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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 1, 1996

J. Hugh Ryan, State Forester
S.C. State Forestry Commission
P.O. Box 21707
Columbia, South Carolina 29221

Re: Informal Opinion

Dear Mr. Ryan:

You have requested an opinion regarding the authority of State Forestry Commission Officers. You provide the following information:

[i]n the past few years our officers have become increasingly involved in the enforcement of state statutes other than the traditional "woods arson" and outdoor burning laws we have been associated with in the past (i.e. 16-11-150 through 180 and 48-35-10 through 50). Some of the other statutes that we have been enforcing recently are the major arson statutes such as 16-11-110; timber theft statutes such as 16-11-580, and Game Management statutes on our State Forests.

In 1991 the question arose concerning the authority of our officers to enforce Game Management statutes and DNR regulations on the areas of our State Forests placed in the Wildlife Management Area program. At this time we contacted your office and the Criminal Justice Academy for an opinion on this issue. As well as I can remember the consensus was that there was no problem with our officers enforcing these other statutes as long as it was in the scope of

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their training and agency policy, but we have no documentation of such an opinion.

Thus, your question is this:

[i]s the existing authority of our law enforcement officers under 48-23-96 or similar statutes sufficient for the statewide enforcement of statutes such as 16-11-110 and 16-11-580, and the Game Management (WMA) statutes on our State Forests? Please know too that ten of our officers are State Constables. Do they have any special standing in regard to laws that they can enforce as compared to regular Forestry Commission Law Enforcement Officers.

LAW / ANALYSIS

S.C. Code Ann. Sec. 48-23-96 provides in pertinent part as follows:

[t]he South Carolina Forestry Commission shall appoint officers for forest law enforcement whose terms of office shall be permanent unless revoked by the Commission. Officers may be removed by the Commission on proof satisfactory to it that they are not fit persons for such positions. Such officers shall carry out the forest law enforcement responsibilities of the Commission, including the training of other personnel, shall enforce statutes enacted for the protection of forests and woodlands from fire, insects and diseases, and shall make arrests for violations of forestry laws.

Such officers shall have authority to obtain and serve warrants including warrants for violations of any duly enacted regulations of the Forestry Commission.

Several principles of statutory construction are applicable to your question. First and foremost, is the fundamental tenet that, in interpreting a statute, the primary purpose is to ascertain the intent of the legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statutory provision should be given a reasonable and practical construction which is consistent with the purpose and policy expressed therein. Jones v. S.C. State Hwy. Dept., 247 S.C. 132, 146 S.E.2d 166 (1966). Words used in an enactment should be given their plain and ordinary meaning. Smith v. Eagle Const. Co. 282 S.C. 140,

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318 S.E.2d 8 (1984). Moreover, exceptions made in a statute give rise to a strong inference that no other exceptions were intended. Pa. Nat. Mut. Cas. Ins. Co. v. Parker, 282 S.C. 546, 320 S.E.2d 458 (S.C. App. 1984). Statutes in pari materia should be construed together in order to render both operative. Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970).

Your first question relates to the authority of Forestry Commission Officers to enforce Section 16-11-110, which is the general arson statute. Such provision makes it a crime to wilfully and maliciously cause an explosion or set fire to a building or structure, dwelling, barn, stable etc. or any other building. Reading that provision together with Section 48-23-96, authorizing Forestry Commission Officers to "enforce statutes enacted for the protection of forests and woodlands from fire ...", I do not believe it unreasonable to conclude that Section 16-11-110 would fit within such authorization. It goes without saying that forest fires frequently start from the intentional or negligent burning in or near "forest lands" or woodlands. See e.g. Section 48-35-10 et seq. Moreover, this reasoning would also lead to the conclusion that, in the context of wilfully and maliciously setting fire to a dwelling in a forest area, Section 16-11-110 could be deemed a part of the "forestry laws" as contemplated by Section 48-23-96. Even where a woods fire is intentionally set near a house which catches the house on fire, the house fire could spread to other forest areas. Thus, in my judgment, it would fit within the scope and purpose of Section 48-23-96 to enable Forestry Commission Officers to enforce the arson statute where applicable on or near "forest lands" or proximate to the forests of South Carolina.

