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OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

March 12, 1997

The Honorable Holly A. Cork  
Member, South Carolina Senate  
612 Gressette Building  
Columbia, South Carolina 29202

Re: Informal Opinion

Dear Senator Cork:

You have asked for an Opinion regarding use of the Water Recreation Resources Fund. You state the following:

[t]he Water Recreation Resources Fund, administered by the Department of Natural Resources (DNR) yields approximately \$50,000.00 annually for Beaufort County. Members of the previous Legislative Delegation permitted the fund to accumulate over several years and last November voted to transfer \$200,000.00 to the Water Safety Trust. This trust is to be administered by Beaufort County to provide funding for public swimming lessons. (Please see document enclosed).

I have recently received a letter from DNR stating that the Delegation proposed use of the Water Resources Fund may not be permissible under the law. Please review the letter and its corresponding 1988 Attorney General's Opinion and confirm whether or not this is true under current law.

You also enclose a document which relates the purpose of the Water Resources Safety Education Trust. This purpose is described as follows:

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[f]unds will be made available to fund qualified instructional courses focused on beginners' swimming, water sports and other water related activities with particular emphasis on, life safety training and water safety instructor training.

In addition, you enclose a letter dated February 25, 1997, from Dr. James A. Timmerman, Director of the South Carolina Department of Natural Resources regarding the expenditure of these funds for this project. Therein, Dr. Timmerman wrote:

[t]he Water Recreational Resources Fund, as originally established by Section 12-27-390 of the Code and now repeated in Section 12-28-2730, by statute must be spent for the purpose of water recreational resources. That term has been interpreted by the State Auditor and the Office of the Attorney General. In 1982, the Office of the State Auditor advised that "These funds should be used for permanent improvement." In Opinion No. 88-53, issued in July 1988, the Office of the Attorney General issued its opinion which found that expenditure of the fund "is restricted ... and that the term 'resource' means the physical property from which the water recreation is obtained or provided. It imports the acquisition or improvement of the actual water resource for recreational purposes." (Emphasis added) Education and training, although water-related, is not a physical improvement of a permanent nature. This Department has been obliged to follow the guidance of the State Auditor and the Office of the Attorney General in administering the funds. Consequently, using the funds to provide qualified instructional courses focused on beginner swimming, water sports, life safety training, and water safety instructor training does not meet this criteria.

Approval by the Delegation notwithstanding, the agency is bound to follow the statutory requirements in disbursing the funds. As an alternate, I would suggest the PRT be contacted to determine if any funding may be available to what appears to be a very worthwhile project.

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### LAW / ANALYSIS

S.C. Code Ann. Sec. 12-27-390 provides that a portion of the gasoline tax levied by Section 12-27-230 be allocated to a special "water recreational resources fund." Such Section states that

subject to the approval of a majority of the county legislative delegation, including a majority of the resident senators, if any for the purpose of water recreational resources.

(Emphasis added).

Several principles of statutory construction are relevant for purposes of resolving your request. First and foremost, is the time-honored tenet that all rules are subservient to the one which requires the legislative intent to prevail. A statutory provision should be given a reasonable and practical construction consistent with the purpose and the policy expressed in the statute. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). Words used are to be given their plain and ordinary meaning. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980).

Moreover, 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 Elec. Co. v. Wason, Inc., 287 S.C. 394, 339 S.E.2d 118 (1986). Where the administrative interpretation is long-standing and has not been expressly changed by the General Assembly, the agency interpretation is entitled to even greater deference. Marchant v. Hamilton, 279 S.C. 497, 309 S.E.2d 781 (S.C.App. 1983). So long as 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 would have adopted in the first instance. Op.Atty.Gen., January 24, 1991.

Finally, we have often noted that in the absence of any legislative amendments following the issuance of an opinion of the Attorney General, such strongly suggests that the views expressed therein were consistent with legislative intent. Scheff v. Township of Maple Shade, 149 N.J. Super. 448, 374 A.2d 43 (1977); Op.Atty.Gen. No. 84-69; Op.Atty.Gen., January 21, 1992.

There are at least three reasons why, in my judgment, the views expressed in Dr. Timmerman's letter, referenced above, are correct. The word "resources" is commonly defined as

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money or any property that can be converted into supplies; means of raising money or supplies; capabilities of raising wealth or capability of any kind. Shelby County v. Tennessee Centennial Exposition Co. 96 Tenn. 653, 36 S.W. 694, 33 L.R.A. 717 Cerenzia v. Department of Social Security of Washington, 18 Wash.2d 230, 138 P.2d 868, 871.

Blacks Law Dictionary, Fourth Edition. The common meaning of "resource" is "[s]omething that can be used for support or help. 2. An available supply that can be drawn on when needed." Thus, an interpretation of "water recreation resources" which is limited to "permanent improvement" or importing the "acquisition or improvement of the actual resource for recreational purposes" is a reasonable construction.

Secondly, in an Opinion dated October 7, 1987, (as well as in Opinion No. 88-53), we recognized that "[t]he Wildlife Department has maintained for some time that 'purpose of water recreational resources' is served by actual physical improvements to water resources, such as boat ramps and connected facilities." We noted that "[t]his interpretation appears to be in accord with the literal language of § 12-27-390 ... ." As our Court emphasized in State v. Salmon, 279 S.C. 344, 306 S.E.2d 620 (1983) where the terms of a statute are clear and unambiguous, they must be applied according to their literal meaning.

Third, the Department of Natural Resources' longstanding interpretation has been consistently viewed by this Office as the correct one. When the Legislature fails to modify a long-standing agency interpretation which has been found to be correct by this Office on a number of occasions, the courts will adopt this construction as the prevailing law.

Finally, it is also well established that "[a]n officer may pay out public money only in the manner prescribed by law." McQuillin, Municipal Corporations, § 12.217. Accordingly, it is my opinion that Dr. Timmerman's letter correctly states the law and that this fund may not be used for the desired purpose expressed in your letter, without a change in the law. As I understand it, a proviso in the Budget Bill recently passed the House which required DNR to transfer a certain portion of this Fund to Richland County for the renovation of the Lake Murray Tourism Visitor Center. You may thus wish to pursue a similar legislative remedy with respect to your proposed project as well.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney

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as to the specific questions 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 am

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General

RDC/ph