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Office of the Attorney General

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April 10, 1985

James H. Hodges, Esquire
Lancaster County Attorney
Post Office Box 947
Lancaster, South Carolina 29720

Dear Mr. Hodges:

By your letter of January 11, 1985, you have asked for the opinion of this Office on whether turkey feathers would be considered litter, so that drivers of poultry trucks from which feathers escape may be cited for violations of various sections of the Litter Control Act of 1978. For the reasons following, the conclusions of this Office that feathers do not constitute "litter," and drivers of trucks from which feathers escape most probably should not be cited as having violated the Litter Control Act, concur with the statement in your letter that "it seems that the intent of Section 44-67-30 was to exclude farming vehicles from being cited for violations of any litter related laws while in the course of hauling."

You have advised that trucks hauling poultry travel through Lancaster County on a daily basis. As a direct result, feathers escape from the truck and fly into the yards of local residents. The Lancaster County litter control officer apparently has cited the driver of one of the trucks for a violation of Section 56-5-4100, Code of Laws of South Carolina (1983 Cum.Supp.). Representatives of the agricultural industry have argued to Lancaster County Council that Section 44-67-30(4) of the Code excludes turkey feathers, as part of the primary process of farming, from litter control which, they contend, Section 56-5-4100 is. For this reason, they state that their vehicles or drivers should not be cited for violations of the Litter Control Act.

The two pertinent sections under which prosecution may be had for littering are both found in Act No. 496, 1978 Acts and Joint Resolutions, the Litter Control Act of 1978. One of these sections is Section 56-5-4100 of the Code, which provides:

REQUEST LETTER

Continuation Sheet Number 2
To: James H. Hodges, Esquire
April 10, 1985

No vehicle shall be driven or moved on any public highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom, except that sand, salt or other chemicals may be dropped for the purpose of securing traction, and water or other substance may be sprinkled on a roadway in the cleaning or maintaining of such roadway by public authority having jurisdiction. Any person operating a vehicle from which any glass or objects have fallen or escaped, which would constitute an obstruction or injure a vehicle or otherwise endanger travel upon such public highway, shall immediately cause the public highway to be cleaned of all such glass or objects and shall pay any costs therefor.

Due to the comprehensive language of this statute, it would appear at first glance that turkey feathers sifting from cages of turkeys (the actual load of the truck) transported by trucks would fall within this statute. 1/ However, further consideration must be given to other portions of the Litter Control Act.

Section 16-11-700 of the Code, also a part of the Act, making the act of littering a misdemeanor and providing for punishment upon conviction therefor, provides in pertinent part:

1/ The only case construing Section 56-5-4100 of the Code construes the predecessor statute before the 1978 amendment. See, Hicklin v. Jeff Hunt Machinery Company, 226 S.C. 484, 85 S.E.2d 739 (1955). From Hicklin and the additional language added in 1978, it would appear that the intent of the statute is to prevent hazards to users of the highway. Because the 1978 amendment pertains to what substances may be placed on the highway and what objects must be cleared from the highway, the primary objective appears to be the prevention of obstructions, injury to vehicles, or conditions which would otherwise endanger highway travel.

Continuation Sheet Number 3
To: James H. Hodges, Esquire
April 10, 1985

(A) No person shall dump, throw, drop, deposit, discard or otherwise dispose of litter or other solid waste upon any public property in this State or upon private property in this State ... whether from a vehicle or otherwise, including but not limited to any public highway, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street or alley... .
* * *

The term "litter" is defined by Section 4 of the Act, now codified as Section 44-67-30 of the Code. Subsection 4 provides:

"Litter" means all waste material including but not limited to disposable packages or containers, trash, garbage or refuse, but not including the wastes of the primary processes of mining, logging, sawmilling or farming. [Emphasis added.]

It thus becomes critical to determine whether turkey feathers could be considered waste of the primary process of farming.

Because the General Assembly did not define "wastes of the primary processes of ... farming," it is necessary to refer to rules of statutory construction. Words used in a statute are to be given their plain and ordinary meaning, Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980), unless it is clear that the General Assembly intended another meaning to apply. Furthermore, where a statute is plain and unambiguous, the courts and this Office must apply the language literally. State v. Goolsby, 278 S.C. 52, 292 S.E.2d 180 (1982). These rules will be applied to the terms of Section 44-67-30(4), as follows.

The term "waste" is defined variously as "damaged, defective, or superfluous material produced during or left over from a manufacturing process or industrial operation," Webster's Third New International Dictionary 2580 (1976), and as a "useless or worthless by-product," or something which "escapes without being used." American Heritage Dictionary 1365 (1982). The term "primary" refers to being first, principal, chief, or leading, Pacific Northwest Alloys, Inc. v. State of Washington, 49 Wash.2d 702, 306 P.2d 197 (1957); first in order of time, Application of I. Lewis Cigar Mfg. Co., 205 F.2d 204 (C.C.P.A. 1953); or preparatory to something higher, State v. Hirsch, 125 Ind. 207,

Continuation Sheet Number 4
To: James H. Hodges, Esquire
April 10, 1985

24 N.E. 1062 (1890). A "process" is a "system of operations in the production of something." American Heritage Dictionary 987 (1982). Finally, the term "farming" clearly includes the raising of poultry. See cases collected in 16 Words and Phrases, "Farming."

