

1983 S.C. Op. Atty. Gen. 105 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-66, 1983 WL 142736

Office of the Attorney General

State of South Carolina

Opinion No. 83-66

September 8, 1983

*1 Dr. James A. Timmerman, Jr.
Executive Director
Wildlife and Marine Resources Department
Rembert C. Dennis Building
Columbia, South Carolina 29201

Dear Dr. Timmerman:

You have requested an opinion as to the constitutionality and interpretation of § 50-17-506, 1976 Code of Laws of South Carolina, as amended by Section 1 of Act No. 128 of 1983. The 1983 amendment provides as follows:

The Division may limit the type of fishing equipment used, seasons, and areas where nonresidents may fish in accordance with comparable limitations placed upon South Carolina fishermen by the nonresident's state.

It has been proposed that based on this provision, the Wildlife Department should prohibit Georgia shrimpers from trawling in South Carolina bays and sounds, although South Carolina Shrimpers are permitted to trawl in those areas.

The United States Supreme Court has previously declared unconstitutional certain statutes which impose burdens upon nonresidents. [Toomer v. Witsell](#), 334 U.S. 385, (1948); [Hicklin v. Orbeck](#), 437 U.S. 518 (1978); see also [Baldwin v. Montana Fish & Game Comm.](#), 436 U.S. 371 (1978). Here, while the constitutionality of § 52-17-506 is subject to serious question, [Toomer](#), *supra*, we need not address the issue, because we conclude there are no 'comparable limitations' imposed by Georgia law which would warrant the closing of South Carolina sounds to Georgia shrimpers.

It is well recognized that words in a statute should be given their ordinary meaning unless there is something in the statute which requires a different interpretation. [Hughes v. Edwards](#), 265 S.C. 529, 220 S.E.2d 231 (1975). The word 'comparable' generally is understood to mean 'similar'. See, 8 [Words and Phrases](#), 'comparable', pp. 44-45 (Cum.Supp.). 'Similar' in its ordinary sense usually means 'nearly corresponding' or 'resembling in many respects.' 39 [Words and Phrases](#), 'Similar', pp. 75-77 (Cum.Supp.); 17 [A.L.R.](#) 94 'Meaning of word "Similar"'. This is the same meaning given the word by the Supreme Court of South Carolina. [Baitary v. Ilderton](#), 214 S.C. 357, 52 S.E.2d 417 (1949). The term has also been given this meaning in statutes involving reciprocity and where there are substantial and fundamental differences in statutes of other states on the same subject for purposes of reciprocity such legislation will be held not similar or comparable to that of the reciprocating state. [Pine Grove Manor v. Director of Tax](#), (N.J.), 171 A.2d 676 (1961).

Here, the Georgia law in question (§ 27-4-133(a) [Official Code of Georgia Annotated](#)) does not impose limitations 'comparable' to those provided in § 50-17-506. The phrase 'comparable limitations' as used in § 50-17-506 clearly appears to modify the preceding phrase '. . . limit the type of fishing equipment used, seasons, and areas where non residents may fish . . .' (emphasis added). The limitation imposed by South Carolina law operates only upon a determination that similar legislation exists in a nonresident state. Thus, the sole determinant in § 50-17-506 is residency.

*2 On the other hand, the Georgia statute in question provides that with several exceptions, the sounds of Georgia are absolutely closed to commercial shrimping using power drawn nets. The exceptions provide that six named sounds may be opened between

September 1 and December 31 of each year if the Commissioner of the Department of Natural Resources so elects; he may only so elect if the shrimp in the sounds have attained a certain size.

In short, the Georgia statute is not related to residency at all. [Section 27-4-133\(a\)](#) closes Georgia's sounds to all commercial shrimping, resident and non-resident alike, and makes no exception which would allow Georgia residents any different privileges from those accorded to anyone else. In addition, the Commissioner has not elected to open any of Georgia's sounds to commercial shrimping.

From the foregoing, it is apparent that Georgia's laws and regulations do not impose 'comparable limitations' to those provided for in the South Carolina statute. Georgia's laws do not operate to distinguish between residents and nonresidents. Our conclusion that Georgia's statutes are not comparable for purposes of § 50-17-506 is further supported by the basic rule that statutes which are penal in nature must be strictly construed against the State, [State v. Cutler](#), 274 S.C. 376, 264 S.E.2d 420 (1980); hence, while § 50-17-506 is itself not penal, the effect of the statute's applicability would invoke South Carolina's criminal laws. Therefore, it is the opinion of this office that the threshold requirement of comparability between the two states' laws has not been met, and that South Carolina's sounds may not be closed to Georgia residents pursuant to the authority of § 50-17-506.

Sincerely yours,

T. Travis Medlock
Attorney General

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