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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

February 1, 2002

The Honorable Edie Rodgers
Member, House of Representatives
326-B Blatt Building
Columbia, South Carolina 29211

Re: South Carolina Local Government Development Agreement Act

Dear Representative Rodgers:

You have forwarded to this Office certain questions regarding the above Act raised by one of your constituents. Specifically, the following three questions have been presented:

1. As referenced in S.C. Code Ann. §6-31-40, what is the definition of highland?;

2. As referenced in S.C. Code Ann. §6-31-60(A)(2), should the duration of the agreement be public knowledge prior to the execution of the agreement?; and

3. As referenced in S.C. Code Ann. §6-31-120, When does the fourteen day count begin? And, if the fourteen day period is not met, what if any action and/or penalty should be taken and by whom?

Each question will be addressed in turn.

1. Definition of Highland

S.C. Code Ann. §6-31-40 requires that a certain portion of the property which is the subject of a development agreement be "highland." The Act does not contain a specific definition of the term "highland." Therefore, the term should be given its plain and ordinary meaning.[1] In an effort to determine the plain and ordinary meaning of "highland," I have researched other statutory provisions

[1] Where the legislature elects not to define a term in a statute, the courts will interpret the term in accord with its usual and customary meaning. Adoptive Parents v. Biological Parents, 315 S.C. 535, 446 S.E.2d 404 (1994).

of the Code and relevant case law. Unfortunately, neither of these sources provides a concrete definition of the term. From these sources, however, I believe that we can determine a sufficient meaning of "highland" for purposes of interpreting Section 6-31-40.

Section 5-1-30(A)(4) addresses the area of land necessary for incorporation of a municipality. In this section, highland is distinguished from marshland and waterway. Likewise, in Section 4-3-231, a property description is provided which distinguishes between acreage consisting of highland and marshland. In Section 48-43-30(B)(1)(l), for purposes of oil and gas exploration, a distinction is made between highlands and wetlands or submerged land. Wetland is described in Section 47-20-10(16) as "lands that have a predominance of hydric soil, are inundated or saturated by water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, and, under normal circumstances, do support a prevalence of hydrophytic vegetation."[2] Finally, in Section 50-5-955, with reference to designating and maintaining public shellfish grounds, it can be inferred that highland property is that which is capable of development.

In Town of Sullivan's Island v. Felger, 318 S.C. 340, 457 S.E.2d 626 (1996), it was reiterated that highlands do not include "tidelands." Tidelands generally mean all areas which are at or below mean high tide and coastal wetlands, mudflats, and similar areas that are contiguous or adjacent to coastal waters and are an integral part of the estuarine systems involved. See Lowcountry Landtrust v. State, 347 S.C. 96, 552 S.E.2d 778 (SC App. 2001). Coastal wetlands include marshes, mudflats, and shallows and means those areas periodically inundated by saline waters whether or not the saline waters reach the area naturally or through artificial water courses and those areas that are normally characterized by the prevalence of saline water vegetation capable of growth and reproduction. Id, See also S.C. Code Ann. §48-39-10(G).

From these sources, it can be gleaned that "highland" would be such a piece of property which is not a marshland, waterway, wetland, submerged land or tideland. A more definitive definition would have to be provided by legislative or judicial clarification.

2. Duration of Agreement as Public Information

S.C. Code Ann. §6-31-50 provides that, "[b]efore entering into a development agreement, a local government shall conduct at least two public hearings." Prior to these hearings, notice of such must be published in a local newspaper. Among other things, the notice "must specify a place where a copy of the proposed development agreement can be obtained." See §6-31-50(B)(2). Pursuant to Section 6-31-60(A)(2), a development agreement must include, among other things, the duration of

[2] This definition is specific to Chapter 20 of Title 47, Confined Swine Feeding Operations," but does provide insight into the meaning of the term "wetland."

the agreement. Accordingly, it appears that the Legislature has clearly expressed the intent that the duration of a proposed agreement be made public knowledge prior to the execution of the agreement.