Because turkey feathers can be considered a by-product or something which escapes from a turkey without being used, turkey feathers would be considered "waste." Transporting turkeys from the farm to the processing plant could be considered a part of the primary process of farming, since the next step in the farm-to-market process, slaughter, cannot occur until the turkeys reach the processing plant. Thus, turkey feathers escaping from turkeys being transported by truck to the processing plant should be excluded from the definition of "litter." Thus, prosecution under Section 16-11-700 of the Code would most probably be inappropriate for persons driving trucks from which turkey feathers escape en route to processing.

In considering both Code sections under which a driver may be prosecuted, it is apparent that application of each to the same fact situation would most probably yield inconsistent results. If there is any way to reconcile the Code sections to avoid inconsistency, such reconciliation must be made if at all reasonably and logically possible. Adams v. Clarendon County School District No. 2, 270 S.C. 266, 241 S.E.2d 897 (1978). Reconciliation is possible here.

It must be noted that Sections 44-67-30(4), 16-11-700, and 56-5-4100 are all parts of Act No. 496 of 1978. As such, these sections are in pari materia and must be harmonized if possible. Smith v. South Carolina State Highway Commission, 138 S.C. 374, 136 S.E. 487 (1927). It is well-recognized that

[w]here two [statutes] in pari materia are construed together, and one contains provisions omitted from the other, the omitted provisions will be applied in the proceeding under the [statute] containing such provisions where not inconsistent with the purpose of the [statute].

82 C.J.S. Statutes § 366. In reviewing the legislative findings and purpose of the Litter Control Act, it is apparent that the Act was designed in part to eliminate open dumps and litter. It is equally apparent that wastes of the primary processes of vital parts of South Carolina's economy (i.e., farming, logging,

Continuation Sheet Number 5
To: James H. Hodges, Esquire
April 10, 1985

sawmilling, and mining) were to be excluded from violation of the Act. To read the exceptions contained in Section 44-67-30(4) into the provisions of Section 56-5-4100 would harmonize the two Code sections authorizing prosecution and would except truck drivers hauling poultry, from which feathers escape, from prosecution under either section. 2/

Moreover, it must be noted that the Litter Control Act is both remedial and penal. Where acts or statutes have both characteristics, such act may be given a liberal construction in a civil court and yet be strictly construed against the State, in favor of a defendant, in a criminal proceeding. Francis v. Mauldin, 215 S.C. 374, 55 S.E.2d 337 (1949). Because the action being taken by the Lancaster County litter control officer is criminal in nature, such action warrants a strict construction of the statutes in question, in favor of the truck drivers and against the State (Lancaster County). The construction of Section 56-5-4100, in which Section 44-67-30(4) is made a part thereof, would be such a strict construction.

Finally, the primary objective of the courts and this Office in construing statutes is to ascertain and give effect to legislative intent if at all possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Although South Carolina has no official legislative history on its acts and views of individual legislators cannot be officially considered in construing a statute, Tallevast v. Kaminski, 146 S.C. 225, 143 S.E. 796 (1928), nonetheless such views are entitled to deference. One of the sponsors of Act No. 496 of 1978 has advised this Office that, in his view, the General Assembly had taken care of such questions as whether turkey feathers constituted littering or dropping of a load by the exclusion of the "wastes of the primary processes of ... farming" in the definition of "litter" in Section 4 of the Act. This reasoning would support the construction of the various parts of the Litter

2/ The term "litter" does not appear in Section 56-6-4100. Nevertheless, Section 56-5-4100 is a portion of the Litter Control Act and is subject to the same purposes and legislative findings as is Section 16-11-700. It does not appear to be necessary that the term "litter" appear in Section 56-5-4100 to make the exemption or restriction applicable thereto. 82 C.J.S. Statutes § 366.

Continuation Sheet Number 6
To: James H. Hodges, Esquire
April 10, 1985

Control Act suggested above and would demonstrate that such construction is in keeping with legislative intent of the Act.

To summarize, this Office concludes that turkey feathers in the situation described above should be excluded from the definition of "litter," and furthermore that it would appear to be inappropriate to prosecute drivers of trucks hauling poultry, from which feathers escape, under Sections 16-11-700 and 56-5-4100 of the Code, concurring with the statement in your letter of January 11, 1985, "it seems that the intent of Section 44-67-30 was to exclude farming vehicles from being cited for violations of any litter related laws while in the course of hauling."

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:djg

REVIEWED AND APPROVED BY:

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