ALAN WILSON
ATTORNEY GENERAL

April 26, 2011

The Honorable William E. Sandifer, III
Member, House of Representatives
407 Blatt Building
Columbia, SC 29211

Dear Representative Sandifer:

You have requested an opinion regarding whether S.C. Code Ann. §50-21-148 allows an authorized law enforcement officer to charge a recreational swimmer with obstructing access to a boat ramp and its facilities. You state in your letter to our office that:

> [t]here are a number of public boat landings on Santee Cooper's lakes and it has come to my attention that Santee Cooper is having problems with swimmers at some of its high traffic boat landings. These particular boat landings have limited channels and unique characteristics that are creating a number of safety concerns with swimming in the area. Law enforcement officials are interested in addressing this problem before a serious incident occurs and have testified to one of my subcommittees that verbal warnings and cautions have not proven effective.

Law/Analysis

As you note in your letter, §50-21-148 provides as follows:

> [i]t is unlawful to obstruct any pier, dock, wharf, boat ramp, or the access area to the facilities. Any vessel, vehicle, or other object left unattended which obstructs any of the facilities or the access to them may be removed entirely at the risk and expense of the owner. The department, with the advice of the Department of Transportation, shall erect signs at appropriate locations advertising the provisions of this section. Any person violating the provisions of this section is guilty of a misdemeanor and upon conviction must be fined not less than twenty-five dollars nor more than one hundred dollars or imprisoned for not more than thirty days.

This statute has never been interpreted by the South Carolina appellate courts and we have not located an opinion of this office which has addressed this statute. Thus, we interpret the meaning of §50-21-148 as it applies to the situation which you have referenced.

In interpreting any statute, we must begin with certain fundamental principles of statutory construction. First and foremost, is the cardinal rule that the primary purpose in interpreting statutes is to ascertain the intent of the Legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). In addition, a statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design and policy of the lawmakers. Caughman v. Columbia Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). 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 (1991). Furthermore, a particular clause or provision in a statute should not be construed in isolation, but should read it in conjunction with the purpose of the statute and the policy of the law. State v. Gordon, 356 S.C. 143, 588 S.E.2d 105 (2003). In addition, in determining the legislative intent, the Court will, if necessary, reject the literal import of words used in a statute. It has been said that "words ought to be subservient to the intent, and not the intent to the words." Greenville Baseball, Inc. v. Bearden, 200 S.C. 363, 20 S.E.2d 813, 816 (1942).

There is the long-recognized rule that penal statutes must be construed strictly against the State and in favor of the defendant. Stardancer Casino, Inc. v. Stewart, 347 S.C. 377, 556 S.E.2d 357 (2001). However, such a rule of interpretation is not absolute in every instance. At the same time, the cardinal rule of statutory construction requires that the court endeavor to "ascertain and effectuate the intent of the legislature." Branch v. City of Myrtle Beach, 340 S.C. 405, 409, 532 S.E.2d 289, 292 (2000). We recognized in an opinion dated July 14, 2006, that:

> [t]he rule of strict construction applicable to the penal provisions of a statute, however, does not prevent a court from reading the statute in relation to the mischief and evil sought to be suppressed or prevent a court from giving effect to the terms of the statute in accordance with their fair and natural acceptation. While a penal statute is not extended by implication or intendment, its clear implication and intendment is not to be denied.., nor is a construction of a penal statute that will aid in its evasion to be favored. [Citation omitted].

In other words, courts make it clear that:

> [t]he rule of strict construction of criminal statutes cannot provide a substitute for common sense, precedent, and legislative history. The construction of a penal statute should not be unduly technical, arbitrary, severe, artificial or narrow. In this regard, while penal statutes are to be strictly construed, they need not be given unnecessarily narrow meaning in disregard of the obvious legislative purpose and intent .... In short, although criminal statutes are to be strictly construed in favor of the

> defendant, the courts are not authorized to interpret them so as to emasculate the statutes.

