9261-9811

ALAN WILSON
ATTORNEY GENERAL

April 9, 2015

Mr. Joshua A. Gruber, Esquire
County Attorney for Beaufort County
Post Office Drawer 12228
Beaufort, South Carolina 29901-1228

Dear Mr. Gruber:

By letter written to this Office, you have explained that Beaufort County Council passed Ordinance 1990/7 establishing the Seabrook Point Special Tax District as a vehicle for Seabrook Point, a private residential subdivision, to construct and maintain its roads. By deed dated December 28, 1995 and recorded on January 30, 1996, the Seabrook Point Property Owners Association Inc. deeded property to the Seabrook Point Special Tax District, described in part as ". . . fifty (50') feet in width roads and right of way . . . ." ". . . subject to a power line easement to S.C. Electric and Gas Company . . . ." "And also: drainage ditches and drainage easements. . ." and, additional land consisting of .10 acres and .20 acres. You have indicated that upon completion of the roads, it is planned that the Special Tax District be dissolved, and that the roads will "remain the property of the subdivision."

Amongst this background and in the context of a potential lawsuit against the special tax district and its commissioners for adverse possession, you have requested the opinion of this Office concerning the following two questions: (1) is a special tax district commission appointed by County Council for a specific purpose entitled to governmental immunity as an arm of the County; and (2) do individual commissioners have governmental immunity?

Law/Analysis

We begin with the caveat that as a matter of policy, this Office does not opine on potential lawsuits. See Op. S.C. Att'y Gen., 2013 WL 3362068 (June 25, 2013). Accordingly, we are only able to provide a general overview of the law pertaining to your inquiries and nothing contained herein speaks to the validity or prospective outcome of any potential lawsuit. We know nothing about the claim or the facts relevant thereto, and even if we did, a court of law, rather than this Office, is best equipped to answer questions of fact. See Op. S.C. Att'y Gen., 2010 WL 3896162 (Sept. 29, 2010) ("This Office is not a fact-finding entity; investigations and determinations of fact are beyond the scope of an opinion of this Office and are better resolved by a court").

I. Special Tax District: Most Probably Considered Part of the County

Article VIII, Section 7 of the South Carolina Constitution and Section 4-9-30(5)(a) of the

South Carolina Code provide counties the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided. S.C. Const. art. VIII, § 7; S.C. Code Ann. § 4-9-30(5)(a)(Supp. 2014). Section 4-9-30(5)(a) specifies that counties can create a "special tax district" for "appropriations for general public works, including roads, drainage, street lighting, and other public works. . . and [ ] provide for the regulation and enforcement of the above." Subsections 4-9-30(5)(a)(i)-(iii) include the procedures on how a special tax district can be created, and Section 4-9-30(b) provides that by ordinance, county council shall establish the operation of the special tax district either as an administrative division of the county or by appointment of a commission consisting of three to five members for a specified term.

In a prior opinion issued by this Office on November 4, 1991, we addressed the nature of a special tax district in the context of its ability to contract and obtain liability insurance. See Op. S.C. Att'y Gen., 1991 WL 633070 (Nov. 4, 1991). Looking to an April 5, 1976 opinion for guidance, we noted that "a county council had not been authorized by the Home Rule Act to create, in effect, an independent political subdivision of the State[1]." Id. at *2. We quoted from the 1976 opinion, which referenced S.C. Code Ann. § 4-9-30(6), to indicate that a special tax district commission created by county council also has to be regulated, modified, merged, or abolished by county council:

> the same provision—which grants to county governing bodies the authority "to establish such agencies, departments, boards, commissions, and positions in the county as may be necessary and proper to provide services of local concern for public purposes," also requires the county governing body to "regulate, modify, merge, or abolish such agencies, departments, boards, commissions and positions" . . . .

Op. S.C. Att'y Gen., 1991 WL 633070 (Nov. 4, 1991) (quoting S.C. Att'y Gen., 1976 WL 30421 (April 5, 1976)). Accordingly, our 1991 opinion concluded that since county council lacks the authority to create a separate autonomous political subdivision, and a special tax district commission must be regulated, modified, merged, or abolished by county council, a special tax district and its governing board were most probably considered a part of the County. Op. S.C. Att'y Gen., 1991 WL 633070 (Nov. 4, 1991). Making this determination, we also concluded that the special tax district could enter into contracts, should county council delegate that function to the District, and that our Office was not aware of any legal constraint that would preclude the Budget and Control Board from writing tort liability insurance to cover tort liabilities incurred by the county and its personnel, in the performance of official duties pursuant to contract. Id. at *2.

