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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

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Dear Mr. Quinn:

You have requested an opinion concerning the following question: "[m]ay the owner of a broken bank rice field place food in the field and thus render it a baited area to prohibit hunting by the public?" In your letter, you note that hunters enter the impounded rice area through the river and proceed to hunt ducks. You further explain that the owner of the impounded rice field places corn in the field for the purpose of baiting the area. The owner displays a sign noting that the land is baited and warning it is unlawful for hunting. According to your analysis, hunters may legally enter the rice field to hunt and that baiting a field for the purpose of impeding lawful hunting violates S.C. Code Ann. Section 50-1-137.

Law / Analysis

Section 50-1-137 provides as follows:

> [i]t is unlawful for a person willfully to impede or obstruct another person from lawfully hunting, trapping fishing or harvesting marine species. Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be punished as provided by Section 50-1-130. In addition to the criminal penalty, any person convicted must have his privilege to hunt, trap, fish, or harvest marine species recreationally or commercially revoked for one year.

Apparently, § 50-1-137 has never been interpreted by our courts. Nor have we located opinions of this Office which have addressed this statute. Thus, we must interpret the meaning of "impede or obstruct another person from lawfully hunting ..." as it applies to the situation which you have referenced.

A number of principles of statutory interpretation are pertinent to this inquiry. The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *State v. Morgan*, 352 S.C. 359, 574 S.,E.2d 203 (Ct. App. 2002) (citing *State v. Baucom*, 340 S.C. 339, 531 S.E.2d 922 (2000)). All rules of statutory interpretation are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999).

The legislature's intent should be ascertained primarily from the plain language of the statute. *Morgan, supra.* Words must be given their plain and ordinary meaning without resort to subtle or forced construction which limits or expands the statute's operation. *Id.* When construing an undefined statutory term, such term must be interpreted in accordance with its usual and customary meaning. *Id.* When a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and a court has no right to look for or impose another meaning. *City of Camden v. Brassell,* 326 S.C. 556, 486 S.E.2d 492 (Ct. App. 1997). The statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. *Id.*

Section 50-1-137 proscribes conduct which wilfully "impede[s]" or "obstruct[s]" another person from lawfully hunting. While the terms "impede" or "obstruct" often connote a physical act of impediment, *see e.g., State v. Bagley*, 164 Wis.2d 255, 474 N.W.2d 761 (1991), such a limitation is not necessarily required by the use of such terms. The term "impede" means "[t]o retard or obstruct the progress of." The word "obstruct" connotes also an interference with or hindrance of. *See, American Heritage College Dictionary* (3d. ed.).

Cases elsewhere have concluded that the word "obstruct" is not limited to physical obstruction. *See, Bright v. East Side Mosquito Abatement District*, 335 P.2d 527 (Cal. 1959); *State v. Tages*, 457 P. 2d 289 (Ariz. 1969) [citing authorities holding that actual violence or direct force is unnecessary for there to be an "obstruction"]; *Eric R. Co. v. Bd. of Public Utility Commrs.*, 89 N.J.L. 57, 98 A.13, 19 (1916) [court holds that a definition of word "impede" requiring permanent physical obstructions is "too narrow" and that the "dictionary definition" of "impede" includes to "hinder; as to impede progress ...."].

By baiting the area and posting it as such so that it is unlawful to anyone to hunt, we think a court could conclude that such conduct is to "willfully ... impede or obstruct another person" from hunting as contemplated by § 50-1-137. We are of the opinion that the General Assembly did not intend to limit the conduct proscribed by the statute to a physical blocking or impeding of persons from hunting. Such a reading would omit many types of conduct or action which has the effect of precluding lawful hunting just as surely as the use of physical force or other forms of physical impediment. South Carolina deems it a criminal offense to hunt certain game over a baited area. *See*, e.g. § 50-11-510; § 50-9-1120 [hunting over bait]. Thus, the combination of baiting the area in question and posting that area as such by a person or persons we assume does not possess valid

legal title to the property serves to "obstruct" or "impede" hunting thereon by that person or persons. We believe such activity falls within the conduct proscribe by § 50-1-137.

The next question is whether a person would be "lawfully hunting, trapping, fishing, or harvesting marine species" as contemplated by the statute. The question becomes whether hunters may lawfully hunt a broken bank rice field. You reference in your letter *League of Women Voters v. Coastal Council*, 289 S.C. 445, 346 S.E.2d 716 (1986) as controlling. This case involved some 660 acres of marshland, formerly used for rice cultivation, and whether the general public had the right to use the waterways and canals for boating, hunting and fishing. The Court concluded that these waterways were navigable and thus the Coastal Council could not block such use.

