

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

November 3, 2000

The Honorable Charles R. Sharpe
Member, House of Representatives
Box 652
Wagener, South Carolina 29164

RE: Informal Opinion

Dear Representative Sharpe:

You have requested an opinion "concerning defacing or removal of flags from the Confederate monuments around the State." You state that "[i]n Aiken County, the Heritage Preservation Association has placed flags at the Jeff Davis Memorial on Jefferson Davis Highway. In addition to being defaced by vandals, the Department of Transportation also wants to take those flags down."

LAW/ANALYSIS

Act No. 292 of 2000 (R-331) makes it a misdemeanor for a person to willfully and maliciously deface, vandalize, damage, destroy, or to attempt to do so, any monument, flag, flag support, or memorial located on the Capitol grounds. In addition, Section 3 of the Act provides as follows:

(A) No Revolutionary War, War of 1812, Mexican War, War Between the States, Spanish-American War, World War I, World War II, Korean War, Vietnam War, Persian Gulf War, Native American, or African American History monuments or memorials erected on public property of the State or any of its political subdivisions may be relocated, removed, disturbed, or altered. No street, bridge, structure, park, preserve, reserve, or other public area of the State or any of its political subdivisions dedicated in memory of or named for any historic figure or historic event may be renamed or rededicated. No person may prevent the public body responsible for the monument or memorial from taking proper measures and exercising proper means for the protection, preservation, and care of these monuments, memorials, or nameplates.

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(B) The provisions of this section may only be amended or repealed upon passage of an act which has received a two-thirds vote on the third reading of the bill in each branch of the General Assembly.

The Act took effect July 1, 2000.

Several principles of statutory construction are pertinent to your inquiry. First and foremost, the elementary and cardinal rule of statutory construction is to ascertain and effectuate the actual intent of the General Assembly. See 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. Columbia Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Words used must be given their plain and ordinary meaning. See Smith v. Eagle Constr. Co. 282 S.C. 140, 318 S.E.2d 8 (1984).

Applying the foregoing rules of statutory construction, we believe that the question of whether the circumstances you describe constitute a violation of the Act turns on the meaning of the term "memorials." The AMERICAN HERITAGE DICTIONARY p.849 (3rd ed.1993), defines "memorial" as "something, as a holiday, intended to celebrate or honor the memory of a person or event." A plain reading of the statute based upon this expansive definition appears to include the placing of flags by the Heritage Preservation Association at the Jefferson Davis Memorial. However, the plain meaning must be consistent with the intent of the General Assembly in the passage of the Act. We think a reasonable and fair interpretation of this Act requires the term "memorial" to be more narrowly construed.

The General Assembly included Section 3 of Act No. 292 as part of the legislation mandating the particular flags flown atop the State House and at the south side of the Confederate Soldier Monument. The Act also governs the display of the flags on the Capitol grounds and the permanent display of the actual Confederate Flag at the State Museum. Section 3, which protects monuments and memorials erected on public property, should be read in the context of its surrounding provisions, which concern officially established public memorials and monuments. In other words, because the provision addresses memorials erected on public property, the specifics of the memorials have been approved, presumably, by the appropriate governing body. It seems reasonable that these are the memorials and monuments contemplated by the Act.

Whether a monument or memorial falls within the ambit of Section 3 of Act No. 292 of 2000 is a fact specific question. Furthermore, the parts of the monument that are protected under the statute also involves numerous questions of fact. To illustrate: it is one thing to conclude that an original statue of a historic figure is a memorial that cannot be relocated or removed, but it is quite another to conclude that candles, for example, placed by members of the public at the base of the statue could never be removed by a park official. To suggest that all memorial items placed at the

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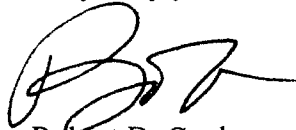
memorial become protected under the statute could lead to an absurd result. Indeed, under some circumstances, an enormous accumulation of these items could actually disturb or deface the original sanctity of the memorial.

In sum, it is our opinion that the determination of whether the removal of the flags placed at the Jefferson Davis Memorial by the Heritage Preservation Association violates Section 3 of Act 292 of 2000 depends on the facts surrounding the placement of the flags and the design of the particular memorial. If the body having oversight with respect to a particular monument or memorial authorizes the placement of flags at that memorial, then such placement would fall within the protection of the Act. If, on the other hand, placement of such flags is by a person or group having no authority or oversight concerning that memorial, the Act is inapplicable. Of course, while it our intention to provide some guidance for resolving this dispute, only a court could make the necessary finding that in this instance the removal of the flags constitutes a violation of the Act.

This letter is an informal opinion only. It has been written by a designated Senior 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 nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,

A handwritten signature in black ink, appearing to be "R. D. Cook", written in a cursive style.

Robert D. Cook
Assistant Deputy Attorney General