We highlight this opinion to illustrate our continued belief that a special tax district and its commissioners are most probably considered an extension of the county. See Op. S.C. Att'y Gen., 2013 WL 3762706 (July 1, 2013) ("[W]e stand by our previous opinion regarding this

[1] We distinguish that the establishment of Special Purpose or Public Service Districts pursuant to S.C. Code Ann. § 6-11-10 et seq. are separate, autonomous entities unlike special tax districts that are created and operated by county council. See Op. S.C. Att'y Gen., 1977 WL 37428 (Sept. 19, 1977) ("Any special purpose district created pursuant to Sections 6-11-10 et seq. would be an autonomous political subdivision and would not be a creature of county council as a special tax district created pursuant to the provisions of the 'home rule' legislation would be.").

issue since this Office will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law."); Op. S.C. Atty. Gen., 2009 WL 959641 (March 4, 2009) ("This Office recognizes a long-standing rule that we will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law"). Therefore, extending this conclusion to your questions, it is our opinion that a court would find a special tax district and its commissioners would presumably be covered by the South Carolina Tort Claims Act and any other applicable common law immunity to the same extent coverage is provided to counties and county officials.

II. Governmental Immunity

a. Political Subdivisions' Tort Immunity

Based on our conclusion that a court would likely find a special tax district and its commissioners are part of the county where the special tax district provides its services, we will address what immunity from liability would most probably be afforded to a special tax district and its commissioners. Because you ask generally about "governmental immunity" we will first address tort claims brought against a special tax district and/or its commissioners. In an opinion of this Office dated November 18, 2005 in reference to the possible personal liability of a county official, we expanded on immunity provided to the county and county officials, acting in their official capacities, provided by the South Carolina Tort Claims Act (S.C. Code Ann. §§ 15-78-10 et seq.). Id. at *1-2. The opinion notes that the Tort Claims Act "is designed generally to immunize public officials from personal liability for their torts when acting within the scope of their employment." Id. at *1. The Tort Claims Act, however, was enacted as a waiver of blanket sovereign immunity. See Bayle v. S.C. Dep't of Transp., 344 S.C. 115, 121, 542 S.E.2d 736, 739 (Ct. App. 2001) ("The Tort Claims Act waives sovereign immunity for torts committed by the State, its political subdivisions, and governmental employees acting within the scope of their official duties) (citations omitted)." Specifically, the Act provides that: "[t]he State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as private individuals under like circumstances. . . ." S.C. Code Ann. § 15-78-40 (2005). However, this waiver is limited, and S.C. Code Ann. § 15-78-60 (2005 & Supp. 2014) contains forty exceptions to the sovereign immunity waiver.

Furthermore, our Court of Appeals has explained that the Tort Claims Act "governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees." Proctor v. Dep't of Health and Envtl. Control, 368 S.C. 279, 628 S.E.2d 496 (Ct. App. 2006) (citations omitted). Pursuant to S.C. Code Ann. § 15-78-30(d) (2005) "governmental entity" is defined as "the State and its political subdivisions." "Political subdivision" is defined as "counties, municipalities, school districts, a regional transportation authority . . . , and an operator . . . which provides public transportation on behalf of a regional transportation authority, and special purpose districts of the State and any agency, governmental health care facility, department, or subdivision thereof." S.C. Code Ann. § 15-78-30(h) (2005). Finally, the term "employee" after January 1, 1989, includes "any officer, employee, agent, or court appointed representative of the State or its political subdivisions, including elected or appointed officials. . . ." S.C. Code Ann. § 15-78-30(c) (Supp. 2014). As

the Act is inclusive of counties and their employees, including appointed officials, it is our belief that special tax districts and its commissioners, to the extent they are acting within the scope of their official duties, would also be provided tort immunity to the extent to Tort Claims Act affords.

