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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

November 6, 1997

The Honorable John R. Russell
Senator, District No. 12
P.O. Box 5524
Spartanburg, South Carolina 29304

Re: Informal Opinion

Dear Senator Russell:

Attorney General Condon has forwarded your opinion request to me for reply. You have attached a letter from a group of your constituents which asks for an opinion of this Office on a question concerning the Equine Liability Immunity Act. Specifically, a question has been raised concerning the posting of warning signs and notices as provided by the Act.

According to their letter, your constituents are members of the North Pacolet Association (NPA), a group of property owners in the Landrum and Campobello sections of your district. Apparently, their land contains a network of horse and carriage trails. These trails cross public roads and are accessible at many points throughout the area. These trails are used by NPA members and their guests and other groups permitted by the NPA. These trails are also used by unauthorized users such as trespassers. The NPA does not have any stables, corrals or arenas, but is merely a network of trails.

The Equine Liability Immunity Act was enacted by the General Assembly by Act No. 182 of 1993 and is codified in S.C. Code Ann. § 47-9-710 et seq. As it relates to the facts presented, this Act allows those entities meeting the definition of "Equine activity sponsor" to invoke the privileges of immunity, except in those situations specified by the Act, for an injury to or death of a participant resulting from the inherent risk of equine activity. S.C. Code Ann. § 47-9-720. An "Equine activity sponsor" is defined as an individual, a group, a club, a partnership, or a corporation, whether the sponsor is

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operating for profit or nonprofit, which sponsors, organizes, or provides the facilities for an equine activity, including, but not limited to, a pony club, 4-H club, hunt club, riding club, school and college-sponsored class, program, and activity, therapeutic riding program, and an operator, instructor, and promotor of an equine facility, including, but not limited to, a stable, clubhouse, ponyride string, fair, and an arena at which the activity is held. S.C. Code Ann. § 47-9-710(4). The Act provides several definitions of "Equine activity," the most pertinent to the facts presented being "a ride, trip, hunt, or other equine activity, however informal or impromptu, that is sponsored by an equine activity sponsor." S.C. Code Ann. § 47-9-710(3)(e).

In order to invoke the privileges of immunity provided by the Act, an equine activity sponsor must post warning signs and notices as provided by the Act. S.C. Code Ann. § 47-9-730(C). These warning signs and notices "must be placed in a clearly visible location on or near stables, corrals, or arenas where ... the equine activity sponsor conducts equine activities." S.C. Code Ann. § 47-9-730(A). The warning notice must appear on the sign in black letters with each letter a minimum of one inch in height and read as follows:

WARNING

Under South Carolina law, an equine activity sponsor or equine professional is not liable for an injury to or death of a participant in an equine activity resulting from an inherent risk of equine activity, pursuant to Article 7, Chapter 9 of Title 47, Code of Laws of South Carolina, 1976.

S.C. Code Ann. § 47-9-730(B).

The problem raised by your constituents concerns the application of the Act to an equine activity sponsor that does not have any stables, corrals or arenas. In particular, since the Act requires that warning signs and notices "must be placed in a clearly visible location on or near stables, corrals, or arenas where ... the equine activity sponsor conducts equine activities," if an equine activity sponsor does not have these facilities, is it prohibited from invoking the privileges of immunity provided by the Act.

As an initial matter, it is your constituents' belief that the NPA meets the definition of an "equine activity sponsor" under the Act. For purposes of this opinion, this Office will rely on this belief and assume that the NPA is an equine activity sponsor. However, nothing in this opinion should be construed to mean that this Office has in any way recognized the NPA as such. Such a determination would have to be made by the appropriate fact finding body.

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As to the particular issued raised by your constituents, a number of well recognized principles of statutory construction are relevant to this question. First and foremost, in interpreting a statute, the primary purpose is to ascertain the intent of the legislature. State v. Martin, 293 S.C. 46, 258 S.E.2d 697 (1987). An act as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. Truesdale v. South Carolina Highway Department, 264 S.C. 221, 213 S.E.2d 740 (1975).

As previously stated, the Act provides that in order to invoke the privileges of immunity, the equine activity sponsor must post warning signs and notices in a clearly visible location on or near stables, corrals or arenas where the equine activity sponsor conducts equine activity. The General Assembly has defined "Equine activity sponsor" as those listed entities that sponsor, organize, or provide the facilities for an equine activity, including, among other things, a riding club, pony club, and hunt club. The definition also includes an operator, instructor, and promoter of an equine facility, including, but not limited to, a stable, clubhouse, ponyride string, fair and arena at which the activity is held. The General Assembly has defined "Equine activity" to mean, among other things, "a ride, trip, hunt or other equine activity, however informal or impromptu, that is sponsored by an equine activity sponsor."

Reading the Act as a whole, the purpose of the Act is to grant an equine activity sponsor immunity from suit, with certain exceptions, for an injury to or death of a participant resulting from the inherent risk of equine activity. The Act defines equine activity sponsor to mean those listed entities that sponsor, organize, or provide the facilities for equine activity. This definition also includes operators, instructors, and promoters of equine facilities. However, the Act specifically provides that these facilities include, but are not limited to, stables, clubhouses, ponyride strings, fairs, and arenas at which the activity is held. Therefore, the use of the phrase "but not limited to" demonstrates that the General Assembly recognized that there will be certain equine activity sponsors that do not have the listed facilities. In light of the General Assembly's definition of equine activity sponsors and its recognition that there will be equine activity sponsors that do not have the above listed facilities, it appears that the purpose and intent of the Act would be defeated if the Act were to be interpreted to mean that the privileges of immunity only apply to those equine activity sponsors that have stables, corrals, or arenas in which to post the warning signs and notices.

In conclusion, it is my opinion that if a court were to examine this issue it would likely determine that if an entity meets the definition of an equine activity sponsor and is sponsoring an equine activity, the fact that the equine activity sponsor does not have a stable, corral, or arena in which to place warning signs and notices does not, in and of

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itself, preclude the equine activity sponsor from invoking the privileges of immunity found in the Act. Furthermore, in my opinion if a court were to examine this issue, it would likely conclude that the placing of warning signs and notices in a clearly visible location on or near stables, corrals, or arenas in which the equine activity sponsor conducts equine activities is a requirement for those sponsors that have such facilities. However, those sponsors that do not have these facilities would be in compliance with the Act by placing warning signs and notices in "clearly visible locations" throughout the area in which the sponsor conducts equine activities.

This letter is an informal opinion only. It has been written by a designated 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 remain

Very truly yours,



Paul M. Koch

Assistant Attorney General