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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 10, 1996

The Honorable John R. Russell
Senator, District No. 12
606 Gressette Building
Columbia, South Carolina 29202

Re: Informal Opinion

Dear Senator Russell:

You have made inquiry regarding materials found in Croft State Park in Spartanburg. You state the following:

> [d]uring World War II, Camp Croft was a national training base for those who fought in the European Theater. It encompassed some 19,000 acres of land. At the conclusion of the War, the facility was closed down and approximately 9,000 acres were deeded to the State of South Carolina. That area now encompasses Croft State Park located in Spartanburg County.
>
> Recently, it has come to light that during the closure process, many items were buried in the facility. Most of the burial area is within State Park boundaries. My question concerns ownership of the items recovered from the State's property. Is that property of the State or is it property of the finder?
>
> I am aware that all ordinance remains the property of the U.S. Government, and my inquiry is directed toward non-ordinance material such as machine parts, rifles, motorcycles, etc. I hope you can give us some guidance as this question[]

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Request Letter

> is going to become more significant as the clean up of the facility by the Corps of Army Engineers continues.
>
> Additionally, if you could research the ownership of such above mentioned items found on private land, i.e. that area not in Croft Park, but those lands that used to comprise the original facility.

Law / Analysis

The common law rules relating to the finding of lost goods are well established. It has been stated that

> [a]s a general rule the title and the right to possession of the finder are not affected by the ownership of the property in or on which the thing lost is found, unless it is imbedded in, or attached to the soil ... .
>
> If a chattel is buried in or embedded in the soil and does not belong to that class of chattels which when so found should be considered treasure trove [any gold or silver in coin, plate, or bullion found concealed in the earth, etc. the owner being unknown or considered buried so long, probable that the owner is dead], is in the owner of the soil, unless in some instances at least, the depositor owner is known. Such a chattel becomes a part of the soil and passes by gift, sale or descent of the real property as a part thereof.

36A C.J.S. Finding Lost Goods § 5. It is also similarly stated elsewhere:

> [w]hen personalty is found embedded in land, title to that personalty rests with the owner of the land. The basis of the rule was that a wrongdoer should not be allowed to profit by his wrongdoing; that is, except for the trivial or merely technical trespass, the fact that the finder was trespassing is sufficient to deprive him of his normal preference over the owner of the place where the property was found.

1 Am.Jur.2d, Abandoned, Lost, etc. Property § 29.

A number of cases apply these rules in a variety of contexts, including where property is found beneath the surface of the ground on state or federal property. In Matter of Search and Seizure v. Shivers, 890 F.Supp. 613 (E.D. Tex. 1995), a metal detectorist searched for, discovered and removed tokens from an abandoned Lumber Company mill site located within National Forest property. The tokens were seized from the finder pursuant to a search warrant. The District Court concluded that the seizure was proper inasmuch as the finder could not show legal entitlement to the property. Finding that no such entitlement could be shown, the Court found that

> [a]bsent express or statutory title conferment, the common law of property provides the rule of decision. Klein v. Unidentified Wrecked and Abandoned Sailing Vessel, 758 F.2d 1511 (11th Cir. 1985) .... Under the common law of finds, abandoned property embedded in the soil belongs to the owner of the soil.

890 F.Supp. at 615. While the Court recognized that "[u]nder the common law of finds, the "finders keepers" rule determines lawful possession of abandoned property not embedded or constructively possessed by the owner of the land", because the finder could not "separate those [tokens] taken from the surface from those excavated", the court denied the finder's request for return of the property. Id. at 616.

Likewise, in the Klein case, cited by the Court in Shivers, an 18th century English vessel was found by an individual while sport diving in the Biscayne National Park. The lands beneath the water were owned entirely by the United States as part of its national park system. The government knew of the wreck's existence but it did not physically locate the wreck until some time after the diver had found it and removed several artifacts therefrom. Title to the National Park property had been conveyed to the United States by the State of Florida.

The diver claimed ownership of the vessel by virtue of the fact that he had found it. Noting that "[t]he common law of finds is the appropriate law to examine to determine the ownership of the wreck", the Eleventh Circuit Court of Appeals disagreed, finding that the wreck belonged to the United States by virtue of its title in the land received from the State of Florida. Said the Court,

> [t]he common law of finds generally assigns ownership of the abandoned property without regard to where the property is found. Two exceptions to that rule are recognized: First, when the abandoned property is embedded in the soil, it belongs to the owner of the soil; Second, when the owner of

> the land where the property is found (whether on or embedded in the soil) has constructive possession of the property such that the property is not "lost", it belongs to the owner of the land. [Citations omitted] Both exceptions operate to give the United States ownership in this case.
>
> The ship is buried in the soil. The soil belongs to the United States as part of its national park system. In 1973, the land was transferred to the United States by the State of Florida for the purpose of allowing the United States to establish a national park area partially because of the historical value of the many shipwreck sites to be found in the area. When the United States acquired title to the land from Florida in 1973, it also acquired title to the shipwrecks embedded in that soil.
>
> Since 1975 the United States has had constructive possession of the wreck by virtue of a preliminary Archaeological assessment of Biscayne National Monument prepared for the Park Service. This assessment noted the presence of an 18th century shipwreck in the area of the wreck. Furthermore, the United States has had the power and the intention to exercise dominion and control over the subject shipwreck. Thus the United States has never legally lost the subject shipwreck and, as the owner of the land on and/or in which the shipwreck is located, it owns the shipwreck.

