ALAN WILSON
ATTORNEY GENERAL

January 2, 2014

The Honorable Glenn Reese
Senator, District No. 11
P.O. Box 142
Columbia, SC 29202

Dear Senator Reese:

By your letter dated September 10, 2013, you have asked for the opinion of this Office regarding the interpretation of "current dog hunting legislation," which I understand to be Section 50-11-770 of the South Carolina Code, also known as the Renegade Hunter Act ("the Act"). You further inquire as to "whether DNR is interpreting legislation as intended" and have attached a constituent letter in which the constituent alleges he and members of his hunt club "are being unfairly targeted and ticketed." Our response follows.

Background

As stated in a recent publication, "the hunting of deer with dogs is a popular sport . . . practiced for hundreds of years in the coastal plain of South Carolina." Jae Epsey, Final Prog. Rept., S.C. Dep't. of Natural Res., Dog Deer Hunting Working Group, p. 2 (Nov. 2008). "The sport utilizes hunting dogs to track and drive deer within range of hunters" and is normally practiced "on large tracts of land." Id. Typically, "the dogs are released on one side [of the land] while hunters wait or 'stand' on the other." Id. "The land used is either owned by an individual or leased by a hunting club during hunting season." Id. According to the report, hunting dogs "[a]t times . . .will run off the tract of land intended for dog deer hunting, ending up on the property of adjacent landowners." Id. "Complaints from landowners have ranged from property damage, diminishment of still hunting opportunities, and general upset that their private property is being overrun by unwarranted dogs." Id.

On June 11, 2010, the Renegade Hunter Act ("the Act") was enacted. 2010 S.C. Acts, 118 Legis. Sess., Act No. 239. Pursuant to section two of the Act, Chapter 11, Title 50 of the Code was amended to add Section 50-11-770. 2010 S.C. Acts, 118 Legis. Sess., Act No. 239, § 2. According to the legislative title of the Act, Section 50-11-770 was enacted to make it "unlawful . . . to hunt from a road, right of way, property line, boundary, or property upon which

he does not have hunting rights with the aid or use of a dog when the dog has entered upon the land of another without written permission or over which the person does not have hunting rights[.]" 2010 S.C. Acts, 118 Legis. Sess., Act No. 239. The legislative title further explains, "the provisions of this section apply whether the person in control of the dog intentionally or unintentionally releases, allows, or otherwise causes the dog to enter upon the land of another without permission of the landowner." 2010 S.C. Acts, 118 Legis. Sess., Act No. 239.

In subsection (A)(1) of Section 50-11-770, the statute explains that "hunting" means (a) "attempting to take any game animal, hog or coyote by occupying stands, standing or occupying a vehicle while; (b) possessing, carrying, or having readily accessible" a (i) "rifle;" or (ii) "shotgun." S.C. Code Ann. § 50-11-770(A)(1)(a)-(b)(i)-(ii) (2012 Supp.). Subsection (A)(2) further defines the phrase "possessing, carrying, or having readily accessible" as mentioned in subsection (A)(1)(b) above. S.C. Code § 50-11-770(A)(2)(a)-(d) (2012 Supp.). Building on the definition section, Section 50-11-770(B), the salient portion of the Act, states:

> Notwithstanding the provisions contained in Section 50-11-760, it shall be unlawful for any person to hunt from any road, right of way, property line, boundary, or property upon which he does not have hunting rights with the aid or use of a dog when the dog has entered upon the land of another without written permission or over which the person does not have hunting rights. The provisions of this section apply whether the person in control of the dog intentionally or unintentionally releases, allows, or otherwise causes the dog to enter upon the land of another without permission of the landowner.

S.C. Code Ann. § 50-11-770(B) (2012 Supp.).

Subsection (C) provides a limited exception from the terms of subsection (B) providing that where a landowner gives permission, an individual may use a single dog to recover a dead or wounded animal on another's land so long as the individual maintains sight and voice contact with the dog. See S.C. Code Ann. § 50-11-770(C) (2012 Supp.) ("It is not a violation of this section if a person, with the landowner's permission, uses a single dog to recover a dead or wounded animal on the land of another and maintains sight and voice contact with the dog."). Additionally, subsection (E) explains the penalties for violating subsection (B) and further classifies the offense as a misdemeanor. See S.C. Code Ann. § 50-11-770(E) (2012 Supp.) ("A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars, no part of which may be suspended, or imprisoned for not more than thirty days, or both. The court must transmit record of the conviction to the department for hunting license suspension pursuant to subsection (F)."). Subsection (F) requires additional penalties for violators of subsection (B) in the form of mandatory suspension of hunting privileges. S.C. Code Ann. § 50-11-770(F) (2012 Supp.) ("In addition to any other penalties provided by law, a person convicted of a violation of this section must have his hunting privileges suspended by the department for one year from the date of his conviction. He may not

have his hunting privileges reinstated by the department until after he successfully completes a hunter education class administered by the department.").[1]

