



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

November 20, 1997

The Honorable Phil P. Leventis  
Senator, District No. 35  
Box 1592  
Sumter, South Carolina 29151-1592

Re: Informal Opinion

Dear Senator Leventis:

You seek an opinion as to whether "quail are deemed poultry under the definitions provided in South Carolina's Code for the purpose of requiring South Carolina to inspect these fowl." You note that quail "are presently voluntarily inspected under the Poultry Products Inspection Law, Chapter 19 of Title 47." You are "of the opinion that quail are poultry" and, therefore, "inspection of quail is mandated by § 47-19-40."

In your letter, you also state the following:

[t]he South Carolina Code defines poultry in two separate code sections. § 47-4-20(10), the State Livestock-Poultry Health Commission, defines poultry as "all avian species including wild fowl raised for use, sale, or display and domestic fowl." This would appear to include quail which is grown for commercial purposes. § 47-19-20(f) defines poultry as "any domesticated bird, whether live or dead." Again, this definition would include quail which is grown for commercial purposes.

The Code also specifically defines when exemptions for poultry inspections are allowed in § 47-19-140(e)(i). Subsection (e)(i) states that the provisions of chapter 19 would not apply if "such producers slaughter not more than two hundred fifty turkeys, or not more than an equivalent number

of birds of all species during the calendar year for which this exemption is being determined (four birds of other species being deemed the equivalent of one turkey)." Therefore any processor of poultry exceeding the aforementioned number of birds would then fall under the mandatory inspection requirement.

### Law / Analysis

S.C. Code Ann. Sec. 47-19-10 et seq. codifies The South Carolina Poultry Products Inspection Act of 1969. Section 47-19-30 designates the Livestock-Poultry Health Commission as the state agency which is responsible for cooperating with the United States Secretary of Agriculture under Section 5 of the Federal Poultry Products Inspection Act. Section 47-19-35(A) requires that "[a] person operating an establishment in which poultry is slaughtered or in which poultry, poultry by-products, or poultry food products, of or derived from fowl, are wholly or in part canned, cured, smoked, salted, packed, rendered, or otherwise prepared which are offered as food for humans shall secure a permit from the State Livestock-Poultry Health Commission." As you indicated, § 47-19-140(e)(i) provides for an exemption for producers who slaughter not more than 250 turkeys or an equivalent number of other birds.

A number of principles of statutory construction are relevant here. The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. Bankers Trust of S.C. v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). The interpretation of statutes according to the natural and obvious signification of the wording without resort to subtle and refined construction for the purpose of either limiting or extending their operation is favored. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). Moreover, a remedial statute should be liberally construed in order to effectuate its purpose. South Carolina Dept. of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978).

As a statute regarding enforcement of statutes concerning the public health, § 47-19-10 should be broadly construed. See, City of Rock Hill v. S.C. Dept. of Health and Environmental Control, 302 S.C. 161, 394 S.E.2d 327 (1990) [authority of agency designed to protect the public health should be broadly interpreted]. As indicated, § 47-19-20(f) defines "poultry" as "any domesticated bird, whether live or dead." Moreover, Webster's Third New International Dictionary defines "poultry" as

domesticated birds that serve as a source of eggs or meat and that include among commercially imported kinds chickens, turkeys, ducks and geese and among kinds chiefly or local interest guinea fowl, peafowl, pigeons, pheasants and others. (emphasis added).

Cases in other jurisdictions have read the term "poultry" broadly. For instance, in State v. Willers, 130 S.W.2d 256 (Mo. 1939), it was concluded that domesticated pigeons bred and raised in a farmer's loft for table consumption constituted "poultry." And in Bartels v. State, 136 N.W. 717 (Neb. 1912), it was said that "poultry" comprises all domestic fowls reared for the table. Thus, it would not be unreasonable to conclude that domesticated quail raised for commercial food distribution constitutes "poultry" for purposes of § 47-19-10 et seq.

However, such a conclusion does not necessarily end our analysis. Quail are defined under state law as game birds. See § 50-1-30. Moreover, Section 50-11-1420 et seq. regulates "pen-raised quail," defined by § 50-11-1420 as having been "hatched from an egg laid by quail and subsequently wholly raised and confined in a pen or coop." Section 50-11-1440 mandates a commercial quail breeder's license from the Department of Natural Resources. Pursuant to § 50-11-1450, the "keeper of a hotel, restaurant, boardinghouse, or club may sell pen-raised quail for food to be consumed on the premises and is not required to hold a license therefor." In addition, § 50-11-1470 states that

[a]ny person complying with this article may sell live pen-raised quail for propagating purposes or may sell the carcasses of the pen-raised quail for any purpose, including sale for food.

(emphasis added). Thus, the issue is how § 47-19-10 et seq. relates to the "pen-raised quail" statutes, referenced above.

Of course, statutory provisions should be harmonized if possible. Generally, if conflicting statutes cannot be reconciled, the last in point of time prevails, under the principle that the last expression of the legislative will is the law. Feldman v. S.C. Tax Comm., 203 S.C. 49, 26 S.E.2d 22 (1943). Moreover, a special or specific act must yield to a later general or broad act where there is a manifest legislative intent that the general act shall be of universal application notwithstanding the prior special or specific act. 73 Am.Jur.2d, Statutes § 417.

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Here, the South Carolina Poultry Products Inspection Act of 1969 is later in time than the "pen-raised quail" provisions (first enacted in 1958). Moreover, the purpose of such Inspection Act is to regulate "[a] person operating an establishment in which poultry is slaughtered or in which poultry, poultry by-products, or poultry food products, of or derived from fowl are wholly or in part canned, cured, smoked, salted, packed, rendered, or otherwise prepared which are offered as food for humans ...." In other words, this Act and the "pen-raised quail" statute serve somewhat different purposes and can thus be harmonized. Therefore, a reasonable reading of the two statutes together is that § 47-19-40 is applicable to those entities or establishments which raise quail for food. On the other hand, where quail are raised by enterprises or entities for release for hunting or the training of dogs or other non-food purposes, such entities are governed exclusively by the "pen-raised" quail statute. Such a reading would be consistent with § 47-19-90 which provides that with respect to the slaughter of poultry or processing of poultry carcasses which are not to be used for food, no inspection is required. Thus, it makes sense to apply the Food Inspection Law to the raising of quail for food, but not where quail are raised for other purposes.

Admittedly, no case law has resolved this issue. Because of the overlap between the two sets of statutes, and because the statutes are ambiguous, legislative clarification would still probably be advisable, to make clear this differentiation between use of quail for food and use of quail for other purposes.

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

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