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CHARLIE CONDON
ATTORNEY GENERAL

June 1, 2000

George L. Schroeder, Director
Legislative Audit Council
1331 Elmwood Avenue, Suite 315
Columbia, South Carolina 29201

RE: Informal Opinion

Dear Mr. Schroeder:

Thank you for your letter of May 8, 2000, requesting an opinion of the Attorney General's Office. You ask whether the State Ports Authority ("SPA"), which has a lease for piers and buildings at the Charleston Naval Complex, may grant a license to a private company to operate a cargo terminal. According to this arrangement, the private company will pay rent to the SPA who will retain half of the profits generated from the cargo terminal operation and remit the remainder to the Charleston Naval Redevelopment Authority ("RDA").

As you are aware, following the closure of federal military installations and defense sites, federal property became available for state use and redevelopment. In South Carolina, this redevelopment authority, codified at S.C. Code Ann. §31-12-10 *et seq.*, allows the Governor to create distinct bodies to oversee the disposition of the property turned over to the state. S.C. Code Ann. § 31-12-40. Pursuant to these statutes, the RDA is charged with redeveloping the former Charleston Naval Base. Although the State Ports Authority, an instrumentality of the State, is charged with promoting the development of harbors and seaports of South Carolina and encouraging foreign and domestic commerce through their use, *see* S.C. Code Ann. §54-3-130, the leases from the RDA to the SPA of the piers and buildings at the Charleston Naval Base are governed by the provisions of S.C. Code Ann. § 31-12-10 *et seq.*

The statute implicated by the arrangement between the RDA and the SPA is S.C. Code Ann. § 31-12-90, which reads:

> Notwithstanding any provision of law, neither the State nor any political subdivision or any public or quasi-public entity or affiliated corporate entity by whatever name whose board is appointed pursuant to an act of the General Assembly or any nonprofit public or nonprofit private corporation chartered for the purpose of furthering economic development may make a profit on the sale of real or personal property to a redevelopment authority created pursuant to this chapter; *nor may any monies from the authority's assets developed through the sale, lease, or fees generated from the profits be transferred to any government entity above, beyond, or outside of the authority itself,* except as may be required or permitted by applicable provisions of the Defense Base Closure Realignment Act, 10 U.S.C. 2901, et seq., as it may be amended from time to time. (Emphasis added.)

Specifically, you wish to know if the emphasized portion of the statute prohibits the SPA's retention of a portion of the profits generated from the cargo terminal operation.

In attempting to determine the effect of § 31-12-90 a number of principles of statutory interpretation are relevant. "In interpreting any statute, the primary purpose is to ascertain the intent of the legislature." State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). *State v. Harris*, 268 S.C. 117, 232 S.E.2d 231 (1977). Moreover, a court will reject the meaning of the words of a statute which would lead to absurd consequences. *Robson v. Cantwell*, 143 S.C. 104, 141 S.E. 180 (1928). Words used must be given their plain and ordinary meaning without resort to subtle or forced construction for the purpose of limiting or expounding the statute's operation. In other words, the real purpose and intent of the lawmakers will prevail over the literal import of the words. *Caughman v. Cola. Y.M.C.A.*, 212 S.C. 337, 47 S.E.2d 788 (1948). *Walton v. Walton,* 282 S.C. 165, 318 S.E.2d 14 (1984). The context of the statute must be examined as part of the process of determining the intent of the General Assembly. *Hancock v. Southern Cotton Oil Co.*, 211 S.C. 432, 45 S.E.2d 850 (1948). The Court must presume that the Legislature intended by its action to accomplish something and not do a futile thing. *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 136 S.E.2d 778 (1964).

Interpreted in the manner most consistent with the legislative intent of the redevelopment statutes, the provision probably does not prohibit the arrangement between the RDA and the SPA. To clarify, the statute can be read with either a broad or narrow interpretation of the prohibition on the transfer of profits. Under a broad sweep of the statute, no monies generated from the use of the facilities could be transferred to any other state agency. This interpretation, however, leads to an absurd result and one inconsistent with concomitant provisions of the redevelopment authority statutes. For example, income

produced from the private companies through the use of the facilities is certainly taxed and passed through to the Department of Revenue. Furthermore, S.C. Code Ann. § 31-12-200 allows property scheduled for disposal to constitute a tax increment finance district. A broad reading of the statute's restrictions on profit transfers would thus render the language of § 31-12-200 mere surplusage. On the other hand, a narrow application of the provision would prohibit monies from being removed from the RDA's assets and siphoned by an entity "above, beyond, or outside the authority," or in other words, a sovereign agency--as opposed to simply another state agency conducting a business arrangement with the RDA. This reading of the statute enables the RDA to contract for the redevelopment of the property while protecting its assets from usurpation.

It is also well established as a matter of statutory interpretation that construction of a statute by the agency charged with its administration is entitled to most respectful consideration and should not be overruled without cogent reasons. *Logan and Associates v. Leatherman*, 290 S.C. 400, 351 S.E.2d 146 (1986); *Emerson Electric Co. v. Wasson, Inc.*, 287 S.C. 394, 339 S.E.2d 118 (1986). A court will defer to the agency's interpretation where it is reasonable even if it is not the only reasonable construction. I am advised that the SPA and RDA have entered into the arrangement for the lease of the piers based on their similar interpretation of the statute as a narrow application of the prohibited profit transfers. Absent clear and compelling language of the statute forbidding the SPA from retaining half of the profits from their license to the private company, this Office must defer to those agencies' reasonable interpretation of S.C. Code Ann. § 31-12-90.

This letter is an informal opinion only. It has been written by a designated Deputy 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 not officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,

Zeb C. Williams

Zeb C. Williams, III
Deputy Attorney General