Likewise, I do not deem it unreasonably broad to construe the enforcement of Section 16-11-580 as being within the jurisdiction and authority of Forestry Commission Officers. That provision makes it

... unlawful for anyone to knowingly or wilfully cut, destroy or remove any trees or timber of any kind standing or growing on any lands of this State, whether privately or publicly owned, or to remove any logs or trees cut from any such lands without the consent of the owner. It shall also be unlawful for anyone who is the owner, master, pilot, operator or consignee of any vessel, vehicle, motor vehicle, aircraft or the owner, director or agent of any railroad to transport any timber or logs or the lumber manufactured therefrom knowing them to have been cut or removed from such property.

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Again, it would appear to me that the removal of trees or timber from the forest or woodlands (where the Forestry Commission has jurisdiction) could be considered as a statute "enacted for the protection of forests and woodlands from fire, insects and diseases" or a "forestry law" as contemplated by Section 48-23-96. Thus, Forestry Commission Officers could enforce this statute.

You also ask about the authority of Forestry Commission Officers on Wildlife Management areas. These are areas designated by the Department of Natural Resources for purposes of Wildlife Management. Various provisions of the Code protect Wildlife Management areas from damage or destruction, regulate hunting and fishing thereupon and provide for special permits issued by the Department of Natural Resources (DNR) for privileges upon such lands. See §§ 50-9-15; 50-0-150; 50-11-350; 50-11-1150- 50-11-2200; 50-11-2210; 50-11-2220; 50-11-2230; 50-11-2240;- 50-19-1310.

Your concerns are the two State Forests in South Carolina which have been made into Wildlife Management areas - Sand Hills and Manchester. Apparently, an agreement between DNR and the Forestry Commission was reached in 1991. DNR agreed to "provide fish and game protection through its staff for the property enforcement of the game and fish laws, rules and regulations made pursuant to the game and fish laws of South Carolina ... ", among other things. DNR also agreed to assist the Forestry Commission "in any way possible with the protection of the property against fire and against trespass." The Forestry Commission, as lessor, agreed to designate the ground as a ground for controlled public hunting and to permit DNR to have egress and ingress and to permit DNR "to establish some degree of harvest of surplus game populations for the benefit of the public." Thus, there is deemed by virtue of this agreement a close connection between protection of these two State Forests and the wildlife upon these properties.

I understand that Forestry Commission Officers who patrol these properties are state constables. This Office, citing the decision of our Supreme Court in State v. Luster, 178 S.C. 199, 182 S.E. 427 (1935) has often concluded that state constables [commissioned pursuant to Section 23-1-60] possess the authority of regularly commissioned peace officers, including the power of arrest. See, Op. Atty. Gen., Sept. 6, 1990; May 14, 1980; July 6, 1977. In Luster, our Supreme Court stated:

[t]he trial judge held and so instructed the jury that Miliam, under the Commission given him by the Governor, was a peace officer of the State, and as such officer had the right and authority to arrest anywhere without a warrant any person committing a misdemeanor in his presence. This charge or

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holding, was unquestionably correct and was applicable under the facts of the case.

178 S.C. at 205. Moreover, citing Section 17-13-10, we have concluded that state constables are allowed to carry pistols. Op. Atty. Gen., Oct. 23, 1978.

Thus, a state constable is clearly recognized as a state officer, possessing statewide law enforcement authority as a peace officer. Our Supreme Court has stated that constables perform all the duties of law enforcement officers and in particular "a constable stands on the same footing as a sheriff." State v. Franklin, 80 S.C. 332, 338, 60 S.E. 953, 955 (1908). Therefore, a state constable whose commission has not been limited by the issuing authority, would generally be authorized to enforce all laws of South Carolina anywhere in the State. See, Op. Atty. Gen., May 6, 1976. Accordingly, a Forestry Commission Officer, holding an unrestricted constable's commission, would be authorized to enforce all laws in the Wildlife Management area.

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/ph