Law/Analysis

It is with this understanding that we now turn to the request referenced in your letter—to interpret "current dog hunting legislation" which, based upon the constituent's letter attached to your opinion request, we understand to be Section 50-11-770 of the Code—and to further determine, based upon the allegations contained within the constituent's letter, whether the Department of Natural Resources' ("DNR") has inconsistently interpreted the law. For the reasons discussed below, we agree with DNR and believe the salient portion of the Act, Section 50-11-770(B), requires dog deer hunters who are hunting "from any road, right of way, property line, boundary, or property upon which he does not have hunting rights" to stop their hunt "when the dog has entered upon the land of another without written permission or over which the person does not have hunting rights" regardless of whether the person controlling the dog releases the dogs intentionally, unintentionally, or otherwise. We further decline to address the accusation regarding DNR's allegedly inconsistent interpretation of the Act as we believe this would require a factual investigation, and this Office, unlike a court, cannot investigate and determine factual questions. Op. S.C. Atty. Gen., 2011 WL 1444717 (March 15, 2011).

1. Interpreting Section 50-11-770(B) of the Act

Interpreting Section 50-11-770 first requires us to determine legislative intent. "The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). When ascertaining legislative intent, South Carolina's appellate courts have stated, "[w]hat a legislature says in the text of a statute is considered the best evidence of the legislative intent or will" and "courts are bound to give effect to the expressed intent of the legislature." Media General Communications, Inc. v. South Carolina Dept. of Revenue, 388 S.C. 138, 148, 694 S.E.2d 525, 530 (2010); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002). Indeed, "[t]here is no safer nor better rule of interpretation than when language is clear and unambiguous it must be held to mean what it plainly states." Jones v. South Carolina State Highway Dep't, 247 S.C. 132, 137, 146 S.E. 2d 166, 168 (1966).

Furthermore, this Office, consistent with South Carolina law, will defer to the administrative agency charged with regulating the subject matter at hand so long as the agency's interpretation is reasonable. Op. S.C. Atty. Gen., 2013 WL 5651550 (September 23, 2013); Op. S.C. Atty. Gen., 2013 WL 4873939 (September 5, 2013); Op. S.C. Atty. Gen., 2013 WL 4497164 (August 9, 2013); Op. S.C. Atty. Gen., 2013 WL 3133636 (June 11, 2013) (citing Logan v. Leatherman, 290 S.C. 400, 408, 351 S.E.2d 146, 148 (1986) ("Construction of a statute

[1] The other subsections of the Act, Sections 50-11-770(D) and 50-11-770(G) are not relevant to this issue, and as such will not be discussed in this opinion.

by the agency charged with executing it is entitled to most respectful consideration and should not be overruled without cogent reasons.")). This is so because, "it is well recognized that administrative agencies possess discretion in the area of effectuating the policy established by the Legislature in the agency's governing law." Op. S.C. Atty. Gen., 2013 WL 5651550 (September 23, 2013); Op. S.C. Atty. Gen., 2013 WL 4497164 (August 9, 2013); Op. S.C. Atty. Gen., 2013 WL 3133636 (June 11, 2013); Op. S.C. Atty. Gen., 2006 WL 2382445 (July 28, 2006); Op. S.C. Atty. Gen., 1995 WL 803726 (August 9, 1995). Accordingly, it is not necessary that an administrative agency's construction be the only reasonable one or even one the court would have reached if the question had initially arisen in a judicial proceeding. Ill. Commerce Comm'n. v. Interstate Commerce Comm'n., 749 F.2d 875, 880 (D.C.Cir. 1984) (citing Fed. Elec. Comm'n v. Democratic Senatorial Campaign Comm'n, 454 U.S. 27, 39 (1981)).

Keeping these principles in mind, we now turn to the terms of the statute, particularly Section 50-11-770(B). As detailed above, Section 50-11-770(B) states:

> Notwithstanding the provisions contained in Section 50-11-760, it shall be unlawful for any person to hunt from any road, right of way, property line, boundary, or property upon which he does not have hunting rights with the aid or use of a dog when the dog has entered upon the land of another without written permission or over which the person does not have hunting rights. The provisions of this section apply whether the person in control of the dog intentionally or unintentionally releases, allows, or otherwise causes the dog to enter upon the land of another without permission of the landowner.

S.C. Code Ann. § 50-11-770(B) (2012 Supp.).

