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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

January 15, 2004

Buford S. Mabry, Jr., Chief Counsel
South Carolina Department of Natural Resources
Post Office Box 167
Columbia, South Carolina 29202

Dear Mr. Mabry:

You have requested an opinion regarding the expenditure of the Water Recreational Resources Fund (the Fund), which is administered by the Department of Natural Resources (DNR). You have included your memorandum dated April 8, 2003 to the Director of DNR. Therein, you concluded that the usage of Fund proceeds to purchase watercraft, as recommended by a county legislative delegation, is outside the parameters of "water recreational resources" as contemplated in S.C. Code Ann. Section 12-28-2730. This statute provides that DNR may "acquire, create, or improve water recreational resources."

You indicate that the General Assembly has defined "water recreational resources" in 2002 amendments to § 12-28-2730(B) as "public waters which are naturally occurring or which provide habitat for fish, aquatic animals, or waterfowl and which must provide public recreation opportunities." In addition, you have referenced a previous opinion of this Office, Op. S.C. Atty. Gen., Op. No. 88-53 (July 14, 1988), which advised that the expenditure of the Water Recreational Resources Fund "is restricted ... and that the term 'resource' means that the physical property from which the water recreation is obtained or provided." You have also cited a 1982 statement offered by the State Auditor which stated that "these funds should be used for permanent improvement."

Based upon these authorities, it is your conclusion that DNR's expenditure of Fund proceeds to purchase watercraft is not authorized by state law. You have now requested this Office's opinion as to these conclusions. We concur in your analysis as explained in the April 8, 2003 memorandum.

Law / Analysis

Section 12-28-2730 was last amended by Act No. 187 of 2002. This amendment was enacted as a result of the South Carolina Supreme Court's decision in Knotts v. S.C. Department of Natural Resources, 348 S.C. 1, 558 S.E.2d 511 (2002), which struck down the prior version of the statute as a violation of separation of powers. Pursuant to the previous version, the legislative delegation possessed the authority to approve or reject any expenditure of the Fund by DNR. See, 348 S.C.,

Pleasant Knotts

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supra at 4. In the Court's view, this legislative exercise of executive power violated Article I, § 8 of the South Carolina Constitution which requires the separation of legislative, executive and judicial powers. Supra at 6.

As a result, the General Assembly rewrote § 12-28-2730. The primary change in the law was to bestow upon DNR the ultimate control over expenditures from the Fund. Rather than being given authority over these expenditures, the delegations may now only make recommendations as to how the Fund is allocated by DNR. However, the statute directs DNR to give those recommendations primary consideration. As amended, § 12-28-2730 provides in pertinent part as follows:

> (A) One percent of the proceeds from thirteen cents of the gasoline tax imposed pursuant to this chapter must be transmitted to the Department of Natural Resources for a special water recreational resources fund in the State. All balances in the fund must be carried forward annually so that no part of it reverts to any other fund.
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> (B) The fund must be apportioned based upon the number of registered boats or other watercraft in each county and expended by the department to acquire, create, or improve water recreational resources. As used in this section, "water recreational resources" means public waters which are naturally occurring or which provide habitat for fish, aquatic animals, or waterfowl and which must provide recreational opportunities. These funds may be used to promote activities that take place on the water for recreation provided that no more than ten percent may be used for this purpose beginning July 1, 2003.
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> (C) Each county delegation may make recommendations to the South Carolina Department of Natural Resources for projects to acquire, create, or improve water recreational resources. The department must give these recommendations primary consideration over any other projects.

In answering your question, a number of principles of statutory construction are pertinent. The primary objective in construing statutes is to determine and effectuate legislative intent if it is at all possible to do so. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). A statute must receive a practical, reasonable, and fair interpretation consonant with the purpose, design and policy of the lawmakers. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Words used must be given their plain and ordinary meaning without resort to subtle or forced construction either to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1990).

Furthermore, it is well established that the meaning of a statute should not be sought in any single section but should be sought in all parts of the statute together in relation to the end intended by the statute. DeLoach v. Scheper, 188 S.C. 21, 198 S.E. 409 (1938). All parts of a statute must be

given effect, State ex rel. McLeod v. Nessler, 273 S.C. 371, 256 S.E.2d 419 (1979), and harmonized with one another to render them consistent with the general purpose of the act. Crescent Mfg. Co. v. Tax Commission, 129 S.C., 480, 124 S.E. 761 (1924). When the Legislature has expressed its intention in one part of an act, it must be presumed that such intention is applicable to all parts. State v. Sawyer, 104 S.C. 342, 88 S.E. 894 (1916).

