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The State of South Carolina

Office of the Attorney General

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October 16, 1987

Cary D. Chamblee, Deputy Director
Land Resources Conservation Commission
2221 Devine Street, Suite 222
Columbia, South Carolina 29205

Dear Mr. Chamblee:

You have asked several questions concerning the powers of the Bear Creek Watershed Conservation District with regard to a watershed project reservoir formed by impounding the waters of Bear Creek. In a number of opinions concerning this reservoir, the most recent one of which is dated August 3, 1987, this Office has concluded that lakes formed by the impoundment of the waters of non-navigable streams are considered non-navigable waters as a matter of law regardless of whether they are in fact capable of navigation. This means that an individual owning a portion of the bed of the lake has a right to navigate only the portion of the lake which covers his portion of the bed.

In the above instance, we are informed that the watershed conservation district does not own any portion of the bed of the lake. Lancaster County does own a small part of the bed, as well as a portion of the bank adjacent to that part of the bed. The County Recreation Commission apparently seeks to build a public boat ramp which would allow public access to the entire lake. My opinion letter dated August 3, 1987 concluded that the publicly-owned portion of the bed of the lake was so small and constricted that even though the public could use it, the small amount of the lake which was usable and the problem of keeping the general public on only that part of the lake would probably make it impractical to put a public boat ramp at the lake. Your most recent request for an opinion assumes for the purposes of discussion that the County would in fact place a boat ramp allowing access to the small portion of the lake where the bed is publicly-owned. You have asked whether the authorizing legislation for the watershed conservation district, § 48-11-10 et. seq., or the easements through which the district obtained the right to impound, create a duty in the district to protect the owners of

other portions of the lake bed from trespass by the general public.

Neither the statute nor the easements expressly create a duty to prevent trespasses. However, case law holds that "[o]ne need not personally commit the trespass in order to become liable therefor, since if one authorizes, advises, encourages, procures, or incites another to commit a trespass, then such one is liable, as is, of course, the actual perpetrator." Fagan v. Timmons, 215 S.C. 116 54 S.E.2d 536 (1949). While the actual liability of the watershed conservation district for any trespasses by the general public would necessarily depend on all the facts, the above general common law rule does indicate that the possibility of liability of the watershed conservation district for trespass exists. Thus, while the watershed district has no express duty to prevent trespasses, it does have a duty not to assist or encourage trespasses.

Sincerely yours,

Kenneth P. Woodington
Senior Assistant Attorney General

KPW:jca

REVIEWED AND APPROVED BY:

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