

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3680
FACSIMILE: 803-253-6283

March 14, 1991

Nancy B. Tecklenburg, Esquire
South Carolina Coastal Council
Ashley Corporate Center
4130 Faber Place, Suite 300
Charleston, SC 29405

Dear Nancy:

You have requested an opinion concerning the application of §48-39-350 to the City of Folly Beach. That section requires each local government in the coastal zone to prepare a local comprehensive beach management plan to be submitted to the Coastal Council for approval. Section 48-39-350(A) lists ten points which must be addressed by the local plan. Failure to provide a plan by July 1, 1991, will cause a local government automatically to lose its eligibility to receive available state funds for beach/dune system protection, preservation, restoration or enhancement, except as directly applied by the Council in its administrative capacities. §48-39-350(B).

Folly Beach is exempt from two other sections of the same act, §§48-39-280 and 48-39-290. Section 48-39-290(E) provides that the aforementioned two sections do not apply to an area whose beach erosion was caused by a federally authorized navigation project, as is the case with Folly Beach. Since §48-39-350 contains some elements which are clearly connected to the requirements of §§48-39-280 and 48-39-290, you have asked whether Folly Beach should also be exempt from §48-39-350.

The answer, in our opinion, is that an exempt local government such as Folly Beach should only be exempt from the provisions of §350 which are clearly tied to §§280 or 290. In other words, an exempt local government must prepare a management plan, but the plan need only contain the elements which are unrelated to §§280 and 290.

The Coastal Council would probably be better able than this Office to determine which parts of §350 are related to §§280 and

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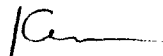
290 and which ones are unrelated. However, we would suggest that the following subsections of §48-39-350 need not be provided in the Folly Beach plan, for the reasons set forth below:

- (1) Inventory of erosion rate date - not applicable because Folly Beach is exempt from erosion rate computation.
- (3), (5) and (7) - All mention the setback line or setback zone, which has no application to an exempt municipality.
- (9) Detailed strategy for achieving goals by end of 40-year retreat period - the 40-year retreat period does not apply to Folly Beach.

No reason is immediately apparent why Folly Beach should not be required to comply with subsections (2), (4), (6), (8) and (10), since none of these subsections appear to be closely connected with the requirements of §§280 or 290. However, as noted above, the Council is probably better able than this Office to determine which subsections of §350 should be complied with.

We believe that the above approach, while somewhat complex, is a more accurate effectuation of legislative intent than simply concluding either that all of §350 applies or none of it applies. Clearly the General Assembly did not specifically consider how §350 would apply to an exempt local government. Our conclusions are intended to allow §350 to apply to exempt municipalities where feasible, but without requiring acts which would serve no useful purpose.

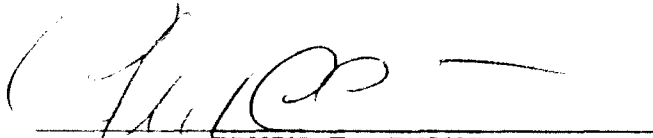
Sincerely,



Kenneth P. Woodington
Senior Assistant Attorney General

KPW/rho

REVIEWED AND APPROVED:



EDWIN E. EVANS
Chief Deputy Attorney General

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ROBERT D. COOK
Executive Assistant for Opinions