The court, in *League of Women Voters, supra*, set forth the general law in South Carolina regarding navigable waters and the public's right to hunt and fish thereupon. There, the Court stated the following:

> Article XIV, Section 4, of the Constitution of south Carolina states in part that "all navigable waters shall forever remain public highways free to the citizens of the State ... and no ... wharf [shall be] erected on the shores or in or over the waters of any navigable stream unless the same be authorized by the General Assembly." A navigable stream is defined in S.C. Code Ann. § 49-1-10 (1976) to mean "[a]ll streams which have been rendered or can be rendered capable of being navigated by rafts of lumber or timber by the removal of accidental obstructions and all navigable watercourses and cuts are hereby declared navigable streams and such streams shall be common highways and forever free...."
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> Section 49-1-10 of the South Carolina Code does not change the definition of navigable waters, but merely emphasizes the law already declared and set out in *Heyward v. Farmers Mining Company*, 42 S.C. 138, 19 S.E. 963 (1894). The Court in *Heyward* rendered a thorough pronouncement of the law of navigability. As noted in *Heyward*, the common law doctrine that the navigability of a stream is to be determined by the ebb and flow of the tide was repudiated in South Carolina in the case of *State v. Pacific Guano Co.*, 22 S.C. 50 (1884).
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> The court clarified in *Heyward v. Farmers Mining Company*, 19 S.E. at 971, that neither the character of the craft nor the relative ease or difficulty of navigation are tests of navigability. The surroundings (e.g. marshland) need not be such that it may be useful for the purpose of commerce nor that the stream is actually being so used. The Court points out a distinction between navigable waters of the United States and navigable waters of the State. In order to be navigable under the United States, the water must connect with other water highways so as to subject them to the laws of interstate commerce. This is not a requirement for navigability of waters under the control of the State.

> The true test to be applied is whether a stream inherently and by its nature has the *capacity* for valuable floatage, irrespective of the fact of actual use or the extent of such use. *Heyward, supra.* Valuable floatage is not necessarily commercial floatage. The Court recognized a tendency of modern judicial thought that water is navigable which is of such character as to be of general use by the public for pleasure boating in *State v. Columbia Water Power Co.*, 82 S.C. 181, 63 S.E. 884, 888 (1909), but did not express any opinion regarding this trend. See also 65 C.J.S. *Navigable Waters*, § 6. It is important to note, however, the strong emphasis and protection afforded public boating. As stated in *State v. Columbia Water Power*, 63 S.E. at 888, "... there cannot be the least doubt that the public is as much entitled to be protected in its use [of navigable waters] for floating pleasure boats as for any other purpose."
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> The use of this waterway by the general public for boating, hunting, and fishing is a legitimate and beneficial public use. It is our view that these waterways not only have the navigable capacity as required under *Heyward v. Farmers Mining Co., supra,* but they are navigable in fact as evidenced by their use by the general public. The Coastal Council does not have the authority to authorize the complete blockage of navigable streams of waterways, especially in a case such as this where there is no overriding public interest. See *cf. State v. Columbia Water Power Co.*, 90 S.C. 568, 74 S.E. 26, 27-28 (1911), and cases cited within.

289 S.C. at 448-449. *See also, State v. Head*, 330 S.C. 79, 498 S.E.2d 389 (Ct. App. 1997) [State holds navigable watercourses subject to a public trust, and the State's ownership of public trust resources is generally not alienable]; *Coburg Dairy, Inc. v. Lesser,* 318 S.C. 510, 458 S.E.2d 547 (1995) [land lying between usual high water mark and usual low water mark on tidal navigable watercourse enjoys unique status since it is held by the State in trust for public purposes; one asserting title to such land must prove specific grant from sovereign strictly construed against grantee]; *McQueen v. South Carolina Coastal Council*, 354 S.C. 142, 580 S.E.2d 116 (2003) [when land borders navigable water, not only does the State hold title to land below the high water mark in *jus privatum*, it holds it in *jus publicum,* in trust for the benefit of all citizens of this State]; *Lowcountry Open Land Trust v. State,* 347 S.C. 96, 552 W.E.2d 778 (Ct. App. 2001) [a grant from the State purporting to vest title to tidelands in a private party is construed strictly in favor of the government and against the grantee]; *S.C. Steamboat Co. v. Wilmington, C. & A. R. Co.*, 46 S.C. 327, 24 S.E. 337 (1896); *State v. Thompson*, 33 S.C.L. (2 Strob.) 12 (1847).