b. Political Subdivisions' Immunity from Adverse Possession

As the Tort Claims Act expressly preserves all existing common law immunities, we turn to analysis of potential immunity from adverse possession. See S.C. Code Ann. § 15-78-20 (2005) ("All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved"); see also O'Laughlin v. Windham, 330 S.C. 379, 498 S.C.2d 689 (Ct. App. 1998) ("The Tort Claims Act expressly preserves all existing common law immunities"). Title by way of adverse possession is a means by which one in possession of real property acquires title to that property after a specified period of time and if certain conditions are met. See Jones v. Leagan, 384 S.C. 1, 10, 681 S.E.2d 6, 11 (Ct. App. 2009) (citation omitted) ("The party asserting adverse possession must show continuous, hostile, open, actual, notorious, and exclusive possession for a certain period of time"). Governmental immunity from the tolling of the adverse possession statute of limitations was first established by the common law maxim nullum tempus occurrit regi. Carl C. Risch, Encouraging the Responsible Use of Land by Municipalities: The Erosion of Nullum Tempus Occurrit Regi and the use of Adverse Possession against Municipal Land Owners, 99 Dick. L. Rev. 197, 199 (Fall 1994). Translated as "no time runs against the king," this doctrine originated as a means of protecting the king under the rationale that he was occupied with acting for the benefits of his subjects rather than looking after the land. Walter Quentin Impert, Whose Land is it Anyway?: It's Time to Reconsider Sovereign Immunity from Adverse Possession, 49 U.C.L.A. L. Rev. 447, 449 (Oct. 2001); Roscoe Pound, A Survey of Public Interests, 58 Harv. L. Rev. 909, 924 (1945).

As explained in State ex rel. Condon v. City of Columbia, 339 S.C. 8, 19, 528 S.E.2d 408, 413 (2000), "the abolishment of sovereign immunity coupled with the Legislature's clear intent since 1870 to have statutes of limitation contained in Chapter 3 of Title 15 apply to the state, swept away the underpinnings of nullum tempus in South Carolina." Accordingly, the Court in State ex rel. Condon did not apply the doctrine of nullum tempus and held the statute of limitations provided in S.C. Code Ann. § 5-3-270 that typically applies in annexation matters was applicable even when the State was the party challenging the annexation proceeding . Id. at 16, 528 S.E.2d at 412. However, despite the apparent abolishment of the doctrine of nullum termpus and the Court's ruling in State ex rel. Condon, the general rule that real property held by the state or one of its political subdivisions cannot be acquired by adverse possession in South Carolina has continued to be applied. See Hilton Head Plantation Property Owners' Assn. v. Donald, 375 S.C. 220, 651 S.E.2d 614 (Ct. App. 2007) ("Finally, based on our finding that the State holds title to the Property, the Association also may not claim the Property through a theory of adverse possession") (citing Davis v. Monteith, 289 S.C. 176, 345 S.E.2d 724 (1986) ("[A]dverse possession does not run against the [S]tate of its duly constituted political subdivisions.")); but see Busby v. Florida Cent. & P. R. Co., 45 S. C. 312, 23 S. E. 50 (1895) ("since the possession provisions of the Code have been enacted, we see no reason why a party who has been in adverse possession of land for the requisite period may not acquire a title

against the state."). Opinions of our Office written subsequent to the State ex rel. Condon decision have recognized the same. See Op. S.C. Att'y Gen., 2010 WL 3048332 (July 8, 2010) (stating that "[i]t is well established that '[a]dverse possession does not run against the state" and, in reference the State ex rel. Condon decision, distinguishing that "just like the Court held that the nullum tempus doctrine prevailed in SC until the Legislature decided otherwise, one can conclude that adverse possession will not run against the state unless the Legislature decides otherwise"); see also Op. S.C. Att'y Gen., 2010 WL 1808724 (April 6, 2010) (making the same conclusions as our July 8, 2010 opinion).

While governmental immunity from adverse possession still appears to apply to the state and its political subdivisions, whether such immunity extends to real property in the name of a special tax district is a novel issue that, to our knowledge, has not been specifically addressed by our courts. To provide guidance to our analysis, we will review authority addressing whether adverse possession claims can be brought against various government entities of a state. "As a general rule, title by adverse possession may not be acquired to land owned by a political subdivision of the State, at least where such political subdivision holds title to property in its governmental capacity for public use." 2 C.J.S. Adverse Possession § 20 (2015). Application of what constitutes a public use differs, some states applying public use broadly to encompass generally all land held by the political subdivision while others give public use stricter application. Carl C. Risch, Encouraging the Responsible Use of Land by Municipalities: The Erosion of Nullum Tempus Occurrit Regi and the use of Adverse Possession against Municipal Land Owners, 99 Dick. L. Rev. 197, 200 (Fall 1994). Moreover, some states have held that an adverse possession claim cannot be brought against a municipality or political subdivision regardless of whether the land is held for a municipal or proprietary use or if it has been dedicated for public use unless the municipality has abandoned the land and is estopped from asserting a claim to it. 4 Tiffany Real Prop. § 1170, n.12.40 (3d ed. 2014).