3. Computation of the Filing Period

S.C. Code Ann. §6-31-120 provides that "[w]ithin fourteen days after a local government enters into a development agreement, the developer shall record the agreement with the register of mesne conveyance or clerk of court in the county where the property is located." The Act contains no further specifications concerning the computation of the fourteen day period. Therefore, the general law in this area should be looked to for guidance. Rule 6 of the South Carolina Rules of Civil Procedure states that:

> .... [i]n computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday. (Emphasis added).

It is my opinion that this rule is the appropriate guideline to follow in computing the fourteen day filing requirement of Section 6-31-120. See OP. ATTY. GEN. (Dated January 21, 1981) (Section 15-1-20 [predecessor of Rule 6] appropriate where statute itself is silent on issue of computation).

As to who should take action if the developer fails to timely file the agreement, ostensibly the local government entity would be the aggrieved party and seek what ever civil remedy is available. The nature of the remedies available to the local government would likely depend on the terms of the agreement and the extent of damage done by the developer's breach. I would suggest that the local government pursue such a matter with their local attorney (i.e. the city or county attorney).

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

David K. Avant
Assistant Attorney General

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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

February 4, 2002

The Honorable Daniel L. Tripp
Member, House of Representatives
312C Blatt Building
Columbia, South Carolina 29211

Dear Representative Tripp:

You have asked whether the display of the words "In God We Trust" in the public schools violates the federal Constitution's Establishment of Religion Clause. See, *Lemon v. Kurtzman*, 403 U.S. 603 (1973); *Lynch v. Donnelly*, 465 U.S. 668 (1984). It is our opinion that the placement in the schools of a display with the words "In God We Trust" thereupon is constitutional.

Law / Analysis

The words "In God We Trust" were first placed upon the United States coins during the War Between the States. In November, 1861, Secretary of the Treasury Salmon P. Chase ordered the Director of the Mint to place a suitable motto upon United States currency, one which succinctly emphasized America's trust in God as a people. The phrase "In God We Trust" was the result.

Subsequently, in 1873, this policy of placing "In God We Trust" on United States currency was enacted into law in the form of the Coinage Act of that year. The Secretary of Treasury was authorized to "cause the motto 'In God We Trust' to be inscribed on such coins as shall admit of such motto." From 1909 onward, those words have continuously appeared on one cent coins and on ten cent coins, since 1916. All gold coins, silver dollars, half dollars and quarter dollars have employed this motto continuously from July 1, 1908 forward. In 1956, President Eisenhower approved a Joint Resolution of Congress making the words "In God We Trust" the National Motto.

This historical significance of the phrase "In God We Trust" has often been recognized by the United States Supreme Court. In *Lynch v. Donnelly, supra*, the Court, in upholding the creche display of the City of Pawtucket against a constitutional challenge under the Establishment Clause, recognized that "[t]here is an unbroken history of official acknowledgment by all three branches of government of the role of religion in American life from at least 1789." In *Lynch*, the Court noted that "[o]ur history is replete with official references to the value and invocation of Devine guidance in deliberations of the Founding Fathers and contemporary leaders." 465 U.S. at 674. Numerous examples of the Government's "official acknowledgment" of our religious heritage in this country

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were enumerated. Among these are the declaration of Thanksgiving and Christmas as national holidays, the service and compensation of chaplains in both the House and Senate, the declarations by the President of a National Day of Prayer, and the phrase "One Nation Under God" in the Pledge of Allegiance. Also listed by the Court among these acknowledgments of America's religious heritage was the National Motto "In God We Trust." 465 U.S. at 676.