758 F.2d at 1514.

In Lathrop v. Unidentified, Wrecked and Abandoned Vessel, 817 F.Supp. 953 (M.D. Fla. 1993), a salvor of the remains of a shipwreck sought a preliminary injunction to prevent interference by the United States in the salvage of the vessel. The Court found that the plaintiff was unlikely to succeed on the merits of his claim regarding ownership of the shipwreck thus denying plaintiff's injunction. Applying the common law of finds with its well-established exceptions, the Court held:

> [i]n the instant case, the alleged shipwreck is buried in the soil. The soil belongs to either the United States as part of its national park system which was dedicated to it by the State of Florida, or to the State of Florida. It appears, then, that if the United States acquired title to the submerged lands

> from Florida, it also acquired title to the alleged shipwreck embedded beneath the soil. If the State of Florida retained ownership of the submerged lands, it has possession and title to the alleged shipwreck. Therefore, Plaintiff has not demonstrated a substantial likelihood of prevailing on his claim of ownership to the alleged shipwreck.

Finally, in Chance v. Certain Artifacts Found and Salvaged, 606 F.Supp. 801 (S.D.Ga. 1984), affd. without op., 775 F.2d 302 (11th Cir. 1986) remains of THE NASHVILLE, a vessel used by the Confederate government in the War Between The States and which sank in the Ogeechee River during the War was discovered. The Court concluded that title to THE NASHVILLE belonged to the State of Georgia. Citing a number of cases including Favorite v. Miller, 176 Conn. 310, 407 A.2d 974 (1978), Ferguson v. Ray, 44 Or. 557, 77 P. 600 (1904), Allred v. Biegel, 240 Mo.App. 818, 219 S.W.2d 665 (1949) and Bishop v. Ellsworth, 91 Ill.App.2d 386, 234 N.E.2d 49 (1968), the Court's analysis was that these cases

> all show that property need not be totally buried to satisfy the embeddedness requirement. What is affixed to the land belongs to the owner of that land. ... In the instant case, despite plaintiff's testimony to the contrary, their application to the state for permit to excavate THE NASHVILLE suggests that plaintiffs were aware that the land belonged to the state. However, whether they in fact knew that title to the ship was in the State is irrelevant to the disposition of this case. The evidence presented at trial reveals that the ship is "embedded in or attached to" the bottom of the Ogeechee River. As a result, title to the vessel properly rests with the state.

606 F.Supp. at 807-808.

While I can locate no South Carolina case which has concluded that the foregoing common laws of "finds" is applicable in South Carolina, likewise I have found no South Carolina statute which purports to modify this common law rule in this context. Moreover, S.C. Code Ann. Section 14-1-50 specifically declares that

> [a]ll, and every part of the common law of England, where it is not altered by the Code or inconsistent with the Constitution or laws of this State, is hereby continued in full force and effect in the same manner as before the adoption of this section.

In Allred v. Biegle, supra the Court referenced the English case of Elwes v. Briggs Gas Company, 33 Ch.D. 562 (1886) and summarized the case as being one

> ... where an ancient ship, some 2000 years old, followed out of a single oak log and retaining its character of wood (not fossilized), was discovered, embedded in the soil, by the lessee of the land, while lawfully excavating thereon. Chitty, J., held that whether the ship was to be regarded as mineral, or as part of the realty under the maxim "Quicquid Plantaur" or "fixatur solo, solo cedit," or merely as a chattel embedded in the soil, its existence completely unknown to the owner of the land, the title thereto was in the owner of the land. It was said that the original owners were long since dead, that it is inconceivable that their title could be established, and that the owner of the land claimed not only the surface thereof but everything within the soil, to the center of the earth, including the ship that was embedded therein.

219 S.W.2d at 666. Thus finding no statute which expressly supersedes this common law rule, I would deem it applicable in South Carolina. Accordingly, it is my opinion that the artifacts and materials which you refer to in your letter would belong to the owner of the real property. Where that is the State, I would consider the State as owner of such chattels and personal property buried beneath its lands and where property is similarly owned by a private individual, that owner would have a valid claim to the buried artifacts.

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