i. Public Use Requirement

Certain courts have determined that there is a rebuttable presumption that a municipality owns land for a public use, *i.e.* either being held currently for public use or having plans to develop or use the land in the future for public use, and the adverse possessor must rebut this presumption by actual evidence to the contrary. See, e.g., Jarvis v. Gillespie, 155 Vt. 633, 587 A.2d 981 (Vt. 1991) (holding that adverse possessor overcame the rebuttable presumption that land acquired by town as settlement of a debt was given to public use; the land was not currently being used by the public and town manifested no future intent to use land for public use by conveying the land to a private individual); see also American Trading Real Estate Props., Inc. v. Town of Trumbull, 215 Conn. 68, 574 A.2d 796 (Conn. 1990) (finding Plaintiff failed to rebut the presumption that strip of land connecting a park to a public road, originally acquired as a roadway, was held by the town in a public use capacity; thus the town was immune from Plaintiff's adverse possession claim).

Other courts have distinguished that land owned by a government entity in its governmental capacity is immune from an adverse possession claim, but land owned in a proprietary capacity is not. See, e.g., Siejack v. City of Baltimore, 270 Md. 640, 313 A.2d 843

(Md. 1974) (granting title to adverse possessor despite land being in the city's name because land had never been devoted to public use and it was unlikely that city ever intended to do so); Long Island Research Bureau, Inc. v. Town of Hempstead, 118 N.Y.S.2d 39 (N.Y. App. Div. 1952) (holding that "where lands are held by a municipality in its governmental capacity they may not be lost by the adverse possession of others but when held in its proprietary capacity, there is no such immunity against adverse possession"). It has been explained that generally a municipality acts in its governmental capacity when it acts as an agent of the state on behalf of the general public and in a proprietary capacity when, conversely, it does not assume the personality of the state but rather acts for the peculiar and special advantages of its inhabitants. 1 McQuillin Mun. Corp. § 2:13 (3d ed. 2014). Under this approach, retention of title alone has been held to be adequate for the municipality to be considered immune to an adverse possession claim permitted the land is owned in a governmental capacity, and no consideration of the actual current or future use of the land is necessary. See Kellison v. McIsaac, 131 N.H. 675, 559 A.2d 834 (N.H. 1989) (holding that although town left land obtained through the non-payment of taxes idle for seven years it was immune from adverse possession claims because land was owned in the town's governmental capacity).

One particular case we wish to highlight is Hillsmere Shores Improvement Ass'n. Inc. v. Singleton, 182 Md.App. 667, 723, 959 A.2d 130, 163 (Md. Ct. Spec. App. 2008), applying the approach that immunity from adverse possession of land held by a political subdivision exists if land is held in the political subdivision's governmental capacity for public use. Specifically, Singleton involved a quiet title action brought by subdivision lot owners against the subdivision association seeking declaration that they had gained title to portions of beach sitting between their lots and water by way of adverse possession. Id. at 674, 959 A.2d at 134. The land in question was reserved for the use and benefit of the subdivision lot owners and had not been dedicated to the use of the general public. Id. at 678, 959 A.2d at 137.

