HENRY MCMASTER
ATTORNEY GENERAL

July 8, 2010

The Honorable William L. Otis, Jr.
Mayor, Town of Pawleys Island
321 Myrtle Avenue
Pawleys Island, South Carolina 29585

Dear Mayor Otis:

We received your letter requesting an opinion of this Office concerning an individual's claim to clear title to property which accreted on the south end of Pawleys Island, below the last development. You asked what the "status of the property [is] with respect to § 48-39-120(B) of the South Carolina Code of Laws."

As a way of background, you explained that directly above the property in question is a "County owned public beach access parking lot" which was "purchased from the family [of the individual claiming the land] many years ago." Additionally, you noted that the actual "property in question is within the John H. Chafee Federal Coastal Barrier Resource System boundaries." You further explained that the individual "pays (minimal) taxes on the property and has now claimed that he has the right to control activity on this site, which currently is over 1000 feet in length with the Pawleys Creek on the west and the Pawleys inlet on the south." Not only has the property been used as a public beach access for many years, but it has "also been used as a sand scraping source for the Town to protect the public beach access and parking." This opinion will address prior opinions, legislative intent, relevant statutes and caselaw.

Law/Analysis

S.C. Code § 48-39-120(B) states as follows:

> (B) The department for and on behalf of the State may issue permits for erosion control structures following the provisions of this section and Sections 48-39-140 and 48-39-150, on or upon the tidelands and coastal waters of this State as it may deem most

> advantageous. Provided, however, that no property rebuilt or accreted[1] as a result of natural forces or as a result of a permitted structure shall exceed the original property line or boundary. Provided, further, that **no person or governmental agency may develop ocean front property accreted by natural forces** or as the result of permitted or nonpermitted structures beyond the mean high water mark as it existed at the time the ocean front property was initially developed or subdivided, and **such property shall remain the property of the State** held in trust for the people of the State.

S.C. Code § 48-39-120(B). This statute was enacted in 1977 and the language was amended in 1993. See, 1977 Act No. 123, § 12; 1993 Act No. 181, § 1235.

It is a cardinal rule of statutory construction that the primary purpose in interpreting statutes is to ascertain the intent of the General Assembly. State v. Martin. 293 S.C. 46, 358 S.E.2d 697 (1987). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1990). Any statute must be interpreted with common sense to avoid unreasonable consequences. United States v. Rippetoe, 178 S.C. 735 (4th Cir. 1949).

As stated in the request letter, the individual claiming clear title to the property in question has been paying minimal taxes on such property. However, our South Carolina Supreme Court held that the "payment of taxes is not evidence of title as is supposed in popular myth, but the failure to pay is evidence that no claim was made." Gadsen v. West Shore Inv. Co., 82 S.E. 1052, 1053 (1914).

In an opinion of this Office dated April 6, 2010, we explained that simply because one acts as if land is his or her own property does not make the land his or her own property when such land is the property of the State. We stated as follows:

> It is well established that "[a]dverse possession does not run against the state." 8 S.C. Jur. Adverse Possession § 45 (citing Davis v. Monteith, 289 S.C. 176, 345 S.E.2d 724 (1986)); See also, Hilton Head Plantation Property Owners' Ass'n. v. Donald, 375 S.C. 220, 651 S.E.2d 614 (2007); Op. S.C. Atty. Gen., December 5, 2003; January 17, 1968; March 29, 1960. However, there is authority that suggests "where circumstances would render it inequitable . . . a party may be protected to prevent manifest wrong and injustice," under the

[1] "Accrete" is defined as "to increase in size, or increase the size of something, especially by accumulation or the growing together of separate things." Encarta World English Dictionary. 9 June 2010, from http://www.encarta.msn.com/dictionary.

> principal of estoppel.[2] Op. S.C. Atty. Gen., October 11, 1965 (citing Outlaw v. Moise, 222 S.C. 24, 71 S.E.2d 509 (1952)). Nevertheless, it is a general rule that estoppel does not bind the sovereign state.
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> In State v. Yelsen Land Company Inc., 265 S.C. 78, 216 S.E.2d 876 (1975), the Supreme Court held that the "State was presumptively the owner of tidelands." The Court of Appeals also held that "[h]istorically, the State holds presumptive title to land below the high water mark." Hilton Head Plantation, 375 S.C. 220, 224 (2007) (citing McQueen v. South Carolina Coastal Council, 354 S.C. 142, 149, 580 S.E.2d 116, 119 (2003); see also Hobonny Club, Inc. v. McEachern, 272 S.C. 392, 396, 252 S.E.2d 133, 135 (1979)).[3]

Op. S.C. Atty. Gen., April 6, 2010.

Conclusion

It is the opinion of this Office that the accreted land is the property of the State. In relevant part, S.C. Code § 48-39-120(B) states that property "accreted as a result of natural forces . . . [which extends] beyond the mean high water mark as it existed at the time the ocean front property was initially developed . . . shall remain the property of the State held in trust for the people of the State." Additionally, there is a strong presumption that the State has title to all tidelands, even if someone has paid taxes on or made improvements to the land.

While we, of course, cannot anticipate all factual circumstances which a court may find, the fact that the land has possibly been used by the individual claiming title does not appear to make the land

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[2] Cf. Condon v. City of Columbia, 339 S.C. 8, 528 S.E.2d 408 (2000) ("under the nullum tempus doctrine, statutes of limitation do not run against the sovereign unless the Legislature specifically provides otherwise"). Just like the Court held that the nullum tempus doctrine prevailed in SC until the Legislature decided otherwise, one can conclude that adverse possession will not run against the state unless and until the Legislature decides otherwise.

[3] Even though adverse possession may not be argued and the land in question would not likely be classified as marshlands, the analysis is still relevant to the issue at hand. In an opinion of this Office dated August 19, 1964, we stated, "there is a legal presumption that the title to all tidal marshlands is in the State. This presumption would hold true regardless of whether someone has . . . filled in a certain area and constructed improvements. The fact remains that the State is presumed to own this land. Certainly a title derived from a king's grant would overcome this presumption of ownership in the State. There may be other situations where this presumption can be overcome, namely where the General Assembly has disclaimed the interest of the State in certain tidal marshlands. This latter situation may be true in some of your land-fill instances where a municipality is granted certain rights by the Legislature."

subject to any exception[4] regarding the rule that adverse possession does not run against the State. As stated in previous opinions, "investigations and determinations of facts are beyond the scope of an opinion of this Office and are better resolved by a court." See e.g., Op. S.C. Atty. Gen., September14, 2006.

Sincerely,

Henry McMaster
Attorney General

Leigha Blackwell

By: Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Deputy Attorney General

[4] Of which this Office is aware