



ALAN WILSON  
ATTORNEY GENERAL

February 20, 2018

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Dear Ms. Johnson:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter asks whether timber sales from state parks managed by the South Carolina Department of Parks, Recreation & Tourism ("SCPRT") should be considered surplus property? Your letter states the following:

[T]he legislature has expressly given SCPRT the power and duty to manage its natural resources, including the management of timber located on SCPRT property (S.C. Code Ann. § 51-1-60 (Supp. 2016)). More specifically, the legislature has explicitly given SCPRT the authority to sell or otherwise dispose of products from its land and use the funds derived in the resource management of the parks (S.C. Code Ann. §§ 51-3-110 and 51-3-120 (1976)). Timber derived from this careful management is no exception, and SCPRT routinely sells timber from the parks and uses the funds for resource management.

...

Timber does not fit the traditional definition of "surplus." Surplus property is generally considered to be a tangible item that was procured, used, and no longer in use. For example, the Department of Administration website lists types of surplus property sold as:

Cabinets, carts, chairs, check-writers, clothing/athletic equipment, computers, computer stands, copiers, desks, disk drives, fax machines, freezers, keyboards, monitors, paper (bond and computer), pianos, printers, refrigerators, sewing machines, shelving, stoves, televisions, typewriter printer ribbons, typewriters, VCRs, and vehicles.

Although timber can be treated as “goods” in some circumstances (S.C. Code Ann. § 36-2-107), there are numerous exceptions. For example, the Code of Laws of South Carolina also recognizes the distinct nature of timber sales as a conveyance of real property (§ 30-5-80); provides for the recordation of timber leases (§ 27-33-30); allows for the exemption of timber deeds for the sale of timber to be cut from the recordation tax (§ 12-24-40); and allows lessees of timber leases to be exempt from the landlord/tenant laws (§ 27-33-20).

As it relates to this question, characterization of timber as “surplus” is important due to the disposition of the proceeds of the sale. If characterized as “surplus,” the S.C. Procurement Code states that the proceeds from such sales are to be deposited in the General Fund (S.C. Code Ann. § 11-35-3820 (Supp. 2016)). However, the same section of the procurement code also states that the allocation of proceeds into the General Fund can be “otherwise directed by regulation” and applies to all governmental bodies unless exempt by law. The SC Legislature has otherwise directed in this case.

The state of South Carolina has always recognized the importance of timber rights and has given the issue of timber rights a distinct place in the body of law in this state. State agencies owning land have been given the authority to do any and all things necessary and incident to the furtherance of the use of the property, including the sale of timber. Although some agencies owning timber are required by statute to deposit timber proceeds into the General Fund (§ 44-20-130, Department of Mental Health), others are directed as to the specific disposition of the proceeds of timber sales (§ 50-3-550, The Department of Natural Resources, timber proceeds to benefit the game protection fund; § 24-1-250, Department of Corrections, proceeds to benefit the agricultural program; § 63-19-420, Department of Juvenile Justice, proceeds allocated to capital improvement).

Similarly, the legislature has given SCPRT the authority to manage the natural resources of the parks and specific direction regarding use of the proceeds. Thus, even if classified as surplus property, the Agency has been explicitly directed to use the funds in the resource management of the parks. Any proposed timber sale, and the resulting proceeds, should be considered a part of the management plan authorized by legislation.

#### Law/Analysis

In order to address whether timber sales from the State parks managed by the SCPRT should be considered surplus property, we must analyze the relevant statutory authority according to the rules of statutory interpretation. Statutory interpretation of the South Carolina

Code of Laws requires a determination of the General Assembly's intent. Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The meaning of these statutes and their effect must be determined with reference to each other so as to "construe them together into one integrated system of law." Op. S.C. Atty. Gen., 2000 WL 1347162 (Aug. 25, 2000); see also State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh'g denied* (Aug. 5, 2015) ("A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers."). Typically, our state courts respectfully consider "the construction of a statute by the agency charged with its administration." Brown v. S.C. Dep't of Health & Env'tl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002). However, such a construction will be overruled "where... the plain language of the regulation is contrary to [such agency's] interpretation." 348 S.C. at 515, 560 S.E.2d at 415. With these principles in mind, we next reconcile the relevant provisions of the South Carolina Consolidate Procurement Code (the "Procurement Code") with SCPRT's statutory directive to control and maintain the State parks.

