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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

August 29, 2002

The Honorable D. Leslie Tindal
Commissioner
SC Department of Agriculture
Post Office Box 11280
Columbia, South Carolina 29211-1280

Dear Commissioner Tindal:

You have requested an opinion as to the "proper interpretation of Proviso 22.6 of the Appropriations Act." You note that Proviso 22.6, which relates to the Department of Agriculture, provides as follows:

22.6 (AGRI: Commissioners' Funding) In the event the department receives a General Fund reduction, the department must continue to fully fund per diem and subsistence payments to commissioners as provided by law, unless an individual commissioner opts to voluntarily waive those payments.

By way of background, you provide the following information:

[t]he Agriculture Commission does not have a separate budget. Its operations are funded with monies appropriated to the Department. In years past, funds for subsistence and per diem were paid from amounts allocated by the Department in its budget submission to the General Assembly. Requests for expenses in addition to these payment[s] were considered and approved by the Commissioner on an individual basis. This was done in accordance with your prior opinion to me regarding the role of the Commissioner of Agriculture vis a vis the Agriculture Commission, and the opinion of Attorney General McLeod, which stated that the budget of the Department of Agriculture was a matter solely within the purview of the Commissioner.

Law / Analysis

Several principles of statutory construction are pertinent. First and foremost, the elementary and cardinal rule of statutory interpretation is to ascertain and effectuate the actual intent of the

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General Assembly. Horn v. Davis Elec. Constructors, Inc., 307 S.C. 559, 415 S.E.2d 634 (1992). A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design and policy of the lawmakers. See, Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Words used must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Chas., 295 S.C. 408, 368 S.E.2d 899 (1988). Any statute must be interpreted with common sense to avoid unreasonable results or absurd consequences. U.S. v. Rippetoe, 178 F.2d 735 (4th Cir. 1950).

In my opinion, the referenced Proviso does not alter in any way the relationship between the Commissioner of Agriculture and the Agriculture Commission which you accurately describe in your letter. The Proviso simply insures that members of the Agriculture Commission will not lose their per diem and subsistence payments established by state law as part of any General Fund reduction in the state budget. However, the Proviso does not expand the powers or authority of the Commission or its members nor does it change the fact that funds for the Commission are allotted through the Department of Agriculture and are under the direction and control of the Commissioner in accordance with state law.

You reference the earlier opinion of Attorney General Condon in your letter. A review of that opinion is appropriate here.

In an opinion dated May 3, 1999, Attorney General Condon reviewed the legal relationship between the Commissioner of Agriculture and the Agriculture Commission. That opinion stressed the fact that the Commissioner of Agriculture is a constitutional officer. That opinion noted that the people of South Carolina, in adopting the Constitutional Amendment in 1982 (ratified in 1983), "made the Commissioner of Agriculture a constitutional office with the full knowledge and understanding that the basic and essential function of that office was to oversee and administer the Department of Agriculture." There, the Attorney General wrote:

[i]n my judgment, the essential duties of the Commissioner of Agriculture are to serve as head of the Department of Agriculture, a function which the Commissioner has exercised since the office of Commissioner was first created. The fact that the Commissioner is now a constitutional officer means that this essential function of the office cannot be assumed by another person or body, including the Commission. The Commissioner's basic authority as chief of the Department, therefore, cannot be removed or undermined without a change in the Constitution.

That opinion remains the opinion of the Office. As Attorney General Condon concluded in the 1999 opinion, any effort by the General Assembly to undermine or remove authority from the Commissioner of Agriculture as head of the Department of Agriculture would be contrary to the State Constitution.

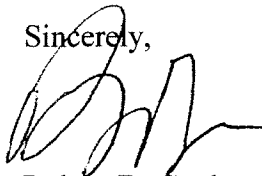
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In this light, we deem the referenced Proviso as nothing more than a direction by the General Assembly to preserve the members of the Agriculture Commission's per diem and subsistence in the wake of massive state budget cuts. As noted above, the Proviso does not alter the relationship between the Commissioner as head of the Department of Agriculture and the Agriculture Commission, as discussed above, nor does it expand the Commission's powers. As you have correctly stated in your letter, the Commissioner, as the chief executive officer of the Department, remains the person who is responsible for and administers the Department's budget, including those funds which are allocated to the Commission as part of that budget.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Cook', with a stylized flourish at the end.

Robert D. Cook
Assistant Deputy Attorney General

RDC/an