



ALAN WILSON
ATTORNEY GENERAL

April 1, 2011

The Honorable Murrell Smith
SC House of Representatives
District No. 67
PO Box 580
Sumter, SC 29151

Dear Representative Smith:

We received your letter requesting an opinion of this Office concerning state forest roads at Manchester State Forest in Sumter County. You asked “whether the Forestry Commission can limit use of certain roads within Manchester State Forest to bicyclists or whether they are prohibited pursuant to Title 56, Article 27 pursuant to their regulations.”

This opinion will address whether bicyclists may access roads maintained on Manchester State Forest in the same manner that they may access roads maintained by the South Carolina Department of Transportation or local government.

Law/Analysis

Generally, a bicyclist riding upon a roadway “must be granted all of the rights and is subject to all of the duties applicable to the driver of a vehicle . . .” S.C. Code § 56-5-3420. Regulations for bicyclists are set forth in Title 56, Chapter 5, Article 27. Such regulations are applicable “whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles.” S.C. Code § 56-5-3410.

S.C. Code § 56-5-430 defines the boundaries of a roadway, street or highway as follows:

The entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel is a “street” or “highway.”

S.C. Code § 56-5-430.

“If a statute’s language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and a court has no right to impose another meaning. The words must be given their plain and ordinary meaning without resorting to subtle or forced

construction which limit or expand the statute's operation." Strickland v. Strickland, 375 S.C. 76, 88-89, 650 S.E2d 465, 472 (2007). The statutes above are clear that a bicyclist has all of the rights and duties as the driver of a vehicle when riding upon a roadway.

Title 48, Chapter 23 created the State Commission of Forestry, establishing that members of the commission should "be selected and appointed with reference to their knowledge of and interest in the forests of the State and the products derived therefrom." S.C. Code § 48-23-10. The State Commission of Forestry "may make such rules and regulations as it deems advisable for the protection, preservation, operation and maintenance, and for the most beneficial service to the general public, of the State forests in this State." S.C. Code § 48-23-200. Such regulations for South Carolina Forestry Commission Lands can be found in S.C. Code of Regulations R. 55-1:

1. Entry onto South Carolina Forestry Commission lands is done wholly and completely at the risk of the individual. The State of South Carolina nor the South Carolina Forestry Commission accepts any responsibility for acts, omissions or activities or conditions on these lands which cause or may cause personal injury or property damage.

2. All persons must obey all special rules and regulations for South Carolina Forestry Commission lands including those found in hunting schedules, maps, brochures, permits, any oral/written instructions issued by South Carolina Forestry Commission personnel or those instructions posted on South Carolina Forestry Commission lands.

...

4. On South Carolina Forestry Commission lands, no motor driven land conveyances shall be operated on any road or trail, other than a public road, except by permit or special authorization, unless otherwise specified. Roads or trails which are closed by barricades and/or signs either permanently or temporarily, are off limits to motor driven land conveyances.

5. Motor driven land conveyances shall be operated in a safe manner while on South Carolina Forestry Commission lands.

...

13. Entry onto South Carolina Forestry Commission lands constitutes consent to an inspection and search of the person, game bag, or creel and any vehicle, trailer, conveyance or container.

S.C. Code of Regulations R. 55-1 (emphasis added).

Neither bicycles nor bicyclists are mentioned under Regulation 55-1. Since the general regulations on South Carolina Forestry Commission Lands fail to address bicycle activity, it is

the opinion of this Office that a court would likely find that the Forestry Commission cannot prevent otherwise lawful bicycle activity.

A court would likely find that the forestry statutes and regulations can be harmonized with the bicyclist statutes because the forestry regulations do not address bicycle activity. However, “[t]he general rule is that the more recent and specific legislation controls if there is a conflict between two statutes.” Ops. S.C. Atty. Gen., December 6, 2010; February 14, 2006; June 11, 1985; April 6, 1993. See, Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000); Unisys Corp. v. South Carolina Budget and Control Bd. Div. of General Services Information Technology Management Office, 346 S.C. 158, 167, 551 S.E.2d 263, 268 (2001). S.C. Code § 48-23-10 *et seq.* and S.C. Code of Regulations R. 55-1 address “Forestry Generally” and the State Commission of Forestry while S.C. Code § 56-5-3410 *et seq.* specifically addressed the rights and duties of bicyclists. Therefore, it is the opinion of this Office that a court would likely find that the specific bicycle statutes found in S.C. Code § 56-5-3410 *et seq.* would control if a conflict was found.

Conclusion

While, according to S.C. Code of Regulations R. 55-1 (2), “[a]ll persons must obey all special rules and regulations for South Carolina Forestry Commission lands including . . . any oral/written instructions issued by South Carolina Forestry Commission personnel or those instructions posted on South Carolina Forestry Commission lands,” the Forestry Commission must act within the confines of the S.C. Code of Laws.

S.C. Code § 56-5-3420 is clear that a bicyclist riding upon a roadway “must be granted all of the rights and is subject to all of the duties applicable to the driver of a vehicle” Therefore, without other reasons provided for under S.C. Code of Regulations R. 55-1 or within the S.C. Code of Laws, the Forestry Commission cannot limit the use of certain roads to bicyclists where automobiles and pedestrians are permitted.

Sincerely,



Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General