

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

December 6, 2005

The Honorable Ralph Norman
Member, House of Representatives
P. O. Box 36518
Rock Hill, South Carolina 29732

Dear Representative Norman:

In a letter to this office you forwarded an opinion request from Mr. Forrest Wilkerson who has questioned the powers and authority of the Lake Wylie Marine Commission. At Mr. Wilkerson's suggestion, I contacted Ms. Linda Pilcher to clarify the question asked. In our telephone conversation she raised the question of what agency has the authority to address the problems at Lake Wylie dealing with speeding boats and other nuisances on the lake.

Pursuant to S.C. Code Ann. §§ 49-27-10 et seq. the Lake Wylie Marine Commission was established. Pursuant to Section 49-27-60 the Commission is authorized to:

(6) lease, rent, purchase, construct, otherwise obtain, maintain, operate, repair, and replace, either on its own or in cooperation with other public or private agencies or individuals, any of the following: boat docks, navigation aids, waterway markers, public information signs and notices, and other items of real and personal property designed to enhance public safety in Lake Wylie and its shoreline area, or protection of property in the shoreline area subject, however, to the provisions of Title 50, Code of Laws of South Carolina, 1976, or regulations promulgated under that title as to property within South Carolina and Chapter 113 of the General Statutes of North Carolina and rules promulgated under that chapter as to property within North Carolina. (emphasis added).

Pursuant to Section 49-27-80

(A) Except as limited in subsection (B) of this section, by restrictions in any joint ordinance, and by other supervening provisions of law, the commission may make regulations applicable to Lake Wylie and its shoreline area concerning all matters relating to or affecting the use of Lake Wylie. These regulations may not conflict

with or supersede provisions of general or special acts or of regulations of state agencies promulgated under the authority of general law. No regulations adopted under the provisions of this section may be adopted by the commission except after public hearing, with publication of notice of the hearing in a newspaper of general circulation in the three counties at least ten days before the hearing. In lieu of or in addition to passing regulations supplementary to state law and regulations concerning the operation of vessels on Lake Wylie, the commission may, after public notice, request that the North Carolina Wildlife Resources Commission and the South Carolina Department of Natural Resources pass local regulations on this subject in accordance with the procedure established by appropriate state law.

(B) Violation of any regulation of the commission commanding or prohibiting an act is a misdemeanor punishable by a fine not to exceed two hundred dollars or thirty days' imprisonment. (emphasis added).

(C) The regulations promulgated under this section take effect upon passage or upon such dates as may be stipulated in the regulations except that no regulation may be enforced unless adequate notice of the regulation has been posted in or on Lake Wylie or its shoreline area. Adequate notice as to a regulation affecting only a particular location may be by a sign, uniform waterway marker, posted notice, or other effective method of communicating the essential provisions of the regulation in the immediate vicinity of the location in question. Where a regulation applies generally as to Lake Wylie or its shoreline area, or both, there must be a posting of notices, signs, or markers communicating the essential provisions in at least three different places throughout the area and it must be printed in a newspaper of general circulation in the three counties.

Consistent with such, there is clear broad authority for the Lake Wylie Marine Commission to take action so as to promote public safety on the lake. Of course, as spelled out by such provisions, any such actions may not be inconsistent with State law or regulations of State agencies which were promulgated by any such agency.

The jurisdiction of law enforcement officers to enforce the laws at Lake Wylie is provided by Section 49-27-90 which states:

(A) Where a joint ordinance so provides, all law enforcement officers, or those officers as may be designated in the joint ordinance, with territorial jurisdiction as to any part of Lake Wylie or its shoreline area, within the limitations of their subject matter jurisdiction, have the authority of peace officers in enforcing the laws over all of Lake Wylie and its shoreline area.

(B) Where a joint ordinance provides it, the commission may hire special officers to patrol and enforce the laws on Lake Wylie and its shoreline area. These special officers have and may exercise all the powers of peace officers generally within the area in question and shall take the oaths and are subject to all provisions of law relating to law enforcement officers.

(C) Every criminal violation must be tried in the county where it occurred. However, a certificate of training by the South Carolina Criminal Justice Academy, or a similar certificate issued by the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission, will suffice for certification in both states for the purposes of this chapter.

(D) Where a law enforcement officer with jurisdiction over any part of Lake Wylie or its shoreline area is performing duties relating to the enforcement of the laws on Lake Wylie or in its shoreline area, he has such extraterritorial jurisdiction as may be necessary to perform his duties. These duties include investigation of crimes an officer reasonably believes have been, or are about to be, committed within the area in question. This includes traversing by reasonable routes from one portion of this area to another although across territory not within the boundaries of Lake Wylie and its shoreline area; conducting prisoners in custody to a court or detention facilities as may be authorized by law, although this may involve going outside the area in question; execution of process connected with any criminal offense alleged to have been committed within the boundaries in question, except that this process may not be executed by virtue of this provision beyond the boundaries of the three counties. This also includes continuing pursuit of and arresting any violator or suspected violator as to which grounds for arrest arose within the area in question.

(E) Where law enforcement officers are given additional territorial jurisdiction under the provisions of this section, this is considered an extension of the duties of the office held and no officer shall take any additional oath or title of office.

In our telephone conversation, Ms. Pilcher particularly raised the issue of wake zones at the Lake. Consideration could be given to seeking legislation specifically establishing such zones at the Lake. Similar legislation has been enacted in the past for other bodies of water. See, e.g., S.C. Code Ann. §§ 50-21-132 (no wake zone for Lake Moultrie) and 50-21-133 (no wake zone established for Sullivan's Island and the Combahee River).

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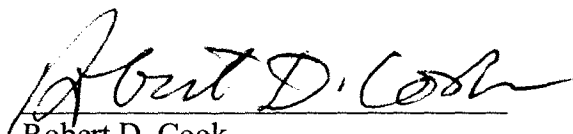
With kind regards, I am,

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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