In her concurring opinion in *Lynch*, Justice O'Connor, voting to uphold the City's creche display, found that Pawtucket had no more "endorsed" religion than had such governmental "acknowledgments" of religion as legislative prayers or printing "In God We Trust" on the Nation's currency. Such acknowledgments of our religious heritage serve, in the view of Justice O'Connor, "the legitimate secular purpose of solemnizing public occasions, expressing confidence in the future and encouraging recognition of what is worthy in our society. For that reason, ... these practices are not understood as conveying government approval of particular religious beliefs." 465 U.S. at 693. Justice O'Connor's concurring opinion in *Lynch* is often seen as the formulation of her "endorsement" test to determine whether a measure violates the Establishment Clause and is an alternative to the test set forth by the Court in *Lemon v. Kurtzman, supra*,

For many of these same reasons, federal circuit courts have upheld the use of "In God We Trust" as the National Motto against an Establishment Clause challenge. See, *Aronow v. U.S.*, 432 F2d 242 (9th Cir. 1970); *Gaylor v. U.S.*, 74 F.3rd 214 (10th Cir. 1996); *O'Hair v. Blumenthal*, 462 F.Supp. 19 (W.D. Tex. 1978), *aff'd. sub. nom.*, *O'Hair v. Murray*, 588 F.2d 1144 (5th Cir. 1978), *cert. den.*, 442 U.S. 930 (1979). In *Gaylor*, the Court cited *Allegheney v. ACLU*, 492 U.S. 573, 602-603 (1989), wherein the Supreme Court had observed that "[o]ur previous opinions have considered in *dicta* the motto [In God We Trust] and pledge [of allegiance], characterizing them as consistent with the proposition that government may not communicate an endorsement of religious belief."

In *O'Hair*, the Court likewise analyzed the National Motto under the three-pronged test of *Lemon v. Kurtzman*, requiring that for a challenged law to be valid under the Establishment Clause, it must (1) reflect a clearly secular purpose, (2) having a primary effect that neither advances nor inhibits religion, and (3) avoid excessive governmental entanglement in religion. The *O'Hair* Court held that the primary purpose of the phrase "In God We Trust" is ceremonial and neither advances nor inhibits religion and that "it would be ludicrous to argue that the use of the national motto fosters any excessive entanglement with religion." Thus, the Court agreed with the 9th Circuit in *Aronow* that the Motto "'has no theological or ritualistic impact.'" 462 F.Supp. at 20.

Finally, in *Opinion of the Justices*, 108 N.H. 97, 228 A.2d 161 (1967), the Supreme Court of New Hampshire upheld a Bill requiring every public school to have a plaque bearing the words "In God We Trust." The Court noted that

> [t]he words "In God We Trust" as a national motto appear on all coins and currency, on public buildings, and in our national anthem, and the appearance of these words

> as a motto on plaques in public schools need not offend the Establishment Clause of the First Amendment.

228 A.2d at 164.

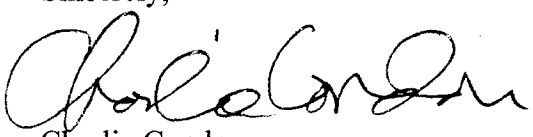
Conclusion

The words "In God We Trust" may constitutionally be placed in our public schools. These words comprise the National Motto of the United States of America. The phrase "In God We Trust" is found on coins and currency and on our buildings and landmarks without constitutional violation. These same words can be constitutionally placed in our schools as well.

The United States Supreme Court has repeatedly noted that the words "In God We Trust" are not an endorsement of religion. Instead, the Court has often referred to our National Motto as an acknowledgment by government of the fundamental role of religion in America's everyday life since the founding of this Country. The words "In God We Trust" serve the nonreligious purpose of solemnizing public occasions, expressing confidence in American society and recognizing the attributes of America. Three circuit courts have upheld the words "In God We Trust" as the National Motto and the Supreme Court of New Hampshire has ruled that these words can be placed in all the public schools.

Rather than an endorsement of religion, the words "In God We Trust" are a symbol of patriotic pride and an acknowledgment of America's religious heritage. Nothing in the Constitution prohibits using the National Motto "In God We Trust" to teach our children to honor and hold high the values and ideals of our Country and our love for God and country.

Sincerely,



Charlie Condon
Attorney General