January 29, 2007

Tom O'Rourke, Executive Director
Charleston County Park & Recreation Commission
861 Riverland Drive
Charleston, South Carolina 29412

Dear Mr. O'Rourke:

We received your letter requesting an opinion of this Office on behalf of the Charleston County Park and Recreation Commission (the "Recreation Commission") regarding the Charleston County Park and Recreation District's (the "District's") authority under its enabling legislation. In your letter, you explained: "I am requesting the assistance of your office to render an opinion as to CCRPC's ability to construct and manage facilities that would provide services in the area of wellness, fitness, and/or senior services within communities in our jurisdictional area."

Law/Analysis

As a creature of statute, the District has only has those powers that are specifically granted to it by statute or which may be reasonably implied therefrom. Piedmont Pub. Serv. Dist. v. Cowart, 319 S.C. 124, 459 S.E.2d 876 (Ct. App. 1995); Op. S.C. Atty. Gen., May 19, 2003. Thus, we must examine the District's enabling legislation to determine the scope of its authority. The Legislature established the District in 1972 pursuant to Act. No. 1595. 1972 S.C. Acts 3122. In 1985, the Legislature amended this legislation by Act No. 263. 1985 S.C. Acts 1869. As amended, the legislation governing the District provides for its governance by the Recreation Commission. 1972 S.C. Acts 3122. The Legislature afforded numerous powers to the Recreation Commission including the power to "acquire, by gift or purchase, lands or interest thereon whereupon to establish county parks and other facilities of like nature," to operate park facilities, and to "acquire and operate any apparatus or equipment useful in the operation of its facilities." 1972 S.C. Acts 3122; 1985 S.C. Acts 1869.

In order to determine whether the facilities to which you refer are authorized by the District's enabling legislation, we must consider the rules of statutory interpretation. "It is a cardinal rule of statutory construction that the primary purpose in interpreting statutes is to ascertain the intent of the Legislature." Sloan v. South Carolina Bd. of Physical Therapy Examiners, 370 S.C. 452, 467, 636

S.E.2d 598, 606 (2006). "In ascertaining legislative intent, words must be given their plain and ordinary meanings." South Carolina Dep't of Revenue v. Rosemary Coin Machines, Inc., 339 S.C. 25, 28, 528 S.E.2d 416, 418 (2000). "Statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers. Subtle or forced construction of statutory words for the purpose of expanding a statute's operation is prohibited." TNS Mills, Inc. v. South Carolina Dep't of Revenue, 331 S.C. 611, 503 S.E.2d 471 (1998) (citations omitted).

The enabling legislation does not specifically address the District's ability to establish and manage facilities providing wellness, fitness, and senior services. This legislation simply vests the District with the authority to establish and manage "county parks and other facilities of like nature." 1985 S.C. Acts 1869. Thus, whether or not the District is authorized to construct the facilities to which you refer in your letter is dependent upon whether such facilities are parks or facilities of like nature. Unfortunately, the legislation does not give much guidance as to what constitutes a "park or facilities of like nature." The American Heritage Dictionary describes a "park" as "[a] tract of land set aside for public use, as: a. An expanse of enclosed grounds for recreational use within or adjoining a town b. A landscaped city square. c. A tract of land kept in its natural state." The American Heritage Dictionary of the English Language, 953 (New College ed. 1980). According to this broad definition, a park could include a facility providing wellness, fitness, and senior services because such a facility would constitute a tract of land set aside for public use. Furthermore, the Legislature increased the breath of facilities that the District may establish beyond parks to include "facilities of like nature." Thus, the legislation establishing the District indicates the Legislature's intent to give the Recreation Commission broad authority with regard to the types of facilities it may create and operate.

A provision in the District's enabling legislation discussing necessary costs for which the Charleston County Legislative Delegation may levy taxes provides further evidence of the Legislature's intent to give the Recreation Commission broad authority in relation to the types of facilities it may establish. These costs include the cost of "providing, maintaining and supervising park and tourist attractions including, but not limited to: (1) Golf courses, (2) Fishing facilities, (3) Historical preservation, (4) Marinas and boat landings, (5) County parks, (6) Public beaches . . . ." 1985 S.C. Acts 1869 (emphasis added). Given the varying types of facilities listed in this provision and the fact that the Legislature did not intend for this list to be exclusive, we further understand the Legislature's intent to allow the Recreation Commission to establish many types of facilities related to the purpose of providing recreational opportunities to the public.

In reading the District's enabling legislation in accordance with the plain and ordinary meaning of the terms used and based on our understanding of the Legislature's intent, the Legislature intended to afford the Recreation Commission the ability to create many types of recreation related facilities. Accordingly, while not specifically provided for in the District's enabling legislation, we believe that the Recreation Commission may establish facilities providing wellness, fitness, and

senior services, so long as those facilities are aimed at providing recreational opportunities to the public.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook
Assistant Deputy Attorney General