On appeal of the grant of title by way of the adverse possession to the lot owners, the subdivision association alleged that it was a special tax district, and therefore a "state agency" immune from claims of adverse possession regardless of the manner or purpose for which it held title to property. Id. at 720, 959 A.2d at 161-62. The Court rejected this argument, finding that "[b]ecause appellant is not a State agency, appellant's ability to claim immunity from adverse possession, if any, [was] limited to immunity enjoyed by a municipality or other political subdivision." Id. at 724, 959 A.2d at 163-64. Accordingly, to be "immune from divestiture of title by adverse possession" under Maryland law, the political subdivision had to "hold title to property in its governmental capacity, for public use." Id., 959 A.2d at 164. In its analysis, the Court noted appellees' observation that "in order for property to be dedicated for public use, it 'must be conferred upon and exercisable by the public *at large*, and not merely a portion of it, such as the property owners living within a particular subdivision." Id. at 725, 959 A.2d at 164 (citations omitted) (emphasis in original). Because the land in question was intended for use only by those residing in the subdivision, the Court held that the land was not dedicated for public use, and the subdivision association was not entitled to protection from adverse possession. Id. at 725-26, 959 A.2d at 165. Again, Singleton illustrates a court applying the requirement that land held by a political subdivision must be held in its governmental capacity, for public use to be immune from an adverse possession claim.

ii. General Immunity

As noted above, some courts do not appear to require that land held by a municipality or other political subdivision be used in its governmental capacity or for a public use to establish immunity from adverse possession. Instead, they apply the general rule that title to property held by the state or its political subdivisions cannot be acquired by adverse possession. See, e.g., Loavenbruck v. Rohrbach, 795 A.2d 90, 2002 ME 73 (Me. 2002) (holding that because a person cannot acquire title by adverse possession against the state absent express statutory authorization, and since this rule extends to political subdivisions and municipalities, adverse claimant's prescriptive rights did not include time that town was the owner of a discontinued street that claimant used a portion of as a driveway); Fischer v. City of Sauk Rapids, 325 N.W.2d 816 (Minn. 1982) (applying the rule that land owned by a municipality may not be acquired by adverse possession regardless of whether the land is held in a proprietary or governmental capacity, except when the municipality has abandoned the land and is estopped from asserting a claim to it). South Carolina has been cited as following this approach. See 4 Tiffany Real Prop. § 1170 (3d ed. 2014) ("However, in some states, land owned by a municipality may not be acquired by adverse possession, regardless of whether the land is held in a proprietary or a governmental capacity, unless the municipality has abandoned the land and is estopped from asserting a claim to it") (citing Davis v. Monteith, 289 S.C. 176, 345 S.E.2d 724 (1986) as one authority in support).

iii. South Carolina Authority

We now turn South Carolina cases addressing adverse possession claims brought against land held by a municipality, looking first to Davis v. Monteith, 289 S.C. 176, 345 S.E.2d 724 (1986) that was cited for the proposition that real property held by a municipality cannot be acquired by adverse possession regardless of whether the land is held in a proprietary or governmental capacity. 4 Tiffany Real Prop. § 1170 (3d ed. 2014). Davis v. Monteith involved former school property first sold by the school district under a restrictive covenant that the land be used only for school, religious and education purposes. Davis v. Monteith, 289 S.C. 176, 178, 345 S.E.2d 724, 725 (1986). The purchaser under the contract for sale, Davis, used the land for over twenty five years as an automobile parts business, in violation of the covenant. Id. at 179, 345 S.E.2d at 725. Except for earnest money paid, the purchaser did not tender the amount owed for the land. Id. Davis was informed by the school district that it could not sell the land to him for the purpose he intended to use the property and to vacate the property. Id. After the school district entered into a contract for sale of the land with a subsequent purchaser, Davis alleged he had legal title to the property by adverse possession. Id. at 179, 345 S.E.2d at 726. Affirming the trial court's holding that he did not, the Supreme Court stated that: "Davis alleges the trial judge erred in finding he did not have legal title to the property by operation of the doctrine of adverse possession. We disagree. The Court correctly held that adverse possession does not run against the state or its duly constituted political subdivisions." Id. (citing Harlock v. Jackson, 5 S.C.L. 254 (1812); 3 Am.Jur.2d *Adverse Possession* Section 206; 55 A.L.R.2d 578).

Because the Court found that property owned by a school district could not be acquired by adverse possession despite its use as an automobile parts business for over twenty five years,

Davis has been interpreted as applying the standard that adverse possession does not run against a political subdivisions regardless of whether the land is held in a governmental or proprietary capacity. See 4 Tiffany Real Prop. § 1170 (3d ed. 2014). Davis did recognize, however, that the state or one of its political subdivisions can be equitably estopped from asserting a claim to land if necessary to prevent a manifest wrong or injustice. Id. at 181, 345 S.E.2d at 727 (noting that [i]n *Outlaw* [*v. Moise,* 222 S.C. 24, 71 S.E.2d 509 (1952)], this Court held the mere possession of a public street or ally cannot confer title; but on the principle of equitable estoppel, a party may be protected against the assertion of right by the public in order to prevent manifest wrong and injustice"). The Court also pointed out that Davis' adverse possession claim lacked the "hostile" element because the school district had knowledge of and gave Davis "tacit permission" to use the property for over twenty five years. Id. at 180, 345 S.E.2d at 726.

