank has no funds and is not funded until July 1, 2004. I have reviewed this Section at length and have discussed it with Buford Mabry, legal counsel for the SCDNR.

The Section stipulates that no further transfer can occur at that time which contemplates that the Bank would have already received some level of funding.

It is our opinion that beginning July 1, 2004 the Bank should begin accruing funds unless and until the Budget and Control Board acts to cut funding across the board.

It is the request of the South Carolina Conservation Bank Board that your office review this matter and give us your opinion if our interpretation is correct. ...

**Law / Analysis**

It is the opinion of this office that your interpretation is correct.

In addressing your question, several principles of statutory construction are relevant to your inquiry. First and foremost, is the fundamental principle of construction which is to ascertain and give effect to the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). All rules of statutory interpretation are subservient to the one that legislative intent must prevail if it can reasonably be discovered in the language used. Clearly, the legislative wording must be construed in light of the General Assembly's intended purpose. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). In essence, the statute as a whole must receive a reasonable, practical and fair interpretation consistent with the purpose, design and policy of the lawmakers. Caughman v. Columbia Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948).

Moreover, the legislation's words and phraseology must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or expand the operation of the statute. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). The plain meaning of the statute cannot be contravened. State v. Leopard, 349 S.C. 467, 563 S.E.2d 342 (2002).

Furthermore, a statute is to be construed with common sense to avoid unreasonable consequences. U.S. v. Rippetoe, 178 F.2d 735 (4th Cir. 1950). A sensible interpretation, rather than one which leads to irrational results, is always warranted. State ex rel. McLeod v. Montgomery, supra.

Applying these general principles of statutory interpretation, we are in agreement with your construction of the new Conservation Bank law. First of all, by the clear terms of the statute (Section 4), transfers of state deed recording fees to the South Carolina Conservation Bank Trust Fund "do not begin until July 1, 2004." Secondly, Section 5 of the Act expressly speaks of certain future

contingencies which might occur after July 1, 2004 – the date upon which the transfers of a portion of the state deed recording fee are to begin. Section 5 provides that "[i]n a fiscal year when the General Assembly in the annual appropriations act provides less appropriations than what was provided for the previous year to at least half of the state agencies or departments ... or in any year when the Budget and Control Board orders across the board cuts to state agencies and departments ..., no further transfer of deed recording fees or other appropriated funds, state or local, may be credited to the trust fund ...." (emphasis added). In other words, these conditions do not become applicable immediately, but are to be deferred until sometime in the future, if at all.

It is well recognized that the term "further" is not a word of strict legal or technical import, and may be used to introduce negation or qualification of some precedent matter. When used as an adverb, the term "further" generally means "additional." Hollman v. Hollman, 264 P. 289, 290, 88 Cal.App. 748 (1928).

Moreover, as the courts have recognized, it is not unusual that the effective date or a particular provision of a statute may be postponed until some future time or some future event. See, U.S. v. Thompson, 687 F.2d 1279 (10th Cir. 1979). In this regard, courts have stated that "while most laws are 'complete when passed, they sleep until the contingency contemplated sets them in motion.'" State of N.Y. v. Strong Oil Co., 105 Misc.2d 803, 433 N.Y.S.2d 345 (1980). See also, City of Schenectady v. State of N.Y., 80 Misc.2d 223, 363 N.Y.S.2d 76 (1975).

In this instance, whether either or both of the contingencies described in Section 5 of the Act become effective can only be determined after the transfer of a portion of state deed recording fees to the Conservation Bank has begun on July 1, 2004, as mandated by Section 4. By use of the word "further," the Legislature has prescribed that deed recording fees must first be transferred into the Trust Fund – beginning July 1, 2004 – before any cessation of such transfers may occur upon the happening of the contingencies set forth in Section 5.

**Conclusion**

Accordingly, it is our opinion that beginning July 1, 2004, the Bank should begin accruing funds unless and until the Budget and Control Board acts to cut funding across the board after such time or unless or until the Legislature makes the described budget cuts beginning in the 2005-2006 budget.

Yours very truly,

Henry McMaster

HM/an