



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

February 5, 1996

The Honorable Joe Wilson
Member, South Carolina Senate
Post Office Box 5709
West Columbia, South Carolina 29171

RE: Informal Opinion

Dear Senator Wilson:

By your letter of January 18, 1996, to Attorney General Condon, you have sought an opinion interpreting S.C. Code Ann. §12-27-390 (1995 Cum. Supp.), concerning the use of gasoline taxes levied for the benefit of water recreational resources. The issue is whether the funds generated by the specified taxes could be used for the "planning and development of water related facilities."

In relevant part, §12-27-390 provides:

(A) One percent of the proceeds from the gasoline tax imposed pursuant to Sections 12-27-230 and 12-27-240 must be transmitted to the Department of Natural Resources to be placed to the credit of a special water recreational resources fund of the state treasury and all balances in the fund must be carried forward each year so that no part of it reverts to the General Fund of the State. All of the funds must be allocated based upon the number of boats or other watercraft registered in each county pursuant to law and expended, 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.]

The plain language of the statute requires that the funds be expended for the purpose of water recreational resources. The enclosure with your letter mentions the possible use of the funds for "planning and development of water related facilities," which phrase may well not have the same meaning or interpretation as the language of the statute.

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This Office issued an opinion on July 14, 1988, which interpreted the phrase "water recreational resources." After examining the definition of each term of the phrase, the opinion continued:

The expenditure of the fund is restricted and in our view requires more than the promotion of an existing resource. "Resource" as the term is here used 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.

Further support for this conclusion is found in the longstanding administrative interpretation of the term "water recreation resources". It is understood that the South Carolina Department of Wildlife and Marine Resources [now Department of Natural Resources] has interpreted the term to mean a physical improvement to naturally occurring bodies of water and associated wetlands. This interpretation is entitled to weight and should not be negated without cogent reasons. Emerson Electric Co. v. Wasson, 287 S.C. 394, 339 S.E.2d 118. [Emphasis added.]

In addition, in an opinion dated October 7, 1987, this Office observed, as to use of the same funds at issue here, that "[t]he Wildlife Department has maintained for some time that the 'purpose of water recreational resources' is served by actual physical improvements to water resources, such as boat ramps and connected facilities." Copies of these two opinions are enclosed for your review.

The enclosure with your letter mentions a "Saluda Shoals project" but does not describe the endeavors which would be a part of the project. Thus, it is not possible to give definitive guidance on whether the project or any part(s) thereof would fall within the phrase "water recreational resources." The primary consideration would be that the project or part(s) of it be for "water recreational resources" and not for "water related facilities" as was suggested in your enclosure; if the project is for "water recreational resources," then use of the watercraft recreational funds would be appropriate for planning and development of the project. If, on the other hand, the project is not in furtherance of a physical improvement to a naturally occurring body of water or associated wetlands, then use of the funds for planning and development therefor would most probably not be appropriate. If only a part of a project, as opposed to the project as a whole, would directly support the "physical improvement to naturally occurring bodies of water and associated wetlands," then the funds would be appropriately expended only for that part of the project; I am of the opinion that other parts of such a project not in direct support of such physical improvement to a naturally occurring body of water, would most

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probably not be permissible.¹ In any event, the interpretation of the Department of Natural Resources, as the agency charged with administration of the funds, would be given great weight and should not be disregarded without cogent reason, as was recognized in the opinion of July 14, 1988, as discussed earlier.

This letter is an informal opinion only. It has been written by a designated Senior Assistant 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 kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General

Enclosures

¹As an example only, without intending to suggest a limitation on projects or parts thereof which might be permissible uses of such funds, I would suggest that docks or ramps which would provide access to a river or naturally occurring body of water and parking facilities, if such would be directly related to the river or boat facilities, would likely be permissible uses of funds. Picnic facilities, nature trails near the body of water, campgrounds, or similar park-type facilities would be more questionable types of expenditures as such would not appear to be direct physical improvements to the body of water. Of course, the Department of Natural Resources would be in the best position to examine specific plans and advise as to the appropriateness of specific requested uses of the funds.