



ALAN WILSON
ATTORNEY GENERAL

April 10, 2020

Joseph Dawson, III, Esq.
County Attorney
4045 Bridge View Dr.
North Charleston, SC 29045

Dear Mr. Dawson:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states:

This is a request for a written opinion regarding the applicability of the Heritage Act codified at S.C. Code. Ann. § 10-1-165 (the "Act") to property in the City of North Charleston known as the Cooper River Memorial Library ("Library"). By way of background, pursuant to a \$108 Million Library bond referendum approved by the voters in November 2014, Charleston County proposes, in addition to other projects, to renovate and add 20,000 square feet onto the Library to provide and deliver modern library and learning resources to the community, to include major technology and building upgrades. The County will maintain the name of the Library; however, it plans to name the facility addition the "R. Keith Summey" Library.

In 1947, the Cooper River District Memorial Library Association (the "Association") was incorporated in South Carolina for the purpose of "maintaining and operating a library and other educational and cultural facilities, as a Memorial to those who gave their services and lives in World War II." ... In 1948, the Association in conjunction with other civic partners constructed a 4,900 square foot building and "Dedicated [it] to the Veterans of World War II." ... In 1973, two wings were added to the Library making the structure 7,700 square feet. In May of 1973, the Corporation conveyed the Library to Charleston County (the "County"). The Corporation maintains a reversionary interest in the property that is "subject to the [the County] using the property as a library." ...

In accordance with the Act, the County's design philosophy is to protect and preserve as much of the exterior existing building dedicated in 1948. However, the County intends to demolish the 1973 additions and completely renovate the original interior Library. In addition, the County plans to construct an approximate 20,000 square foot addition to the Library to expand library services. Based on these assumptions, and assuming the County will protect and preserve all monumental and/or memorial plaques affixed to the original building or reintegrate them onto the original Library, Charleston County respectfully requests your opinion on the following:

1. Does the Heritage Act apply to the original 1948 Library construction and/or its 1973 additions?
2. If so, does the Act's "protection, preservation, and care" provision allow the County to implement and construct its design philosophy stated above (i.e., preserve the exterior 1948 building except where it connects to the 20,000 square foot addition, demolish or preserve the 1973 additions, completely renovate the interior 1948 original construction and/or the 1973 additions, and adding on a 20,000 square foot addition)?
3. Would the Act apply to the 20,000 square foot addition when completed?

Law/Analysis

It is this Office's opinion that a court likely would hold the protections listed in the Heritage Act, S.C. Code Ann. § 10-1-165, apply to the Cooper River Memorial Library (the "Library"). The remaining questions in the request letter, however, require factual findings which are beyond the scope of this Office's opinions. See Op. S.C. Att'y Gen., 1989 WL 508567, at 6 (July 17, 1989) (Fact-finding is beyond the scope of an opinion and is more appropriately reserved to "the province of the courts."). This Opinion will, however, address the issues presented and offer a framework a court may use to interpret the Act.

In parts relevant, the Act states:

No Revolutionary War, War of 1812, Mexican War, War Between the States, Spanish-American War, World War I, World War II, Korean War, Vietnam War, Persian Gulf War, Native American, or African-American History monuments or memorials erected on public property of the State or any of its political subdivisions may be relocated, removed, disturbed, or altered. No street, bridge, structure, park, preserve, reserve, or other public area of the State or any of its political subdivisions dedicated in memory of or named for any historic figure or historic event may be renamed or rededicated. No person may prevent the public body responsible for the monument or memorial from taking proper measures and

exercising proper means for the protection, preservation, and care of these monuments, memorials, or nameplates.

S.C. Code Ann. § 10-1-165(A).

It is this Office's opinion that the Act applies to the Library based on the facts described in the request letter and demonstrated by the attached materials. Local fund raising efforts stated the Library would be "dedicated to the men who gave their lives in World War II and also to those who were in any branch of the armed services during the war." *Suburban Group Plans Drive to Raise \$20,000 for Library*, Charleston News and Courier, March 12, 1946, at 12. Photographs attached to the request letter show that the Library bears a plaque that states, "Dedicated to the veterans of World War II by the citizen of Charleston County." The materials also show that the Library was conveyed to Charleston County on June 14, 1973 to qualify for federal funding for an expansion project. There is no indication whether the Library was rededicated or otherwise memorialized following this expansion. Yet, it is clear that fund raising efforts promised the Library would be "built as a memorial" to World War II service men and women and the plaques on the building demonstrate that it was so memorialized. *Memorial Library Opens Tomorrow*, The Charleston Evening Post, December 1948, at 6. The conveyance to Charleston County converted the Library to public property of a political subdivision of the State of South Carolina. Therefore, a court would likely hold that the Library is covered by the terms of the Act.

