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The State of South Carolina

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Buford S. Mabry, Jr., Chief Counsel
South Carolina Wildlife & Marine Resources Department
Post Office Box 167
Columbia, South Carolina 29202

Dear Mr. Mabry:

You have requested the opinion of this Office as to whether the legislation establishing the South Carolina Wildlife and Marine Resource Department's licensing scheme for the use of set or channel nets violates the Equal Protection Clause of the United States Constitution or South Carolina Constitution. Your question particularly pertains to South Carolina residents and nonresidents who were not set or channel net licensees in the previous year.

The State has a legitimate interest in controlling and regulating wildlife as long as such regulation does not violate constitutional proscriptions. The State is given great deference in determining the best means to protect and regulate wildlife. Cf. Baldwin v. Fish & Game Comm'n of Mont., 435 U.S. 371, 383, 98 S.Ct. 1852, 56 L.Ed. 2d 354 (1978). 14 SC Jurisprudence Game & Fish §2 (1992).

The Legislature granted the Wildlife Department authority to issue only a limited number of permits allowing the use of set or channel nets. Section 50-17-130, S.C. Code Ann., 1976 (as amended). "Applicants who held set or channel net licenses for the previous fiscal year and who were not in violation of applicable conservation laws or regulations have preference for licenses." Id.

It is well established that a state is not required to have identical licensing schemes for residents and nonresidents. Baldwin v. Fish & Game Comm'n of Mont., 435 U.S. 371, 383, 98 S.Ct. 1852, 56 L.Ed. 2d 354 (1978). Nor is a state required to apply all of its laws equally to anyone, resident or nonresident. Only with respect to fundamental rights and privileges must a state treat all

citizens, residents and nonresidents, equally. Id. at 383. The statute in question, §50-17-130, does not differentiate (or even mention) out of state applicants or licensees.

Without any indication of preference being granted either South Carolina residents or non-residents, this aspect of your request does not trigger any equal protection (or commerce clause) analysis. The classification itself (which gives preferential treatment to those applicants who previously held set or channel net licenses) hinges upon the previous status of the applicant and not on the applicant's residence.

The Wildlife Department's licensing scheme will not violate the Equal Protection clauses of the United States Constitution or South Carolina Constitution if the preferential treatment afforded to applicants who already possess a channel net license is a valid and reasonable classification. In order to be reasonable, the classification must:

1) bear a reasonable relation to the legislative purpose sought to be achieved;
2) members of the class must be treated alike under similar circumstances; and
3) the classification must rest on some rational basis.

Hanvey v. Oconee Memorial Hosp., ___S.C.___ 416 S.E.2d 623, 625 (S.C. 1992); Samson v. Greenville Hosp. Sys. 295 S.C. 359 368 S.E.2d 665 (S.C. 1988). As long as there is a reasonable relation between the legislative purpose of §50-17-130 and the challenged classification (the preferential treatment), the licensing scheme should withstand constitutional challenge.

We have examined this issue from the standpoint of other jurisdictions that have considered similar preferential licensing schemes, but have found no authority dealing with the issue.

By limiting the number of licenses and giving a preference to those persons who already have licenses, the state is making a conscientious effort to regulate and conserve its wildlife. Cf. Douglas v. Seacoast Products, Inc., 431 U.S. 265, 97 S.Ct. 1740, 52 L.Ed.2d 304 (1977); Baldwin, supra. This effort is coupled with the interest of the State in only issuing licenses to persons who have established their previous ability to abide by the Wildlife laws and regulations. This is apparently the legislature's motive in preferring previous, proven licensees over unknown applicants.

Assuming that the Wildlife Department's licensing scheme is reasonably justified, the licensing scheme will not violate the

equal protection clause. It has been held that "a classification by statute does not need to completely accomplish legislative purpose with delicate precision in order to survive equal protection challenge." Foster, 413 S.E.2d at 36. Because this licensing scheme is targeted at the conservation and regulation of wildlife, it is neither arbitrary nor based on reasons totally unrelated to the purpose of the statute. Thus, it appears that the licensing scheme is constitutional. Cf. DeLoach v. Scheper, 188 S.C. 21, 198 SE 409 (1938).

I hope this answers your question, and if I may be of further assistance please do not hesitate to call upon me.

With my kind regards, I am

Very truly yours,

Cameron B. Littlejohn, Jr.
Assistant Attorney General

CBLjr./fg

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