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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

November 1, 2005

The Honorable Catherine C. Ceips
Member, House of Representatives
1207 Bay Street
Beaufort, South Carolina 29902

Dear Representative Ceips:

In a letter to this office you questioned the requirements for obtaining a commercial shellfish culture or mariculture permit. Such are issued by the State Department of Natural Resources (hereinafter "The Department"). Pursuant to S.C. Code Ann. § 50-5-900(A),

The department may grant permits to any state resident for the exclusive use of portions of the intertidal or subtidal state-bottoms or waters for commercial shellfish culture or mariculture not to exceed an aggregate of five hundred acres of bottoms or an aggregate of one hundred surface acres of waters to any entity. In exercising its discretion the department may consider applicants' previous performance and compliance with natural resources laws. (emphasis added).

Section 50-5-905(A) states that "(a) person or entity desiring to acquire a Shellfish Culture Permit or a Shellfish Mariculture Permit for any bottoms or waters must make written application to the department on a form provided by the department." Referencing such, you have asked whether an out of state individual with a domestic incorporated business may hold a commercial shellfish culture or mariculture permit.

When interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

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As specified by Section 50-5-900, permits for commercial shellfish culture or mariculture may be granted to a "state resident". Section 50-5-905 refers to "a person or entity desiring to acquire a Shellfish Culture Permit or a Shellfish Mariculture Permit". In my opinion, the "person or entity" specified in Section 50-5-905 is modified by the provision in Section 50-5-900 that any permit may only be granted to a "state resident". Therefore, in my opinion, the statute requires that the permit be held by a state resident or a South Carolina domestic corporation.

Such construction is supported by the fact that Sections 50-5-900 and 50-5-905 replaced former statutes, S.C. Code Ann. § 50-17-310 and 50-17-330, which were repealed by Act No. 245 of 2000. That same Act enacted Sections 50-5-900 and 50-5-905. Former Section 50-17-310 also referred to the granting of permits to "any state resident". Former Section 50-17-330 stated that "[a]ny person desiring to acquire permit rights to any bottoms, as provided in Section 50-17-310, shall apply upon forms prescribed by the department." Therefore, former Section 50-17-330 by referring back to Section 50-17-310 was specific in limiting its application to "any state resident". Consistent with such, in my opinion, present Section 50-5-905 should also be construed as being limited to a state resident and, therefore, the permit must be held by a state resident or a South Carolina domestic corporation.

With kind regards, I am,

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General