Although Davis v. Monteith suggests that public use and holding land in a governmental capacity may not be required for land held by a political subdivision to be immune from adverse possession, immunity from adverse possession to lands held by a political subdivision of the state has been most frequently extended to lands dedicated for public use. This has been consistently demonstrated in cases involving adverse possession claims over portions of streets or alleys dedicated to the public[2]. See Crocker v. Collins, 37 S.C. 327 (1892) ("[M]ere adverse possession for the statutory period of a street or alley in a town, which is a public highway, cannot confer title; but where such possession is accompanied with other circumstances which would render it inequitable that the public should assert its right to regain possession, then, upon the principal of estoppel, a party may be protected against the assertion of right by the public in order to prevent manifest wrong and injustice"); see also City of Myrtle Beach v. Parker, 260 S.C. 475, 197 S.E.2d 290 (1973) ("It is well settled in this State, if not everywhere, that no rights in a street can be acquired against a municipality by adverse possession"); Corbin v. Cherokee Realty Co., 229 S.C. 16, 91 S.E.2d 542 (1956) ("It is equally well established that appellant [owner of land in subdivision] could not acquire title to any portion of the dedicated area [of a public street in a subdivision] by adverse possession as against the County of City of Florence"); Outlaw v. Moise, 222 S.C. 24, 71 S.E.2d 509 (1952) ("It is well established in title to property dedicated to and used by the public for streets and highways cannot be acquired by prescription or adverse possession as against the State of any of its political subdivisions" but analyzing the distinction that private easements can be acquired by adverse possession). Thus, it is abundantly clear that lands dedicated to public use held by a political subdivision are immune from acquisition by adverse possession.

Conclusion

In conclusion, we reiterate that pursuant to the policy of this Office, this opinion is in no

[2] We mention that roads and associated storm drainage dedicated for "public maintenance" by a subdivision developer with the intent to retain discretionary control of the dedicated property's use was held to be ineffective by our Supreme Court. Timberlake Plantation Co. v. County of Lexington, 314 S.C. 556, 431 S.C. 556 (1993). Thus, the dedicated roads within the subdivision, once accepted by the public at large, were considered public easements dedicated to the public despite the developer's intent to dedicate the roads only for public maintenance. Id. ("It is clear then, that while a landowner may dedicate land for a specific, limited, and defined purpose, he cannot retain discretion to alter or control future use of the property once it has been accepted by the public. Accordingly, we find that Timberlake's attempt to retain discretionary control of property dedicated to the public was ineffective").

way a comment on the potential outcome or validity of any potential adverse possession claim against the Seabrook Point Special Tax District. We are not permitted to opine on potential lawsuits and we know nothing of the facts supporting or opposing any potential claim, should there be one. This opinion is merely a summary of the law pertaining to governmental immunity that we believe a court would apply to a special tax district and its commissioners.

As noted above, it is this Office's continued belief that a court would find a special tax district and its commission would most probably be considered part of the county. As such, it is our opinion that a special tax district and its commissioners would be afforded the same tort and common law immunities provided to counties and employees of the counties.

Despite the apparent abandonment of the nullum tempus doctrine in South Carolina to the extent explained in State ex rel. Condon, the position that adverse possession does not run against the State or its political subdivisions has since been applied by our Courts. Immunity from acquisition of title to lands held by political subdivisions by adverse possession has most frequently been applied where lands have been dedicated to public use. However, South Carolina case law has been interpreted as suggesting dedication to public use is not necessary, and land being held in the name of a political subdivision is the only requirement to establish immunity from a claim of adverse possession brought against it. While this appears to be the current posture of the law, legislative or judicial clarification on this intricate issue is strongly advised.

Should you have any additional questions, please do not hesitate to contact our Office.

Very truly yours,

Anne Marie Crosswell

Anne Marie Crosswell
Assistant Attorney General

REVIEWED AND APPROVED BY:

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