ALAN WILSON
ATTORNEY GENERAL

February 11, 2013

The Honorable C. Ryan Johnson
Magistrate
Greenwood County Courthouse, Ste. 100
528 Monument Street
Greenwood, SC 29646

Dear Judge Johnson:

In a letter to this Office, you reference S.C. Code Ann. §16-11-780(C), which provides, in part, that:

> [i]t is unlawful for a person to wilfully, knowingly, or maliciously enter upon the lands of another or the posted lands of the State and disturb or excavate a prehistoric or historic site for the purpose of discovering, uncovering, moving, removing, or attempting to remove an archaeological resource. . . .

You state that the definition of a "prehistoric or historical site" is "unclear," and ask whether a site must therefore be designated by statute as "prehistoric or historical" for §16-11-780(C) to apply. In addition, you question whether the statute is applicable to private lands not so designated by statute. For example, "would the statute apply to a person who is on the property of another and attempting to locate, dig up, and remove arrowheads?"

Law/Analysis

Your questions require an examination of certain basic principles of statutory interpretation. First and foremost is the cardinal rule of statutory interpretation, which is to ascertain and effectuate the legislative intent, whenever possible. State v. Morgan, 352 S.C. 359, 574 S.E.2d 203 (Ct. App. 2002). All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and such language must be construed in light of the statute's intended purpose. State v. Hudson, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999). Moreover, a statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). In construing statutes, the words used must be given their plain and ordinary meaning without resort to a subtle or forced construction for the purpose of limiting or expanding their operation. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). The best evidence of the Legislature's intent is found in the plain language of the statute. State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007). Further, as the South Carolina Supreme Court stated in Greenville Baseball, Inc. v. Bearden, 200 S.C. 363, 20 S.E.2d 813, 816 (1942),

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"it is a familiar canon of construction that a thing which is within the intention of the makers of the statute is as much within the statute as if it were within the letter. It is an old and well established rule that the words ought to be subservient to the intent and not the intent to the words." In addition, in construing statutory language, a statute must be read as a whole, not provisions thereof in isolation. All sections must be construed together with one another and each section given effect. Higgins v. State, 307 S.C. 446, 415 S.E.2d 799 (1992). As our Supreme Court has recognized, "[i]n ascertaining the intent of this Legislature, a court should not focus on a single section or provision but should consider the language of the statute as a whole." Croft v. Old Republic Ins. Co., 365 S.C. 402, 618 S.E.2d 909, 914 (2005).

Section 16-11-780 prohibits a person from going onto another person's property, or the posted lands of the State,[1] with intent to discover, uncover, move, remove, or attempt to remove an archaeological resource. "Archaeological resource" is defined in §16-11-780(A)(1) as "all artifacts, relics, burial objects, or material remains of past human life or activities that are at least one hundred years old and possess either archaeological or commercial value,[2] including pieces of pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, rock paintings, rock carving, intaglios, graves, or human skeletal materials." From our reading of the statute as a whole, the Legislature's general purpose and object is to protect "archaeological resources" from slovenly exploration and destruction. This legislative goal cannot be fully achieved if only "archaeological resources" in State-designated prehistoric or historic sites were protected by the statute. While a court may find otherwise, we believe the statute is applicable to any person who enters onto another person's property without permission, or the posted lands of the State, with the intent to discover, uncover, move, remove, or attempt to remove "archaeological resources," wherever such resources may be located on these lands. By implication, such a site would be deemed a location of prehistoric or historic occupation or activity where exploration and/or excavation are prohibited by law, except in accordance with and pursuant to the spirit and authority of the statute.

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[1]"Posted lands" of the State is defined in §16-11-780(A)(5) as lands where the State has complied with the notice or warning requirement which must either be posted or given to an offender pursuant to Section 16-11-600 [providing that "when any owner or tenant of any lands shall post a notice in four conspicuous places on the borders of such land prohibiting entry thereon, a proof of the posting shall be deemed and taken as notice conclusive against the person making entry, as aforesaid, for the purpose of trespassing"]."

[2]Pursuant to §16-11-780(A)(2), "archaeological value" means "the value of the data associated with the archaeological resource. This value may be appraised in terms of the costs of the retrieval of the scientific information that would have been obtainable prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential." "Commercial value" is defined in subsection (A)(3) as "the fair market value of the archaeological resource. When a violation has resulted in damage to the archaeological resource, the fair market value may be determined using the condition of the archaeological resource prior to the violation, to the extent its prior condition can be ascertained."

We note that §16-11-780(J) specifically provides that: "[n]othing contained in [the statute] shall limit or interfere with a landowner's lawful use of his property or with the state's ability to conduct archaeological investigations or excavations on either state lands or private lands with the consent of the landowner."[3]

In addition to criminal penalties provided for in the statute, see §§16-11-780 (D), (E) & (F), it is provided in §16-11-780(H) that "[a]ll equipment and conveyances including, but not limited to, trailers, motor vehicles, and watergoing vessels that were used in connection with felony violations of this section are subject to forfeiture to the State in the same manner as equipment and conveyances are subject to forfeiture pursuant to Section 44-53-520 [*i.e.*, property forfeitures involving controlled substances]." Furthermore, §16-11-780(I) provides that "[t]he landowner, in the case of private lands, or the State, in the case of state lands, may bring a civil action for a violation of [the statute] to recover the greater of the archaeological resource's archaeological value or commercial value, and the cost of restoration and repair of the site where the archaeological resource was located, plus attorney's fees and court costs."

Conclusion

Based on our analysis above, we are of the opinion the Legislature intended to protect "archaeological resources" on private and public lands, and we advise that §16-11-780(C) is applicable to any person who enters onto another person's property or the posted lands of the State to disturb or excavate a site wherever such "archaeological resources" are located, with the intent to discover, uncover, move, remove, or attempt to remove such resources from these lands, except in accordance with and pursuant to the authority of this statute.

Addressing the factual scenario presented in your letter, we have repeatedly stated that this Office cannot and does not resolve factual disputes or make findings of fact. Therefore, while the statute speaks for itself, this Office cannot in an opinion determine how a particular set of facts might apply to the law in a particular instance. Only a court of competent jurisdiction can make such a determination. Op. S.C. Atty. Gen., September 12, 2012 (2012 WL 4283913).

We further 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., September 22, 2011 (2011 WL 4592377). 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 a particular case is a matter within the discretion of the local

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[3]Section 16-11-780(K) further provides that the statute shall not limit or interfere with either (1) "the lawful acts of a landowner's employee, agent," or (2) "an independent contractor acting in the scope of and in the course of his employment, agreement, or contract."

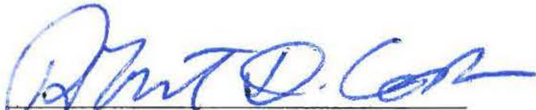
prosecutor. Id. The prosecutor is the person on the scene who can weigh the strength or weakness of an individual case and we must therefore defer to the prosecutor's ultimate judgment as to whether or not to prosecute an individual in question in a given case under particular circumstances. Id.

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
Deputy Attorney General