The Procurement Code states, "Subject to existing provisions of law, the board shall promulgate regulations governing: (1) the sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate methods designated by such regulations; (2) the transfer of excess supplies between agencies and departments." S.C. Code Ann. § 11-35-3810. Such regulations have in fact been promulgated to define surplus property as "all State-owned supplies and equipment, not in actual public use, with remaining useful life and available for disposal." S.C. Code Ann. Regs. 19-445.2150(A)(1). "Supplies" is statutorily defined within the Procurement Code to mean "all personal property including, but not limited to, equipment, materials, printing, and insurance." S.C. Code Ann. § 11-35-310(31). Further, a governmental body must report the following information within one hundred eighty days from the date property becomes surplus: "[t]he description, model or serial number, acquisition cost, date of purchase and agency ID number shall be listed for each item." S.C. Code Ann. Regs. 19-445.2150(B)(1). The Procurement Code directs the Division of General Services of the Department of Administration to conduct the sale of all surplus property as follows:

Except as provided in Section 11-35-1580 and Section 11-35-3830 and the regulations pursuant to them, the sale of all state-owned supplies, or personal property not in actual public use must be conducted and directed by the Division of General Services of the Department of Administration. The sales must be held at such places and in a manner as in the judgment of the Division of General Services is most advantageous to the State. Unless otherwise determined, sales must be by either public auction or competitive sealed bid to the highest bidder. Each governmental body shall inventory and report to the division all surplus personal property not in actual public use held by that governmental body for sale. The division shall deposit the proceeds from the sales, less expense of the sales, in

the state general fund or as otherwise directed by regulation. This policy and procedure applies to all governmental bodies unless exempt by law.

S.C. Code Ann. § 11-35-3820 (emphasis added). The statutory and regulatory authority cited above can be read to apply to all “personal property” held by a governmental body which is not in public use unless the governmental body is “exempt by law” from the surplus property policy and procedure. Therefore, it must be determined whether timber from the lands managed by SCPRT as State parks is considered personal property and whether the sale of such timber by SCPRT is exempt by law from the surplus property policy and procedure.

The South Carolina Supreme Court, in Epstein v. Coastal Timber Co., 393 S.C. 276, 281, 711 S.E.2d 912, 915 (2011), discussed how timber is treated as tied to real property until severed from the land.

In South Carolina, standing timber has historically been defined as “a part of the realty, as much so as the soil itself.” First Carolinas Joint Stock Land Bank of Columbia v. N.Y. Title & Mortgage Co., 172 S.C. 446, 450, 174 S.E. 406, 408 (1934) (citation omitted); see also D.W. Alderman & Sons Co. v. Kirven, 209 S.C. 446, 455, 40 S.E.2d 791, 794 (1946) (“We have held ... that trees growing upon lands are a part of the realty, and continue to be realty until severed from the soil.”). “The conveyance of timber land without reservation or exception of timber carries the timber.” First Carolinas, 172 S.C. at 450, 174 S.E. at 408.

The Court explained that S.C. Code Ann. § 36-2-107(2) allowed timber to be cut under a contract of sale to be treated “as a sale of goods, even though the timber is still attached to the land, and to provide a method for a purchaser to document a security interest in such timber under contract.” The Court concluded that Section 36-2-107(2) “did not effect a wholesale cancellation of existing real estate law in South Carolina and did not convert all standing timber to ‘goods.’” 393 S.C. at 288, 711 S.E.2d at 919. The holding in Epstein suggests that timber growing on State parks managed by SCPRT continues to be considered real property. Therefore, the surplus property policy and procedure discussed above would not apply to standing timber because real property is not included within the statutory definition of “supplies” in S.C. Code Ann. § 11-35-310(31).<sup>1</sup> However, once the timber is “severed from the soil,” the timber would no longer be considered part of the realty. Epstein, 393 S.C. at 281, 711 S.E.2d at 915. Once the timber is severed from State parks managed by SCPRT, the surplus property policies and procedures would apply unless such sales by SCPRT are exempt by law.

