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The State of South Carolina



Office of the Attorney General

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July 31, 1985

Honorable Alfred H. Vang
Executive Director
Water Resources Commission
Post Office Box 4440
Columbia, South Carolina 29240

Dear Mr. Vang:

You have requested an opinion as to whether the South Carolina Scenic Rivers Act of 1974, §§ 51-5-10 et seq., 1976 Code of Laws as amended, would authorize the State to accept a grant of a scenic river easement when the grant provides for termination if certain conditions occur.

The specific proposed easement in question involves the portion of the Saluda River below the Lake Murray Dam. The owner of the lands bordering the river also owns the Lake Murray Dam. The landowner desires to condition its easement by providing that if scenic river status leads to a minimum water release requirement, the easement would become void. The property tax savings to the donor will probably be less than \$1500 per year, and both Richland and Lexington Counties have endorsed the idea of making this a scenic river.

Section 51-5-70 provides that the State may purchase or accept donations of lands either "in fee simple or perpetual easement." "Perpetual easement" is defined in § 51-5-20(4) as "a perpetual right in land of less than fee simple;" the subsection goes on to list the parties' rights once the easement is in existence. Section 51-5-90 indicates that something less than perpetual may have been intended, however, because that section provides that donated lands shall revert to the donor whenever the lands are no longer used for the purposes donated.

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Although it is arguable that § 51-5-90 permits the landowner to define the purposes for which the land is donated, and hence to determine the terms of the reversion, the intent of the section probably is to refer to the purposes of the Scenic River Program rather than those of the donor. However, § 51-5-90 does indicate that it is not inconsistent with the purposes of the Act for the State's interest to be less than perpetual in some instances.

The purpose of the Act, as stated in § 51-5-30, is to protect the State's diminishing unspoiled scenic river resources. The obligations of the State after a river acquires scenic river status are to develop a management plan for the resource, probably to be done by present Water Resources Commission personnel and to manage it for protection of its natural state, requiring at most 2 more wildlife officers. No initial survey will be necessary. While these commitments by the State are not negligible, they do not appear to represent the type of investment which would be wasted if scenic river status were to be lost after the passage of time.

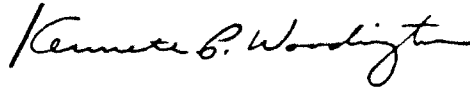
While no authority relating to facts such as these has been found, the matter would seem to fall under the maxim, used in a variety of contexts, that the greater includes the lesser, i.e., the power to accept a perpetual easement also includes the power to accept a lesser easement. See, e.g., Palmer v. Dunn, 216 S.C. 559, 59 S.E.2d 158 (1950); Wiggins v. Southern Bell, 266 S.E.2d 148 (Ga. 1980). See also, 56 Am. Jur.2d Municipal Corporations, § 540 (if a municipality has power to purchase, it also has power to lease); 2A Antieau, Local Government Law, § 20.16; 81A C.J.S. States, § 145. Although the case might be different if the easement could be reliably predicted to be only for a short term, the condition mentioned here may well never happen. Nothing in the purposes of the Act would be disserved by the State's acceptance of the easement here proposed. If the State accepts the donation, it will receive the benefits of scenic river status for this watercourse for what may in effect be a perpetual period; even if the condition is later invoked, the relative likelihood that the easement will be of long duration would serve the fundamental purposes of the Act.

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For the above reasons, it is therefore the opinion of this Office that it would not be inconsistent with the Act for the State to accept the easement in question.

Of course, this opinion addresses only the legal questions presented and does not comment upon the administrative, budgetary and business decisions which the parties themselves must address.


Sincerely yours,



Kenneth P. Woodington
Senior Assistant Attorney General

KPW:rmr

REVIEWED AND APPROVED BY:



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