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July 13, 1989

John W. Hamilton, Director
South Carolina Aeronautics Commission
Drawer 1987
Columbia, South Carolina 29202

Dear John:

As you know, your letter to Attorney General Medlock was referred to me for response. Referencing 1988 S.C. Acts 658, §120.5 ["1988-89 general appropriations act"], you ask: "Does this section control the expenditure of money by Bonds or other sources that might have been received in years prior to the enactment of this provision of the Appropriations Act?" For the reasons set out hereinafter it is the opinion of this Office that a court would probably determine that §120.5 of the 1988-89 general appropriations act would apply prospectively, not retroactively. Therefore, that section would not control the expenditure of monies received in prior years.

Of course, statutory construction is, ultimately, the province of the courts. Johnson v. Pratt, 200 S.C. 315, 20 S.E.2d 865 (1942).

In interpreting a statute, the primary purpose is to ascertain the intent of the legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987); Multi-Cinema, Ltd. v. South Carolina Tax Comm'n, 292 S.C. 411, 357 S.E.2d 6 (1987). When interpreting a statute, the legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in the light of the intended purpose of the statutes. Gambrell v. Travelers Ins. Cos., 280 S.C. 69, 310 S.E.2d 814 (1983).

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Statutes generally must be construed prospectively, rather than retroactively, absent specific provision or clear legislative intent to the contrary unless the statute is remedial or procedural in nature. Bartley v. Bartley Logging Co., 293 S.C. 88, 359 S.E.2d 55 (1987). Accord Sutherland Stat. Constr. §41.04 (4th ed. 1986) ("Retrospective operation is not favored by the courts, however, and a law will not be construed as retroactive unless the act clearly, by express language or necessary implication, indicates that the legislature intended a retroactive application. [Footnote omitted.]"). According to Bartley, supra, a "remedial" statute that may be retroactively applied, even without specific provision or clear legislative intent, refers to procedure, rather than the right to collect some particular amount. A statute is "remedial" and may be retroactively applied when it creates new remedies for existing rights or enlarges the rights of persons under disability, unless it violates a contractual obligation, creates a new right, or divests a vested right. Hooks v. Southern Bell Telephone & Telegraph Co., 291 S.C. 41, 351 S.E.2d 900 (Ct. App. 1986).

In dealing with the problem of retroactivity, it is extremely difficult to establish definite criteria upon which court decisions can be foretold. A statute must not act unreasonably upon the rights of those to whom it applies. What is reasonable and what is unreasonable is difficult to state in advance of actual decisions. ". . . the method to be pursued is not the unerring pursuit of a fixed legal principle to an inevitable conclusion. Rather it is the method of intelligently balancing and discriminating between reasons for and against." It is misleading to use the terms "retrospective" and "retroactive," as has sometimes been done, to mean that the act is unconstitutional. The question of validity rests on further subtle judgments concerning the fairness of applying the new statute. Even where a constitution explicitly and unqualifiedly prohibits the enactment of retrospective statutes, the courts usually strike down only those statutes whose retroactivity results in measurable unfairness. Statutes will not be applied retroactively even where there is no

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constitutional impediment against it unless it appears by fair implication from the language used that it was the intention of the legislature to make it applicable to both past and future transactions. Particular cases are decided on their specific facts, in light of established principles. Aside from the suspicion with which all retroactive operation is regarded, the standards of judgment for determining the fairness of retroactive laws are not significantly different from those which apply under constitutional limitations which affect all legislation. [Footnotes omitted.]

Sutherland Stat. Constr. §41.05 (4th ed. 1986).

In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Multi-Cinema, Ltd. v. South Carolina Tax Comm'n, supra. In determining the meaning of a statute, it is the duty of the court to give force and effect to all parts of the statute. State ex rel. McLeod v. Nessler, 273 S.C. 371, 256 S.E.2d 419 (1979). In construing a statute, words must be given their plain and ordinary meaning, without resort to subtle or forced construction for the purpose of limiting or expanding its operation. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984).

The 1988-89 general appropriations act provides:

All General Aviation Airports will receive funding prior to the four air carrier airports (i.e. Columbia, Charleston, Greenville-Spartanburg, Myrtle Beach Jetport) as these qualify for special funding under the DOT/FAA appropriations based on enplanements in South Carolina. This policy may be waived to provide matching state funds for critical FAA safety or capacity projects at air carrier airports.

1988 S.C. Acts 658, §120.5. This proviso is silent as to whether it applies retroactively. In addition, this proviso does not appear to be merely remedial or procedural, as contrasted with substantive, in nature. Consequently, nothing whatsoever about

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this proviso intimates that the General Assembly intended it to be retroactive. Moreover, its retroactive application might impair contractual rights concerning the bonds or other sources of funds which would violate state and federal constitutional provisions to the effect that contracts may not be impaired. See Bartley, supra. Therefore, a court would probably determine that §120.5 of the 1988-89 general appropriations act applies only prospectively and not retroactively.

If I can answer any further questions, please advise me.

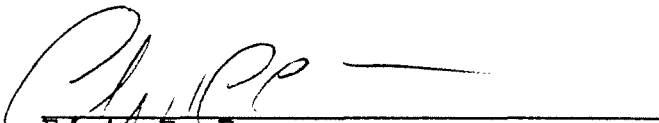
Sincerely,

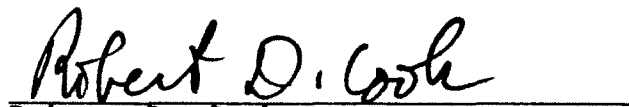


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