ALAN WILSON
ATTORNEY GENERAL

July 31, 2019

Mr. Tom W. Patton
Deputy State Forester
South Carolina Forestry Commission
P.O. Box 21701
Columbia, South Carolina 29221

Dear Mr. Patton:

We understand you seek an opinion of this Office as to "whether section 48-23-295 (Forestry Services to landowners) allows the SC Forestry Commission to extract mired equipment for private contractors serving private forest landowners in the maximum production of their woodland." You state the Forestry Commission (the "Commission") "has provided this service in the past, charging the same service rate as firebreak installations. However, in recent years, largely due to herbicide contractors using skidders later in the growing season and wet weather events as a result of hurricanes and El Niños, these request have become more frequent."

Law/Analysis

As you reference in your letter, section 48-23-295(A) of the South Carolina Code (2008) provides:

> The State Commission of Forestry may make available forestry services consisting of scientific, technical, and practical services to landowners of the State to assist them in the afforestation, reforestation, and maximum production of their woodland. These services consist of specialized equipment and operators or rental of the equipment to perform labor and services necessary to carry out approved forestry practices including mechanical and chemical site preparation, processing forest tree seed, forest tree planting, insect and disease control, prescribed burning, firebreak plowing, and other appropriate practices to assist landowners in maximum production of their woodland.

Providing landowners with the services you describe fits within the portion of the statute allowing the Commission to provide equipment and operators to assist in reforestation.

However, you are concerned with whether performing extractions for private contractors falls within the services allowed under the statute. Section 48-23-295 does not specifically address the use of private contractors employed by landowners to perform afforestation, reforestation or other activities that aid in production of their woodland. As such, we must consider whether the Legislature intended to allow the Commission to provide the same services to private contractors as it provides to landowners.

"The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly." Beaufort Cty. v. S.C. State Election Comm'n, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citations omitted) (quotations omitted). "Statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers." TNS Mills, Inc. v. S.C. Dep't of Revenue, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1998).

We are not aware of any court decisions or prior opinions of this Office discussing the legislative intent of section 48-23-295. Nonetheless, the statute itself conveys an intent by the Legislature to promote the protection and enhancement of the state's woodlands by providing forestry services to landowners. Many landowners employ others to perform work on their land, especially in the area of forestry which requires specialized skill and equipment. Although a private contractor might perform the work required to plant and grow woodlands, the Legislative purpose remains the same - cultivating and preserving the State's woodlands. Reading section 48-23-295 to allow these services to extend to private contractors hired by landowners is in keeping with what we believe is the Legislature's intent. Therefore, we are of the opinion that the Legislature, in addition to providing services to landowners, intended to allow the Commission to provide services to private contractors ultimately benefiting landowners and furthering the purposes of the Commission.

We note in numerous opinions this Office concluded that use of public labor and equipment for private purposes is prohibited. See Ops. S.C. Att'y Gen., 2016 WL 5820152 (September 23, 2016); 2015 WL 7573851 (November 12, 2015); 2003 WL 41471508 (June 2, 2003). These opinions are based on the provisions in the South Carolina Constitution that require the use of tax proceeds solely for public purposes. See S.C. Const. art. X, § 5 (2009) (requiring "[a]ny tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied); S.C. Const. art. X, §11 (2009) (providing the "credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association, corporation, or any religious or other private education institution except as permitted by Section 3, Article XI of this Constitution."). In the 2016 opinion cited above, we employed the following test espoused by the Supreme Court in Nichols v. South Carolina Research Authority, 290 S.C. 415, 429, 351 S.E.2d 155, 163 (1986), to determine whether a

county's resources may be used to provide emergency maintenance of private roads. Quoting Nicholas, we stated:

> The Court should first determine the ultimate goal or benefit to the public intended by the project. Second, the Court should analyze whether public or private parties will be the primary beneficiaries. Third, the speculative nature of the project must be considered. Fourth, the Court must analyze and balance the probability that the public interest will be ultimately served and to what degree.

Op. S.C. Att'y Gen., 2016 WL 5820152 (September 23, 2016) (quoting Nichols, 290 S.C. at 429, 351 S.E.2d at 163). Based upon prior opinions and a court order addressing a similar ordinance, we determined the proposed ordinance did not meet the public purpose requirement. Id.

We begin with the presumption that section 48-23-295 is a valid statute. See Davis v. Cty. of Greenville, 322 S.C. 73, 77, 470 S.E.2d 94, 96 (1996) ("All statutes are presumed constitutional and will, if possible, be construed so as to render them valid."). Moreover, "[t]he question of whether an Act is for a public purpose is primarily one for the Legislature." Nichols, 290 S.C. at 426, 351 S.E.2d sat 161 (citations omitted) (internal quotations omitted). As the Supreme Court noted in Nichols, modern courts "recognize public purpose as a fluid concept, affected by the complexity of modern society." Id. at 427, 351 S.E.2d at 162. The Supreme Court also recognized "a trend toward broadening the coverage of what constitutes a valid public purpose for the expenditure of public revenues." Id. at 428, 351 S.E.2d at 162. A court could read this statute to serve the purpose of maintaining an important natural resource for our state. See Clarke v. S.C. Pub. Serv. Auth., 177 S.C. 427, 181 S.E. 481, 486 (1935) (stating the reforestation of watersheds is a public purpose); United States v. Eighty Acres of Land in Williamson Cty., 26 F. Supp. 315, 320 (E.D. Ill. 1939) ("That reforestation, forestation, prevention of forest fires, flood control and prevention of soil erosion are public purposes it would seem no one can reasonably doubt."); In re Opinion of the Justices, 114 A.2d 327, 328 (N.H. 1955) ("Since the protection and promotion of forests and water resources are within the ambit of public welfare the taxing power may be used to aid that public purpose."). Despite the statute serving a public purpose, we cannot ignore the fact that a court could also find it primarily benefits private landowners and, as we read it, their private contractors.

An opinion issued by this Office in 1987 presented a similar set of facts. Op. S.C. Att'y Gen., 1987 WL 342831 (April 2, 1987). In that opinion, Aiken County asked if it could provide county labor and equipment to clean up trash and unsightly vegetation in an unincorporated municipality located within Aiken County that included property belonging to a railroad company. Id. We noted "[t]his Office has opined on numerous occasions that county equipment and personnel . . . may not be used for work on private property." Id. However, we concluded Aiken County could use county resources to clean up private property if payment is made to the county prior to it providing such assistance. Id. We explained, "such payment would remove the constitutional difficulty of using public funds or equipment for private purposes." Id.

Section 48-23-295(B) provides "[f]or the services or rentals a reasonable fee representing the commission's estimate of not less than the cost of the services or rentals must be charged." According to your letter, the Commission charges "the same service rate as firebreak installations" to perform extractions of mired reforestation equipment. The statute requires a fee that at a minimum reflects the cost of the services provided. As we stated in 1987, this payment would remove any constitutional difficulties with providing such services and equipment to private landowners and their contractors.

Conclusion

It is our opinion that reading section 48-23-295 to allow the Commission to provide extraction services to private contractors performing services for landowners, in addition to landowners themselves, is reasonable with respect to the legislative purpose of this statute. Moreover, because section 48-23-295 requires the Commission to charge a reasonable fee for such services, we do not believe the statute, or its implication to private contractors, would run afoul of the constitutional provisions prohibiting the use of public equipment or employees for private purposes.

Sincerely,

Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General