Op. S.C. Atty. Gen., July 14, 2006 [citing 72 Am.Jur.2d, Statutes, §196 (2001)].

Additionally, a statute will be construed to avoid an absurd result. Any statute must be interpreted with common sense to avoid unreasonable consequences. United States v. Rippetoe, 178 F.2d 735 (4th Cir. 1949). A sensible construction rather than one which leads to irrational results is always warranted. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964).

In §50-21-20, the Legislature declared its intent "to promote safety for persons and property in and connected with the use, operation, and equipment of vessels and to promote uniformity of laws relating thereto." Pursuant to this policy, §50-21-148 proscribes conduct which "obstruct[s] any pier, dock, wharf, boat ramp, or the access area to the facilities." The American Heritage College Dictionary 859 (2nd ed.) defines "obstruct" in these words: "[t]o block or fill (a passage) with obstacles. . . [t]o impede, retard or interfere with; hinder . . . [t]o cut off from sight." The statute clearly does not limit "who" or "what" must keep clear of the described areas. It further does not limit enforcement to land or water. Although the second sentence of the statute provides that "any vessel, vehicle, or other object left unattended which obstruct any of the facilities or the access to them may be removed entirely at the risk and expense of the owner," we are of the opinion it would be illogical to conclude the Legislature intended to limit the conduct proscribed by the statute only to "objects" and not to "persons," as such a reading would omit other types of conduct which may also "obstruct." We therefore believe that a person conducting himself so that he interferes with or hinders a boat ramp and its water-based facilities falls within the conduct proscribed by §50-21-148.

In your letter, you indicate the Legislature is considering a Bill (S.349) to add Santee Cooper's lakes to the provisions of §50-21-125, which now states: "[i]t is unlawful for any person to swim within fifty feet of a public boat landing or ramp located on a lake or reservoir constructed or developed by an investor-owned utility for hydroelectric generation . . ." [1] This section is distinguishable from §50-21-148 in that it does not require evidence of obstruction. A violation of §50-21-125 is a misdemeanor offense pursuant to §50-21-150. Under the circumstances you present to us, a person swimming within fifty feet of a public boat landing or ramp would also fall within the conduct proscribed by §50-21-125, as amended by S.349 to include the South Carolina Public Service Authority.

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[1] S.349 would amend §50-21-125 to read as follows:

> It is unlawful for a person to swim within fifty feet of a public boat landing or ramp located on a lake or reservoir constructed or developed by an investor-owned utility or by the South Carolina Public Service Authority for hydroelectric generation. For purposes of this section, a public boat landing or ramp is one owned or maintained by an investor-owned utility or by the South Carolina Public Service Authority for hydroelectric generation and is available to the public at large . . . [Emphasis added].

Conclusion

Accordingly, we conclude that §50-21-148 generally is applicable to the situation referenced in your letter. Section 50-21-148 proscribes and makes subject to criminal prosecution any person who "obstruct[s] any pier, dock, wharf, boat ramp, or the access area to the facilities." Additionally, a person falls within conduct proscribed in §50-21-125 if he "swim[s] within fifty feet of a public boat landing or ramp located on a lake or reservoir constructed or developed by an investor-owned utility for hydroelectric generation . . ." Of course, this office is unable in an opinion to make factual determinations, draw factual conclusions or to weigh or assess the facts, we can obviously not predict with any certainty how a court or jury will rule if presented with particular facts. Ops. S.C. Atty. Gen., November 10, 2004; August 13, 2001. This office further adheres to its long-standing policy that the judgment call as to whether to prosecute a particular individual is warranted, or is on sound legal ground in an individual case, is a matter within the discretion of the Circuit Solicitor. Ops. S.C. Atty. Gen., October 29, 2004; April 20, 2004; February 3, 1997.The Solicitor is the person on the scene who can weigh the strength or weakness of a particular case. Op. S.C. Atty. Gen., August 14, 1995. Thus, while this office has provided to you the relevant law in this area, we must defer to the Solicitor's judgment as to whether or not to prosecute an individual in question.

Very truly yours,

N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General