As you point out in your memorandum to Mr. Frampton, the new legislative definition of "water recreational resource" replicates the interpretation recognized in previous opinions of this Office. In an opinion dated March 12, 1997, we opined that the Fund could not be used to provide public swimming lessons. There, we reasoned that such expenditures were not in accordance with § 12-28-2730 for the following reasons:

> The word "resources" is commonly defined as
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> > money or any property that can be converted into supplies; means of raising money or supplies; capabilities of raising wealth 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.
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> Blacks Law Dictionary, Fourth Edition. The common meaning of "resource" is "[s]omething that can be used for support or help. 2. An available supply that can be drawn on when needed." Thus, an interpretation of "water recreation resources" which is limited to "permanent improvement" or importing the "acquisition or improvement of the actual resource for recreational purposes" is a reasonable construction.
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> Secondly, in an Opinion dated October 7, 1987, (as well as in Opinion No. 88-53), we recognized that "[t]he Wildlife Department has maintained for some time that 'purpose of water recreational resources' is served by actual physical improvements to water resources, such as boat ramps and connected facilities." We noted that "[t]his interpretation appears to be in accord with the literal language of § 12-27-390 ... ." As our Court emphasized in State v. Salmon, 279 S.C. 344, 306 S.E.2d 620 (1983) where the terms of a statute are clear and unambiguous, they must be applied according to their literal meaning.
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> Third, the Department of Natural Resources' longstanding interpretation has been consistently viewed by this Office as the correct one. When the Legislature fails to modify a long-standing agency interpretation which has been found to be correct by this Office on a number of occasions, the courts will adopt this construction as the prevailing law.

> Finally, it is also well established that "[a]n officer may pay out public money only in the manner prescribed by law." McQuillin, Municipal Corporations, § 12.217. Accordingly, it is my opinion that Dr. Timmerman's letter correctly states the law and that this fund may not be used for the desired purpose expressed in your letter, without a change in the law. As I understand it, a proviso in the Budget Bill recently passed the House which required DNR to transfer a certain portion of this Fund to Richland County for the renovation of the Lake Murray Tourism Visitor Center. You may thus wish to pursue a similar legislative remedy with respect to your proposed project as well.

It is true that in amending § 12-28-2730 by Act No. 187 of 2002, the General Assembly provided that "[t]hese funds may be used to promote activities that take place on the water for recreation provided that no more than ten percent of each annual allocation may be used for this purpose beginning July 1, 2003." However, this language must be read in conjunction with the requirement contained in the very same paragraph that "[t]he fund must be ... expended by the department to acquire, create,, or improve water recreational resources ... ." As noted, the Act now defines this term as "public waters which are naturally occurring or which provide habitat for fish, aquatic animals, or waterfowl and which must provide recreational opportunities." Reading the amended version of § 12-28-2730, we thus agree with your conclusion in your memorandum of April 8, 2003 "that any recommended project from the county delegation must be for the acquisition of, the creation of or the improvement of water recreational resources. Improving water recreational resources is limited to those projects which make better or increase the value of the public waters of the State."

As you note, and as documented above, "[t]he new legislative definition of water recreational resource follows the interpretation of both the Office of the State Auditor and the Office of the Attorney General and the longstanding interpretation by [DNR] ... concerning the use of the Water Recreational Resources Fund." It is generally recognized that longstanding administrative interpretations are not overturned absent cogent reasons. Op. S.C. Atty. Gen., October 20, 1997, citing Logan v. Leatherman, 290 S.C. 400, 351 S.E.2d 146, 148 (1986). Moreover, it is well settled that "where an administrative interpretation of a statute has been applied for a number of years without being changed by the Legislature despite amendments to the statute, a presumption is created that such interpretation is correct." Op. S.C. Atty. Gen., November 3, 1983, citing Ryder Truck Lines, Inc. v. South Carolina Tax Commission, 248 S.C. 148, 149 S.E.2d 435, 437 (1966); Etiwan Fertilizer Co. v. South Carolina Tax Commission, 217 S.C. 354, 60 S.E.2d 682, 684 (1950). This rule is particularly applicable when the Legislature does not change or alter the law in light of an existing Opinion of the Attorney General. See, Op. S.C . Atty. Gen., July 23, 1999.

Here, there are no cogent reasons to change or modify this Office's previous interpretations of § 12-28-2730 in the opinions referenced above. Indeed, it appears that the General Assembly has, in the most recent amendments by Act No. 187 of 2002, incorporated these interpretations as part of the statute.

Conclusion

Accordingly, we concur in your interpretation of § 12-28-2730 that "any recommended project from the county delegation must be for the acquisition of, the creation of or the improvement of water recreational resources." Likewise, we, therefore, concur that § 12-28-2730 does not authorize expenditures from the Water Recreational Resources Fund for the purchase of watercraft.

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General