

1983 WL 181751 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 15, 1983

***1 RE: Shellfish Leasing System**

Mr. Charlie Bearden
Director
S. C. Marine Resources Center
Post Office Box 12559
Charleston, SC 29412

Dear Mr. Bearden:

You have inquired as to the effect of Act No. 565 of 1980 on Shellfish Leases existing at the time of the enactment.

Act No. 565 of 1980, a Joint Resolution, provides in part that a subcommittee of the Legislature be established to study the system of shellfish leases and to make a report to the General Assembly on its findings. Additionally, Section 2 of this Act provides that all existing shellfish leases which expire prior to the issuance of the subcommittee report shall be extended until the report is made and subsequent action based on the report is taken by the General Assembly. This Section further provides that no shellfish lease expiring prior to the issuance of such report shall be renewed or reissued until the report is made and subsequent action is taken.

The Act was approved by the Governor on June 11, 1980; the subcommittee report was issued on March 1, 1981. The report found the existing statutory oyster and clam shellfish leasing system needed improvement in many respects. However, to date there has been no 'subsequent action' by the General Assembly.

A literal interpretation of Section 2 of this Act suggests that this Act applies only to those leases which would expire before the subcommittee report was made. In other words, interpreted literally, those leases expiring between June 11, 1980 and March 1, 1981 are the only leases intended to be affected by this Act. However, this Joint Resolution also contemplated subsequent action on the report by the General Assembly. This action apparently would change the existing leasing system. In anticipation of this change, the General Assembly wanted the system to continue to function, but intended that there be no long-term obligation for lessor or lessee because of the contemplated subsequent action. Thus, this Act provides that leases are extended until action is taken.

Logically, the legislature anticipated all leases expiring after this Act would be affected by the new leasing system to be enacted. Therefore, to give logical effect to the intent of the Act it must be construed to extend all existing shellfish leases until such time as the General Assembly takes action on the subcommittee report.

An 'extension' of a lease generally means the prolongation or continuation of the term of the existing lease [Sunac Petroleum Corporation vs Parkes](#), 416 SW 2d 798 (Tex. 1967); [Myers vs. Cornelius](#) 262 SC 417, 205 SE 2nd 180 (1974). Therefore, the parties to the original leases would continue to hold the same obligations and privileges, one to the other, as they did under the conditions set forth in the original leases. See in accord: [Rubin vs. Gochrach](#), 186 Va. 786, 44 SE 2nd 1 (1947); [Moore vs. Maes et al.](#) 214 SC 274, 52 SE 2nd 204 (1949).

It is the Opinion of this Office that under Act No. 565 of 1980 all those shellfish leases which would have expired after June 11, 1980 have been extended under the original conditions and with the same obligations and privileges incumbent on each party and shall not expire until such time as the General Assembly has taken action on the subcommittee report.

Very truly yours,

*2 Buford S. Mabry, Jr.
Assistant Attorney General

1983 WL 181751 (S.C.A.G.)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.