Title 51, Chapter 3 of the South Carolina Code of Laws authorizes the SCPRT to control and maintain the State parks. Section 51-3-10 states, “The Department of Parks, Recreation and Tourism may control, supervise, maintain and, wherever practicable, improve all parks

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<sup>1</sup> Please note that S.C. Code Ann. § 1-11-58 directs each state agency to annually report on “all residential and surplus real property” it owns.

belonging to the State, for general recreational, educational and forestry purposes ....” Section 51-3-110 allows SCPRT to “sell or otherwise dispose of products from such lands” acquired under Section 51-3-80. Finally, Section 51-3-120 provides:

The revenues derived from such lands owned by the Department of Parks, Recreation and Tourism shall be segregated by the State Treasurer for the use of the Department in the acquisition, management and development and use of such lands until all obligations incurred have been paid in full. Fifty per cent of all net profits accruing from the administration of such lands shall be applicable for such purposes as the General Assembly may prescribe and fifty per cent shall be paid into the school fund of the county in which such lands are located.

That SCPRT is authorized to “control, maintain and ... improve all parks belonging to the State, for ... forestry purposes” as well as to “sell or otherwise dispose of products from such lands” clearly allows SCPRT to sell timber from the State parks which it oversees. This authority to sell the products from lands SCPRT acquires, namely timber, precludes the Division of General Services of the Department of Administration from conducting a sale of such products as surplus supplies under S.C. Code Ann. § 11-35-3820. While Section 51-3-110 does not appear to provide a blanket exemption for all personal property held by SCPRT, the legislative intent expressed by its plain language demonstrates that timber and other products derived from lands held as State parks are to be sold by SCPRT rather than according to the surplus supplies policy and procedure. Indeed, the Division of General Services cannot conduct a sale of timber as surplus supplies where such timber has already been sold by SCPRT. Moreover, Section 51-3-120 directs that the “revenues derived from such lands owned by [SCPRT] shall be segregated “for the use of [SCPRT] until all obligations incurred have been paid.” After all SCPRT obligations are met, the net profits from the administration of the lands managed by SCPRT are split between “the school fund of the county in which such lands are located” and for such purposes as “the General Assembly may prescribe.” Thus, because both the sale of timber from the State parks which SCPRT administers and the revenues from such sales are expressly accounted for in Title 51, Chapter 3 of the South Carolina Code of Laws, it is this Office’s opinion that a court would likely find such sales are “exempt by law” from the policies and procedures for surplus personal property sales authorized in the Procurement Code.

### **Conclusion**

It is this Office's opinion that a court would likely find the sale of timber from the State parks which SCPRT administers is “exempt by law” from the policy and procedure for surplus personal property sales authorized in the Procurement Code. S.C. Code Ann. § 51-3-110 authorizes SCPRT to “sell or otherwise dispose of products from such lands” it acquires. S.C. Code Ann. § 51-3-120 directs how the “revenues derived from such lands owned by [SCPRT]” are allocated. Because both the sale of timber, as a product of the lands SCPRT manages, and the revenue derived from lands owned by SCPRT are controlled by statute, a court would likely find that policy and procedure regarding surplus personal property not in actual public use held

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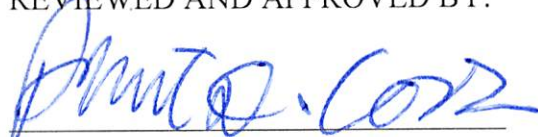
by a governmental body is inapplicable to such sales. See S.C. Code Ann. § 11-35-382 ("This policy and procedure applies to all governmental bodies unless exempt by law.").

Sincerely,



Matthew Houck  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General