Our opinions issued over the years are consistent with the foregoing South Carolina case law. We have consistently advised that it is permissible for an individual to enter any creek, rice field, or other area for the purpose of hunting or any other purpose if the waters are deemed navigable. For example, in *Op. S.C. Atty. Gen.*, November 16, 1965, we commented that

> [t]he Title to navigable waters is in [this] state subject to the public use. The title is held by the state as representative of the public, and in trust for them. The South

> Carolina constitutional, statutory and common law gives the South Carolina Public the right of free and unobstructed navigation on the navigable waters of South Carolina. The South Carolina public is entitled to navigate all streams that are navigable in fact. A stream is navigable in fact if a person can float any vessel, of any size or construction, for any purpose whatsoever (pleasure or commerce), at any stage of tide (or water level), and for any length of stream regardless of the case or difficulty of propulsion.
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> The navigable waters of South Carolina are tidewater and fresh water streams, of any depth or width, with the capacity to float anything (logs, rafts, etc.), having a channel free either from obstructions or interrupted by obstructions, floatable at any time period of the normal high tide or normal high water level and accessible at one public place.

And, in an Opinion dated September 22, 1964, we stated that '[t]he public has free and unobstructed use of all navigable waters for boating, hunting and fishing." *See also, Op. S.C. Atty. Gen.,* May 21, 1964 [It is well settled in South Carolina "[t]hat individuals do not own navigable waters, cannot erect barricades in navigable waters and are not entitled to create a private sanctuary in the said creeks."] *Op. S.C. Atty. Gen.,* Op. No. 1423 (November 19, 1962) ["The public has the right to hunt upon any of the navigable tidal streams of the State and in the marshes below the high water mark of the tidal navigable streams, unless the marshes have been granted to individuals by the State of South Carolina or its predecessors, the Kings of England or the Lord Proprietors."]; *Op. S.C. Atty. Gen.*, October 12, 1960 ["If major natural creeks, rivers and arms of the sea go through or into the rice fields, they are navigable waters if useful for public travel."]; *Op. S.C. Atty. Gen.,* July 21, 1964 ["The State owns the land underlying its navigable waters in its sovereign capacity, that is, as a representative of, and in trust for , the public. Thus the State holds title to tidelands and submerged land in trust for and subject to, the public purposes of rights of navigation, commerce, fishing, bathing, recreation or enjoyment, and other appropriate public and useful purposes, or such other rights as are incident to public waters at common law, free from obstructions and interference by private persons."].

In your letter, you indicate that the waterways in question are navigable. You note that the hunters navigate the river and enter the rice field through the broken bank where they proceed to hunt. It appears that the rice fields are readily accessible by boat from the river, in other words. Moreover, inasmuch as this is a "broken bank" rice field , it appears from your description that the river's waters flow freely into the field. As we stated in *Op. S.C. Atty.*, October 12, 1960, "[i]f major natural creeks, rivers and arms of the sea go through or into the rice fields, they are navigable waters if useful for public travel." Accordingly, absent a grant from the State or colonial authorities, such areas must remain "free from obstruction and interference by private persons" and "open for the public use and enjoyment." *Op. S.C. Atty. Gen.,* July 21, 1964, *supra.*

Conclusion

Assuming that the waterways in question are navigable (which appears to be the case from your letter), South Carolina law requires that such waterways must remain open to the public at all times for the purpose of navigation, commerce, hunting and fishing, as well as recreation and other enjoyment. Such areas are held in trust by the State for the public and private parties may not interfere with the public's use and enjoyment thereof.

Accordingly, we conclude that § 50-1-137 is applicable to the situation referenced in your letter. Section 50-1-137 proscribes and makes subject to criminal prosecution a person who "willfully impede[s] or obstruct[s] another person from lawfully hunting, trapping, fishing, or harvesting marine species." Based upon longstanding and irrefutable South Carolina case law, the public possesses the right to hunt on navigable waters and thus the hunting thereupon would be "lawful" under the statute. Again, assuming the area in question is navigable, in our opinion the baiting and posting of such area so as to preclude hunting by members of the public is prohibited § 50-1-137, and is prosecutable pursuant to this provision.

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General