

# The State of South Carolina



## Office of the Attorney General

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November 15, 1989

The Honorable Martha K. Baumberger  
Mayor, Town of Hilton Head Island  
Post Office Box 22779  
Hilton Head Island, South Carolina 29925

Dear Mayor Baumberger:

By your letter of October 18, 1989, you have advised that the Town of Hilton Head Island, through its Town Council, is anxious to take appropriate action to begin a beach renourishment project, as a means of promoting tourism and the economy of the Town of Hilton Head Island. To finance the beach renourishment project, the creation of a municipal improvement district is being considered. You have asked whether a beach renourishment project would fall within the definition of "improvements," so that a municipal improvement district could be established for this purpose.

The establishment of a municipal improvement district is governed by Section 5-37-10 et seq., Code of Laws of South Carolina (1976 & 1988 Cum. Supp.). In particular, Section 5-37-40(A) of the Code provides:

- (A) If the governing body finds that:
- (1) improvements would be beneficial within a designated improvement district;
  - (2) the improvements would preserve or increase property values within the district;
  - (3) in the absence of the improvements, property values within the area would be likely to depreciate, or that the proposed improvements would be likely to encourage development in the improvement district;

- (4) the general welfare and tax base of the city would be maintained or likely improved by creation of an improvement district in the city; and
- (5) it would be fair and equitable to finance all or part of the cost of the improvements by an assessment upon the real property within the district, the governing body may establish the area as an improvement district and implement and finance, in whole or in part, an improvement plan in the district in accordance with the provisions of this chapter.

What would be considered an "improvement" for purposes of this statute is defined in Section 5-37-20(2):

"Improvements" include open or covered malls, parkways, parks and playgrounds, pedestrian facilities, parking facilities, parking garages and underground parking facilities, and facade redevelopment, the relocation, construction, widening, and paving of streets, roads, and bridges, including demolition of them, underground utilities, all activities authorized by Chapter 1 of Title 31 (State Housing Law), and all things incidental to the improvements, include planning, engineering, administration, managing, promotion, marketing, and acquisition of necessary easements and land, and may include facilities for lease or use by a private person, firm, or corporation.

Of course, it would be within the province of the Town Council of Hilton Head Island to make the findings specified in Section 5-37-40(A), supra, but it is the opinion of this Office that the term "parks" in the definition of "improvements" could be construed broadly enough to include a beach renourishment project.

In interpreting statutes such as these, it is the primary objective of both the courts and this Office to ascertain and effectuate legislative intent as far as possible. McGlohon v. Harlan, 254 S.C. 207, 174 S.E.2d 753 (1970). In so doing, words used in statutes should be given their plain and ordinary meanings unless there is some reason within a statute which would require a different interpretation. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980); Brewer v. Brewer, 242 S.C. 9, 129 S.E.2d 736 (1963). We can identify no reason to apply a meaning of the term "park" other than a plain and ordinary meaning to carry out legislative intent.

A "park" is defined as:

1. A tract of land set aside for public use, as:
  - a. An expanse of enclosed grounds for recreational use within or adjoining a town.
  - b. A landscaped city square.
  - c. A tract of land kept in its natural state.

The American Heritage Dictionary, "park," p. 903 (Second College Edition 1976). The concept of a park includes land set aside for its beauty, for recreation or amusement, or to promote health and enjoyment of fresh air and the elements of nature. 59 Am. Jur. 2d Parks, Squares, and Playgrounds §1; Williams v. Gallatin, 229 N.Y. 248, 128 N.E. 121 (1920); Bernstein v. Pittsburg, 366 Pa. 200, 77 A.2d 452 (1951); General Outdoor Advertising Co. v. City of Indianapolis, Dept. of Public Parks, 202 Ind. 85, 172 N.E. 309 (1930). As you point out in your letter, "the pedestrian facilities and the recreational and leisure activities available on the beach are virtually identical to the activities available" in a park. A beach would be a wide expanse of land, in its natural state, used for recreation and the enjoyment of nature. Thus, a beach could most probably fit within the broad definition of a "park."

The definition of "improvements" includes "all things incidental to the improvements... ." If a beach could be considered a park, then beach renourishment program could be considered as incidental to the beach as an improvement. As you state in your letter, the assurance that a wide sandy beach exists will attract both tourists and residents, thus promoting the Town's economy through its recreational resources.

For the foregoing reasons, it is the opinion of this Office that a beach renourishment program would most probably be within the definition of the term "improvements," the beach being considered as a type of "park," so that a municipal improvement district could be created to finance such a project pursuant to Section 5-37-10 et seq. of the Code. As previously noted, the Town Council of Hilton Head Island must make certain findings according to the statutes relative to municipal improvement districts, and it would be within the province of the Town Council to determine whether such a program would meet the remaining statutory requirements to create the district.

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With kindest regards, I am

Sincerely,

*Patricia D. Petway*

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Assistant Attorney General

PDP/nnw

REVIEWED AND APPROVED BY:

*Robert D. Cook*

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