The remaining questions regarding whether the Act applies to the 1973 addition and the proposed 20,000 square foot addition, as well as the extent that the Act's preservation provisions permit renovations are questions of fact beyond the scope of this Office's opinions. The Act contains two provisions which require reconciliation in this context. First, the first sentence provides that monuments or memorials to which the Act applies may not "be relocated, removed, disturbed, or altered." S.C. Code Ann. § 10-1-165(A). This Office has consistently interpreted this language strictly and concluded that any alteration to a monument or memorial must be accomplished by a two thirds majority of the General Assembly.¹ Second, the final sentence of the Act states, "No person may prevent the public body responsible for the monument or

¹ See *Ops. S.C. Att'y Gen.*, 2015 WL 1093151 (February 25, 2015) (opining that the Heritage Act's requirements were binding and must be followed concerning the placement of names of a WWI and WWII monument); 2014 WL 2757536 (June 10, 2014) (Confederate Battle Flag placed in Summerall Hall "may not be moved or relocated."); 2012 WL 4283911 (September 7, 2012) ("[I]t is the opinion of this Office that the Cold War Submarine Memorial may not be relocated, removed, disturbed, or altered."); 2004 WL 3058237 (December 13, 2004) ("[T]he City of North Augusta is not permitted to move monuments located in the Wade Hampton Veterans Park from their current locations to the center of the park.").

memorial from taking proper measures and exercising proper means for the protection, preservation, and care of these monuments, memorials, or nameplates.” *Id.* (emphasis added). In the context of the Library expansion and renovation project, these two provisions present a degree of tension. Determining whether a specific renovation project would be considered a proper means of protection, which is not to be prevented, or an alteration, which is forbidden, necessarily requires findings of facts.

Our prior opinions were concerned with the prohibitions of relocating, removing, or altering monuments based on the issues presented in each request letter. Previous requests have asked to address what constitutes proper measures and proper means for the protection, preservation, and care of monuments. As this appears to be a matter of first impression, it should be emphasized that the General Assembly’s intent is the primary consideration in interpreting the terms of a statute. *See Op. S.C. Att’y Gen.*, 2001 WL 957759 (July 18, 2001). Where the statutes’ 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). “A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers.” *State v. Henkel*, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh’g denied* (Aug. 5, 2015). However, the Supreme Court of South Carolina has stated that where the plain meaning of the words in a statute “would lead to a result so plainly absurd that it could not have been intended by the General Assembly... the Court will construe a statute to escape the absurdity and carry the [legislative] intention into effect.” *Duke Energy Corp. v. S. Carolina Dep’t of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016).

In a situation where a memorial also provides a direct public service, such as a library, questions about whether the Act’s prohibition on alterations restricts construction projects designed provide the same services at a scale appropriate to meet growing population needs or to meet new safety codes to will inevitably arise. In the case of the Library, the original building was constructed over seventy years ago. Eventually, preservation efforts will inarguably be appropriate to permit the public to access it safely. In such a case, it is this Office’s opinion that a court would likely construe the Act’s allowance for preservation to prevail over the prohibition on alterations. In a July 18, 2001 opinion to Representative Charles R. Sharpe, we opined that the language regarding “‘public bodies responsible for the monument or memorial’ must be broadly construed” to include non-profit groups whose recognized purpose is the preservation of Confederate heritage and history.

The Legislature’s purpose was obviously to protect and preserve historic monuments. A principal aim of the statute is to insure that presently existing monuments, including those dedicated to service in the War Between the States,

Joseph Dawson, III, Esq.
Page 5
April 10, 2020

and which are located on property of the State or its political subdivisions may not be relocated, removed, disturbed or altered. In that context, the Legislature sought to insure that the body responsible for the monument or memorial is free to take “proper measures” and “exercise proper means for the protection, preservation, and care of these monuments, memorials, or nameplates.”

Op. S.C. Att’y Gen., 2001 WL 957759, at 2 (July 18, 2001). It remains this Office’s opinion that the General Assembly intended for public bodies to be free to take measures for protection, preservation and care of monuments and that this provision should be broadly interpreted to accomplish this goal. The alternative construction would frustrate the General Assembly’s intent by freezing a public facility in time and potentially creating unsafe conditions for the public to access the very monuments the Act was design to protect. Such a result can fairly be characterized as absurd and the Act should be interpreted to avoid it. Duke Energy Corp., *supra*.

Finally, we note that the request letter describes the construction project as intended “to demolish the 1973 additions and completely renovate the original interior Library” while maintaining “much of the exterior existing building dedicated in 1948.” This description suggests a hard look at whether the project exceeds preservation and protection efforts may be warranted. Of course, the determination of whether a particular construction project constitutes a preservation effort rather than an alteration of a monument or memorial is fact dependent and is reserved to our courts.

Conclusion

It is this Office’s opinion that a court likely would hold the protections listed in the Heritage Act, S.C. Code Ann. § 10-1-165, apply to the Cooper River Memorial Library (the “Library”). The remaining questions in the request letter, however, require factual findings which are beyond the scope of this Office’s opinions. See Op. S.C. Att’y Gen., 1989 WL 508567, at 6 (July 17, 1989)

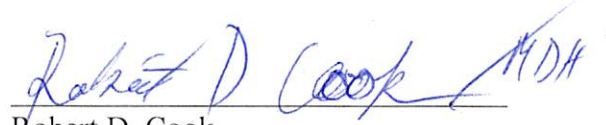
Sincerely,



Matthew Houck
Assistant Attorney General

Joseph Dawson, III, Esq.
Page 6
April 10, 2020

REVIEWED AND APPROVED BY:

A handwritten signature in blue ink that reads "Robert D. Cook" followed by the initials "MDH". The signature is written over a horizontal line.

Robert D. Cook
Solicitor General