



The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

October 20, 1995

The Honorable Glenn F. McConnell  
Senator, District No. 41  
311 Gressette Building  
Columbia, South Carolina 29202

Re: Informal Opinion

Dear Senator McConnell:

You have asked us to provide the Hunley Commission with an opinion evaluating who may bind the State in negotiations with the Navy. You have further indicated that

[w]e believe that the Hunley Commission would be an appropriate party to an agreement with the Navy, but would such an agreement need the signature of another entity and would the Budget and Control Board need to approve the document?

Apparently, the vessel is located upon and embedded in lands of the State of South Carolina within the three-mile limit of the South Carolina coast. S.C. Code Ann. Section 54-7-630 provides in pertinent part that:

- (A) [a]ll submerged archaeological historic property and artifacts and all submerged paleontological property located on or recovered from submerged lands over which the State has sovereign control, are declared to be the property of the State.

Title to the seabed out to the three-mile limit is confined by the Submerged Lands Act, 43 U.S.C. Section 1301 et seq. See also, Section 54-7-630(47) ["territorial waters" to

The Honorable Glenn F. McConnell

Page 2

October 20, 1995

include navigable waters of the State three miles from the coastline and "such other waters" as defined in the Federal Abandoned Shipwreck Act of 1987.]

Clearly, the Hunley Commission would be the primary signatory to any agreement. S.844 of 1995, a Concurrent Resolution, expresses the sense of this General Assembly that such Commission is acting on behalf of the General Assembly in matters involving the Hunley. Three members of the Commission are appointed by the Speaker of the House, three by the President Pro Tem of the Senate and three by the Governor. The Concurrent Resolution authorizes the Commission to

... make a study of the law regarding the rights to the salvage of the "Hunley," a Confederate submarine, and any claim that a person or entity may assert with regard to ownership or control of the vessel. The committee is authorized to direct the Attorney General on behalf of South Carolina to take appropriate steps to protect and enforce the rights of the State of South Carolina to the salvage of the Hunley and to defend the State against claims regarding this vessel and to make recommendations regarding the appropriate method of preservation of this historic vessel.

The General Assembly clearly intended for the Commission to "take appropriate steps" regarding the rights of the State concerning the Hunley and to "make recommendations" regarding preservation. Thus, based upon the General Assembly's intent, the Hunley Commission would take the lead and be the primary party in the negotiation of any agreement. In my judgment, therefore, the Hunley Commission would be an essential party to any agreement.

Likewise, the Attorney General, or his designee, would be an appropriate party. S.844 empowers the Commission to "direct the Attorney General" concerning the State's rights as to this vessel. As the State's chief legal officer, see S.C. Code Ann. Sec. 1-7-10 *et seq.*, the Attorney General is acting in conjunction with and at the direction of the Commission, and thus could sign the agreement, pursuant to this authority as well as his common law powers on behalf of the people of South Carolina. See State v. Broad River Power Company, 157 S.C. 1, 68, 153 S.E. 537 (1929); Cooley v. South Carolina Tax Comm., 204 S.C. 10, 28 S.E.2d 445 (1943); State ex rel. Wolfe v. Sanders, 118 S.C. 498, 110 S.E. 808 (1921).

You have asked specifically whether the Budget and Control Board would be an appropriate party to any agreement with the Navy and I concur that the Board would be

The Honorable Glenn F. McConnell

Page 3

October 20, 1995

appropriate as a party thereto. As you suggest, the Board is the agency generally responsible for the management and control of real and personal property belonging to or in the custody of the State of South Carolina where no state agency or board otherwise has such responsibilities by law. See, e.g. Section 3-9-10 (Board through Director of General Services to control surplus personal property vis á vis the United States government); Section 1-11-70 (vacant lands of the State "subject to the directions of the State Budget and Control Board) [Hunley apparently embedded in State's lands]; Section 10-1-140 (Director of General Services given general oversight authority with respect to personal property of State); R 19-410 et seq. (Division of General Services of Budget and Control Board designated the State Agency for Surplus Property whose mission is to dispose of surplus property).

Moreover, the Board is given a direct role in the South Carolina Underwater Antiquities Act of 1991. Section 54-7-640(C) provides that

[t]he custodian of any other things of value not provided for in this section is the State Budget and Control Board which may promulgate regulations as necessary for this purpose.

Accordingly, while the Board may not be the actual custodian here, considering this specific authority of the Board regarding underwater antiquities, as well as the other authorities referenced, it would certainly be prudent for the Board to be a signatory to any agreement. Likewise, the South Carolina Institute for Archaeology and Anthropology, is made custodian of "submerged archaeological historic property and artifacts" under this same Act, see, Section 54-7-640(A), and thus should be a signatory.<sup>1</sup>

Finally, out of an abundance of caution, the General Assembly may wish to consider ratifying any agreement, when it returns next session. This would be consistent with the Legislature's instructions in S.844 that the Hunley Commission is "to make recommendations regarding the appropriate method of preservation of this historic vessel." It is evident that this language indicates the Legislature's desire to remain closely involved with the salvage of the Hunley and thus it would be wise to obtain the Legislature's approval of any agreement consistent with such intent.

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<sup>1</sup> As I understand it, the South Carolina Department of Archives and History is designated as the State Historic Preservation Officer (SHPO). This agency would be an appropriate signatory of any agreement.

The Honorable Glenn F. McConnell

Page 4

October 20, 1995

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 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/an