It is our understanding that DNR has interpreted this statute to mean that when a dog deer hunter is hunting from any road, right of way, property line, boundary, or other property where he does not have hunting rights, the hunter must stop his hunt once a hunting dog gets on property that the hunter does not have rights to hunt.[2] In other words, "[t]he dog going on lands where permission is not obtained does not constitute a violation," but the law would be violated where a hunting dog ventures onto another's land where the hunter has no hunting rights and rather than stopping the hunt, he continues to hunt.[3]

We believe DNR's interpretation is consistent with a plain reading of the statute and as such, find no compelling reason to veer from such an interpretation. Emerson Elec. Co. v. Wasson, 287 S.C. 394, 397, 339 S.E.2d 118, 120 (1986). Specifically, we agree with DNR that the intent of the General Assembly is clear and unambiguous and therefore, consistent with South Carolina law, must be construed according to its plain meaning. That is, Section 50-11-770(B), as mentioned in the legislative title to the Act, prohibits hunting deer with dogs, "from

[2] See www.clarendoncitizen.com/article/new-law-impacts-deer-hunters-using-dogs (last visited 12/31/13).
[3] See FN2, *supra*.

any road, right of way, property line, boundary," or other property where an individual does not have hunting rights, "when the dog has entered upon the land of another" regardless of whether the person controlling the dogs releases them intentionally, unintentionally, or otherwise. Stated differently, rather than criminalizing a dog deer hunter for his dogs' entry into the land of another, the statute instead criminalizes a dog deer hunter's *failure to stop his hunt* when a dog, for whatever reason, enters into another individual's land where the hunter has neither written permission to be, nor hunting rights thereto. Thus, we agree with DNR that Section 50-11-770(B) essentially recognizes that, when hunting from property lines, boundaries, roads, or a right of way, hunting dogs will, at times, venture onto another individual's property where the hunter has no legal right to be and therefore, simply places a duty on dog deer hunters to stop what they are doing and retrieve their dogs so as to minimize and mitigate their dog's entry onto the land of another.

2. The Department of Natural Resources' Allegedly Inconsistent Interpretations

Having interpreted the salient "dog hunting legislation" we now turn to the allegations contained within the constituent letter attached to your opinion request. Specifically, the constituent alleges, "[t]he law . . . is being interpreted different ways by different authorities" and goes into two separate incidents to support his contention. We decline to address this issue.

Quite simply, to determine whether DNR officers were inconsistently interpreting the statute, we would first have to determine whether the underlying facts mentioned in the constituent letter are accurate. However, this Office, unlike a court, which can subpoena witnesses and take testimony under oath, is ill-equipped to investigate and determine factual questions. Op. S.C. Atty. Gen., 2011 WL 1444717 (March 15, 2011) ("This Office, unlike a court, cannot investigate and determine factual questions."). Moreover, even assuming the underlying facts mentioned in the constituent letter are accurate, we would still need to determine how the DNR officers mentioned in the constituent's letter interpreted the law based upon such facts. Again, this would require investigation and is better handled by a court rather than in an advisory opinion. Op. S.C. Atty. Gen., 2013 WL 3479877 (June 26, 2013) ("[T]his Office does not have the authority of a court or other fact-finding body, and therefore, it is unable to adjudicate or investigate factual questions."); Op. S.C. Atty. Gen., 2013 WL 3479876 (June 26, 2013) (explaining this Office does not investigate facts, but instead only issues legal opinions); Op. S.C. Atty. Gen., 2013 WL 861299 (February 26, 2013) ("We have repeatedly stated that, because this Office does not have the authority of a court or other fact-finding body, we are not able, in a legal opinion, to adjudicate or investigate factual questions."). Accordingly, pursuant to the longstanding policy of this Office, we respectfully decline to address whether DNR officers inconsistently interpreted Section 50-11-770 when issuing citations to the constituent mentioned in the opinion request.

Conclusion

In conclusion, we agree with DNR that the salient portion of the Renegade Hunter Act, Section 50-11-770(B), requires dog deer hunters hunting "from any road, right of way, property line, boundary, or property upon which he does not have hunting rights" to stop their hunt "when the dog has entered upon the land of another without written permission or over which the person does not have hunting rights" regardless of whether the person controlling the dog releases the dogs intentionally, unintentionally, or otherwise. We further decline to address accusations regarding DNR's allegedly inconsistent interpretation of the Act, specifically Section 50-11-770(B), as we believe this would require a factual investigation, and this Office, pursuant to longstanding office policy, does not investigate and determine factual questions, but instead issues only legal opinions.

Sincerely,

Brendan McDonald
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General