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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

October 30, 2001

Chad B. Hatley, Esquire
Briarcliffe Acres Town Attorney
Post Office Box 51
North Myrtle Beach, South Carolina 29597

Re: S.C. Code Ann. §50-11-870

Dear Mr. Hatley:

In a Memorandum to this Office on behalf of the Town of Briarcliffe Acres, you "[r]equest an Advisory Opinion with regards to the use of firearms within a Bird sanctuary for the purpose of deer population control." Specifically, you present the following question:

Given the fact that Briarcliffe is recognized within § 50-11-870 (*copy attached hereto*) of the South Carolina Code (as amended in 1976), as being a bird sanctuary, can rifles be utilized in an effort to maximize the efficiency of deer harvesting efforts?

By way of background, you indicate that Briarcliffe Acres has been suffering the effects of an over abundant deer population within its corporate limits for sometime now. You also provide the following history:

[I]n the November 3, 1998, election, an overwhelming majority of the Town's registered voters affirmative answered a referendum question on the ballot regarding the Town Council's implementation of a deer population program within the corporate limits of Briarcliffe. As a result of the aforementioned referendum, the Town Council passed Ordinance 98-02 thereby authorizing the enactment of a deer population control program. Following the passing of Ordinance 98-02, the Town's subsequent research revealed that the only truly effective way to address the deer overpopulation issue, was to remove them from the ecosystem. This was further confirmed by a report from the United States Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services which recommended an integrated wildlife damage management approach that included lot clearing coupled with deer harvesting. Shortly thereafter, deer harvesting was initiated in which dart guns were utilized in an effort to maximize safety and efficiency. Upon the successful

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harvesting of any deer, efforts were made to pass any disease free meat onto local food shelters for distribution.

The above-described harvesting techniques and efforts, have proven to be very ineffective from a cost and efficiency standpoint. Therefore, the Town of Briarcliffe is in the process of seeking more effective alternatives. The prominent options being discussed at this time include the erection of a deer fence between the Town of Briarcliffe and the adjacent property of the Meher Spiritual Center and/or the utilization of other means for the purposes of harvesting.

First of all, as I am sure you are aware, this Office cannot make factual determinations concerning the necessity of implementing a deer population control program or the appropriate means for accomplishing such. This Office can, however, provide an opinion as to the application of certain statutory provisions to the situation you describe.

Pursuant to S.C. Code Ann. § 50-11-870, Briarcliffe Acres has been designated as a bird sanctuary. The last sentence of Section 50-11-870 provides that "[i]t is unlawful to use shotguns, rifles, pellet guns, and BB guns within the area described in this section." Your concern is that this provision limits the ability of Briarcliffe Acres to use certain firearms in the control of the deer population therein. Section 50-11-870 cannot, however, be read in a vacuum. There are other provisions of law which must be evaluated when considering your question. For example, within the same chapter of the Code as Section 50-11-870 (Chapter 11 - Protection of Game), there exist Article 6 which allows the Department of Natural Resources (hereinafter the "Department") to issue "Special Depredation Permits." Within Article 6, there is Section 50-11-1050 which provides:

Where wildlife is destroying property, the department, upon the request of the property owner, may issue a permit authorizing the property owner, under the supervision of the department, to take action necessary to remove the destructive wildlife from his property.

Also, Section 50-11-1090 provides that:

The department has the authority during any season of the year to permit the taking of any game animal and prescribe the method by which they may be taken when they become so numerous that they cause excessive damage to crops and property.

Further, there are certain general laws regarding the State's proprietary interest in wildlife and the Department's authority to enforce and regulate the game laws of this state which must be considered. Section 50-1-10 provides that, for the most part, all wild birds, wild game and fish are property of the State. Section 50-3-110 provides that "[t]he department shall exercise supervision over the enforcement of the laws of the State, regulatory, tax, license or otherwise, in reference to birds, nonmigratory fish, game fish, shellfish, shrimp, oysters, oyster leases, and fisheries." These Sections

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of the Code give the State an overriding interest in all wild game, birds and fish and the Department broad supervisory powers to enforce the State's interest in such.

Given the position of the Department in regulating the fish and game laws of this State, I contacted the Office of Chief Counsel for the Department concerning your question. On behalf of the Department, that Office provided me with a Memorandum (copy attached) analyzing of the interplay of the relevant statutes. The Department considered the legislative intent involved in their passage, the legal principals involved in statutory construction and case law concerning similar statutes. The result of the Department's analysis can be seen in the last paragraph of the Memorandum which reads:

The obvious intent of the legislature in restricting use of rifles in Section 50-11-870 is to protect birds. The taking of deer under a Section 50-11-1090 permit will not violate the sanctuary status of birds if the permit is limited to taking non-avian species in a manner conditioned to protect birds. If the SCDNR is capable of issuing a permit calculated reasonably to insure protection of birds, then Section 50-11-1090 would not conflict with Section 50-11-870. Section 50-11-1090 authorizes the SCDNR to issue a depredation permit for "the taking of any game animal ... when they become so numerous that they cause excessive damage to crops and property." The damage sought to be prevented could include damage to birds or avian habitat. As stated above, this office does not make factual findings. The SCDNR is the agency to determine if damage to property constitutes an appropriate basis for the issuance of a permit to take wildlife under Section 50-11-1090, or associated statutes. Viewed within the context stated herein above, Sections 50-11-870 and 50-11-1090 may be read *in pari materia* and each statute given its full effect consistent with legislative intent.

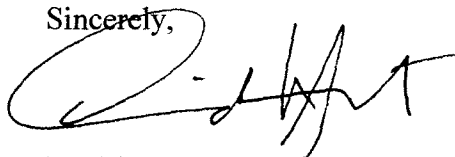
The construction given to a statute by the agency charged with its administration will be accorded most respectful consideration and will not be overturned absent compelling reasons. Laurens Co. School Districts 55 and 56 v. Cox, 308 S.C. 171, 417 S.E.2d 560 (1992); Jasper Co. Tax Assessor v. Westvaco, 305 S.C. 346, 409 S.E.2d 333 (1991). If the administrative interpretation is reasonable, courts will defer to that construction even if it is not the only reasonable one or the one the court could have adopted in the first instance. Op. Atty. Gen. (Dated March 12, 1997). This Office will also defer to the administrative interpretation of a statute so long as the interpretation is reasonable. Op. Atty. Gen. (Dated April 28, 1999).

It is apparent that the construction given the various statutes by the Department in this case is reasonable and is designed to foster the legislative intent. Therefore, it is my opinion that the Department's authority to issue special depredation permits under Article 6, Chapter 11 of Title 50, South Carolina Code of Laws, can be fully exercised notwithstanding the provisions of S.C. Code Ann. §50-11-870.

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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,

A handwritten signature in black ink, appearing to read 'D. Avant', with a large, sweeping initial 'D'.

David K. Avant
Assistant Attorney General

DKA/an
Enclosure