

5263 February

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3660
FACSIMILE: 803-253-6283

January 3, 1994

The Honorable L. Morgan Martin
Member, House of Representatives
1206 3rd Avenue
Conway, SC 29526

Dear Representative Martin:

As you are aware, your letter of October 8, 1993 to Attorney General Medlock was referred to me for response. In that letter you indicated that "it has become necessary for proscriptive easements to be gained from land owners in the Horry Soil and Water Conservation District so that Water Shed District ditches and canals can be maintained. The directors for the local Water Shed District and the Horry Soil and Water Conservation Commission are of the opinion that the Land Resources Conservation Commission can and should assist these local water shed districts in gaining these easements." You go on to ask for this Office's opinion as to "whether or not the Land Resources Conservation Commission can legally assist the local water shed districts in obtaining easements necessary for the maintenance of those districts."

The creation and function of watershed conservation districts, and the responsibility of the Land Resources Conservation Commission (LRCC) to provide assistance to the districts, are delineated in the provisions of 1976 S. C. Code, Ann., Section 48-11-10, et seq. A review of those provisions reveals no language which seems to absolutely prohibit the LRCC from providing assistance to watershed districts in obtaining easements. Therefore, it appears that the LRCC would not be statutorily barred from providing such assistance if that agency deemed it appropriate to do so. However, the issue of whether or not the LRCC should provide the assistance is, of course, not a legal question and, thus, is not addressable by this Office.

Don

The Honorable L. Morgan Martin
Page Two
January 3, 1994

Implicit in your inquiry is the further issue of whether the LRCC is required to provide assistance in obtaining easements to watershed districts. Guidance on that issue is found in the language of Section 48-11-15. That section provides as follows:

The South Carolina Land Resources Conservation Commission shall assist boards of commissioners of soil and water conservation districts and boards of directors of watershed conservation districts with the organization and function of watershed conservation districts. For the purpose of this chapter, the responsibility of the commission is limited to this activity. The construction, operation, and maintenance of watershed works of improvement are the sole responsibility of watershed conservation districts and others as specified in the documents for the works of improvement." (emphasis supplied).

By the plain language of Section 48-11-15, the only statutory mandate placed upon the LRCC is to assist the boards of directors of watershed conservation districts with the organization and function of watershed conservation districts. Responsibility for the construction, operation and maintenance of watershed works of improvement is placed solely upon watershed conservation districts. Clearly, the plain language of Section 48-11-15 indicates that the LRCC is not required to provide assistance to the watershed conservation districts in obtaining easements. Martin v. Ellisor, 266 S.C. 377, 223 S.E.2d 415 (1976).

In addition, Section 48-11-110(7) provides that watershed conservation districts may "employ appropriate consultants, advisors, and employees and fix and pay them compensation from funds available to the district." It appears, from this language, that the legislature contemplated and intended that the districts would obtain needed assistance, including legal services, from a source or sources other than the LRCC. The intent of the legislature must be given effect. McGlohon v. Harlan, 254 S.C. 207, 174 S.E.2d 753 (1970).

Finally, we note that the LRCC construes Section 48-11-15 to provide that the agency is not obliged to provide the aforementioned assistance to watershed conservation districts. We are mindful of the principle that the construction given a statute by those charged with the duty of executing it ought not to be overruled without cogent reasons. Hadden v. S. C. Tax Commission, 183 S.C. 38, 190 S.E. 249 (1937). We find no cogent reasons to take issue with the LRCC's interpretation of Section 48-11-15.

The Honorable L. Morgan Martin
Page Three
January 3, 1994

In summary, we conclude that the LRCC is not required, by statute, to provide assistance in obtaining easements to watershed conservation districts. The question of whether or not the LRCC should provide such assistance must be left to the LRCC for determination.

I trust that you will find the foregoing information to be responsive to your inquiry. Please contact this Office if we can be of further assistance.

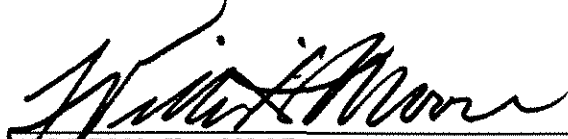
Very truly yours,



Wilbur E. Johnson
Assistant Attorney General

WEJ/fc

REVIEWED AND APPROVED:



WILLIAM K. MOORE
Deputy Attorney General



ROBERT D. COOK
Executive Assistant for Opinions