



ALAN WILSON
ATTORNEY GENERAL

September 22, 2011

Colonel Alvin A. Taylor
Deputy Director for Law Enforcement
South Carolina Department of Natural Resources
P.O. Box 167
Columbia, SC 29202

Dear Colonel Taylor:

The South Carolina Department of Natural Resources (“DNR”) has requested an opinion of this office regarding S.C. Code Ann. §50-11-100, which regulates enclosures impeding the free range of deer that are hunted. You note that Subsection (A) makes it “unlawful to construct a new enclosure which prevents or materially impedes the free range of the deer being hunted.”

By way of background, you provide that:

[d]uring DNR’s day to day operations we have learned of new construction of these type enclosures across the state. Our Law Enforcement Division has learned and seen firsthand how individuals are building these enclosures, and are trying to circumvent the current law. The builders of these enclosures are erecting a fencing system 6 feet high or higher which encompasses the 3 sides or the majority of the desired area. The final section erected is less than 6 feet high with a trench/ditch dug into the ground on the inside of the enclosure, at the base of the fence. This trench/ditch gives the shorter fence area an increased vertical height. This trench/ditch along with the fence less than 6 feet high will impede the movement and stop the animals from exiting the enclosure. [Emphasis in original].

Given this background information, you ask whether the construction of an enclosure built as described above violates §50-11-100 (A)?

In reviewing §50-11-100, it is imperative that there be compliance with the rules of statutory construction. South Carolina Coastal Conservation League v. South Carolina Dept. of Health and Environmental Control, 390 S.C. 418, 702 S.E.2d 246 (2010). Statutory interpretation is a question of law. City of Newberry v. Newberry Elec. Co-op., Inc., 387 S.C. 254, 692 S.E.2d 510 (2010). The primary rule of statutory construction is to ascertain and give effect to the intent of the Legislature. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000); Mid-State Auto Auction of Lexington, Inc. v. Altman, 324

S.C. 65, 476 S.E.2d 690 (1996). The best evidence of intent is in the statute itself. Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their plain and ordinary meaning. Id.

If the [L]egislature's intent is clearly apparent from the statutory language, a court may not embark upon a search for it outside the statute. When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the [L]egislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning.

While it is true that the purpose of an enactment will prevail over the literal import of the statute, this does not mean that [a] Court can completely rewrite a plain statute.

Hodges, 533 S.E.2d at 582. What the Legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the Legislature. Media General Communications, Inc. v. South Carolina Dept. of Revenue, 388 S.C. 138, 694 S.E.2d 525 (2010); Wade v. State, 348 S.C. 255, 559 S.E.2d 843 (2002); see also Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E. 2d 166, 168 (1966) ["There is no safer nor better rule of interpretation than when language is clear and unambiguous it must be held to mean what it plainly states"]. Finally, we note that when a statute is penal in nature, it will be construed strictly against the State and in favor of a defendant. Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001); State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991).

The Legislature was specific in §50-11-100 (A) that "[f]or purposes of the definitions . . . 'prevents or materially impedes' means erecting a fence in excess of six feet in height from ground level for the express purpose of corralling wild game for hunting purposes." The use of a trench/ditch dug into the ground on the inside of an enclosure may certainly impede the free range of deer being hunted. However, the rules of statutory construction dictate that if the Legislature had intended to prohibit any means to "prevent or materially impede" deer other than a fence in excess of six feet from ground level, then it would have said so. Undoubtedly, based on the plain text of the statute, the Legislature clearly and unambiguously chose the definition of "prevents or materially impedes" provided in Subsection (A). This is a choice which the Legislature freely made and we are constrained to interpret the statute accordingly. While this definition may be seemingly inapplicable to circumstances such as you describe, it is the one the Legislature chose. We cannot deviate from it in answering the question presented. Any change must come from the Legislature, and not an opinion of this office.

We recognize the day-to-day decisions as to whom to charge with a crime are made primarily by law enforcement officers, and that police officers and agencies are afforded by law broad discretion to carry out their arduous daily tasks of enforcing the law. This being the case, law enforcement officers should evaluate each particular situation as it arises and gauge whether there is a likelihood of a violation of the law. Op. S.C. Atty. Gen., July 2, 1996. 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

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ground in a particular case is a matter within the discretion of the local prosecutor. Op. S.C. Atty. Gen., April 6, 2011. The prosecutor is the person on the scene who can weigh the strength or weakness of an individual 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 prosecutor's ultimate judgment as to whether or not to prosecute an individual in question in a given case under particular circumstances.

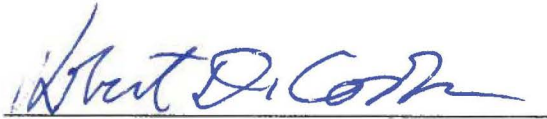
If you have any further questions, please advise.

Very truly yours,



N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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CC: Buford Mabry, Jr.