

*Literary 4662*

The State of South Carolina



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September 3, 1991

Dr. H. Wayne Beam  
Executive Director  
SC Coastal Council  
AT&T Capitol Center  
1201 Main Street  
Suite 1520  
Columbia, SC 29201

Dear Wayne:

In a previous opinion dated March 14, 1991, I concluded that the Town of Folly Beach was exempt from the provisions of §§48-39-280 and 48-39-290, S.C. Code Ann. In practical effect, this exempted Folly Beach from having to include in its local beach management plan any type of forty-year retreat provisions. In §48-39-260(2) (the "policy section" of the 1990 amendments to the Coastal Council Act), it is stated that as a matter of policy, local plans must contain provision for a forty-year retreat. A question has thus arisen as to whether the policy section requires Folly Beach to devise a retreat plan even though §48-39-290(E) specifically exempts Folly Beach from the Act's forty-year retreat provisions.

Numerous cases hold that a preamble (now generally known as the "policy section") cannot enlarge or confer powers nor control the words of the act, unless they are doubtful or ambiguous. See, e.g., Yazoo & Miss. Valley R. Co. v. Thomas, 132 U.S. 174 (1889); Hobbs v. State, 451 N.E.2d 356 (Ind.App. 1983); Hayen v. County of Ogle, 451 N.E.2d 612 (Ill.App. 1983); Samuels v. District of Columbia, 650 F.Supp. 482 (D.D.C. 1986).

Accordingly, for the same reasons that §48-39-350(9) does not apply to Folly Beach, §48-39-260(2) likewise does not apply. Section 48-39-290(E) clearly and specifically sets forth the

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legislative intent that Folly Beach is exempt from the forty-year beach retreat concept, and that section should not be regarded as vitiated by any other more general provision in the Act.

Sincerely yours,



Kenneth P. Woodington  
Senior Assistant Attorney General

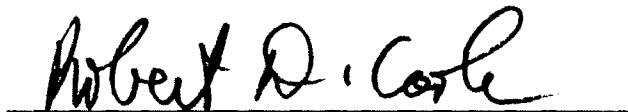
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Enclosure

REVIEWED AND APPROVED



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