

9345-9895



ALAN WILSON
ATTORNEY GENERAL

February 25, 2015

The Honorable Michael A. Pitts
Representative, District No. 14
327-C Blatt Building
Columbia, SC 29201

Dear Representative Pitts:

You have requested our opinion regarding the Heritage Act. By way of background, you reference H. 3574, a Joint Resolution altering the placement of names on a WWI and WWII monument, located at 332 Main Street in Greenwood. You have asked the following:

Would this resolution, should it pass, have statewide implications in regard to the Heritage Act? Would this allow the City of Greenwood to circumvent the Heritage Act? Who would the enforcing authority of the Heritage Act be should a violation occur?

Law/Analysis

Enclosed, please find an Opinion of this Office, dated June 10, 2014, which provides the guidance you are seeking. The Opinion addressed the question of whether the Heritage Act, codified at S.C. Code Ann. Section 10-1-165, must be followed before the Confederate Battle Flag (sometimes referred to as the "Naval Jack"), "first placed in The Citadel's Summerall Chapel in 1939", could be moved. In that Opinion, we concluded that "the flag does fall under the provisions of the Heritage Act and requires the protection of law."

Section 10-1-65 was enacted in 2000 as part of a hard fought compromise to remove the Confederate Flag from atop the Statehouse Dome. Such a provision states as follows:

- (A) No Revolutionary War, War of 1812, Mexican War, War Between The States, Spanish-American war, World War I, World War II, Korean War, Vietnam War, Persian Gulf War, Native American, or African American History monuments or memorials erected on public property of the State or any of its political subdivisions may be relocated, removed, disturbed or altered. No street, bridge, structure, park, preserve, reserve or other public area of the State or any of its political subdivisions dedicated in memory of or named for any historic figure or historic name may be renamed or rededicated. No person may prevent the public body responsible for the monument or memorial from taking proper measures and exercising

proper means for the protection, preservation and care of these monuments, memorials or nameplates.

- (B) The provisions of the Section may only be amended or repealed upon passing of an act which has received a two-thirds vote, on the third reading of the bill in each branch of the General Assembly.

Based upon the foregoing, as well as the broad language of § 10-1-165 of the Heritage Act, it is our opinion that the WWI and WWI monument in Greenwood would be covered by that Act. Accordingly, in order to make the changes to the monument proposed, the provisions of the Heritage Act would have to be followed. This means that such changes which may be proposed to the monument could not be made without an amendment to the Heritage Act. Such amendment would require a "two thirds vote on the third reading of the bill in each branch of the General Assembly."

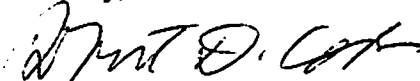
Conclusion

Your specific questions are answered as follows:

1. Yes. The Resolution you reference would have statewide implications. The Heritage Act applies statewide and must be followed in order to make the changes proposed. Failure to follow the Act's requirements would set a statewide precedent.
2. No. The Heritage Act is applicable to your situation and may not be ignored. While, generally speaking, one General Assembly may not bind another, the provisions of § 10-1-165 facially require a two-thirds vote of each house in order to amend the Act. Such provision is binding. See S.C. Op. Att'y. Gen., No. 80-53 (May 16, 1980) [Act requiring a two-thirds vote of each house to take specific action must be followed].
3. Enforcement of violations of the Heritage Act would have to be through the courts. A party with legal standing, such as the owner of the monument in question, would have to seek relief in the form of an injunction or a declaratory judgment action to enforce the provisions of the Heritage Act.

In summary, the Heritage Act's requirements are binding before a covered monument may be altered, removed or moved. The Greenwood monument you reference is included within the Act's coverage and must be followed.

Sincerely,



Robert D. Cook
Solicitor General

Enclosure