

The State of South Carolina



Office of the Attorney General

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January 10, 1989

The Honorable Glenn F. McConnell
Senator, District No. 41
610 Gressette Building
Columbia, South Carolina 29202

Dear Senator McConnell:

By your letter of November 23, 1988, you have referred to Act No. 590, 1988 Acts and Joint Resolutions, which authorizes municipalities and counties to adopt zoning ordinances providing for the landscaping, protection, and regulation of trees. An exemption in the new law was created for public utilities and power suppliers; you have asked whether this exemption would apply to only existing utility lines, or whether new lines yet to be erected would also be covered by the exemption.

You stated that your impression was that the exemption was a full exemption for the utility companies, exempting them from tree ordinances as relates to existing lines and new lines. We concur with your impression.

Act No. 590 of 1988 amends Section 6-7-710, Code of Laws of South Carolina (1976), to provide that zoning regulations made by counties and municipalities are to be designed to

... include provisions for landscaping and protection and regulation of trees in consideration of their value from an environmental, agricultural, aesthetic, scenic, or preservation standpoint, however, this authority does not include the regulation of commercial timber operations, nor shall this authority restrict the ability of public utilities and electric suppliers from maintaining safe clearance around utility lines;

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The question under consideration is whether only utility lines in existence at the effective date of Act No. 590 of 1988 (June 2, 1988) would be covered by the exemption, or whether utility lines erected after that date would also be covered by the exemption.

In construing a statute, both the courts and this Office will attempt to ascertain and effectuate legislative intent if at all possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Language used in a statute will be given its plain and ordinary meaning. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). All words importing the present tense will also apply to the future, generally. Schumacher v. Chapin, 228 S.C. 77, 88 S.E.2d 874 (1955). An interpretation which avoids absurd results is favored. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). Finally, exceptions in a statute will be construed narrowly, Barringer v. Dinkler Hotels Co., 61 F.2d 82 (4th Cir. 1932), but those exceptions must be read together with a view toward carrying into effect the whole purpose of the act. Gasque, Inc. v. Nates, 191 S.C. 271, 2 S.E.2d 36 (1939).

Applying the foregoing rules of statutory construction to the above-cited provisions of Act No. 590 of 1988, it would appear that while the General Assembly considered the environmental, agricultural, aesthetic, scenic, and preservation value of trees, the General Assembly also recognized the public safety aspect of utility companies and electrical suppliers maintaining safety around utility lines; the unambiguous language clearly states these considerations. The use of the present tense, without reference within the exception to the future tense for any activity, mandates application of the exception in the future. Schumacher v. Chapin, *supra*. It would be absurd to interpret the statute as applying only to electrical or utility lines presently in existence, as the same safety considerations existing presently will also exist as to future utility or electrical lines. Otherwise, the General Assembly would be required, on a continuing basis, to update the provisions of Act No. 590 of 1988, periodically to cover electrical or utility lines erected since the last legislative act; this too would be an absurd result and would effectively mean that the General Assembly has acted in a futile manner in adopting the provisions of Act No. 590 of 1988.

Based on the foregoing, it is the opinion of this Office that the terms of Act No. 590 of 1988, as cited above, would apply equally to electrical or utility lines existing on the effective date of the act, as well as to those electrical or utility lines to be erected in the future.

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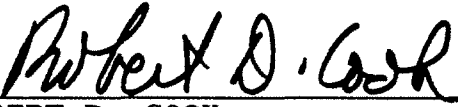
With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP:sds

REVIEWED AND APPROVED BY:



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