ALAN WILSON
ATTORNEY GENERAL

May 5, 2021

Steve Willis
Lancaster County Administrator
Post Office Box 1809
Lancaster, South Carolina 29721-1809

Dear Mr. Willis:

We received your letter requesting an attorney general's opinion concerning "whether Lancaster County (the 'County') may require a person operating a permanent structure on a farm where they sell fruits, vegetables, and other pantry items to the public to comply with adopted building codes and the Lancaster County Unified Development Ordinance ('UDO')." You state, "The County has classified such structures as Commercial/Mercantile use under the UDO, which requires the submission of a site survey and building plans showing compliance with applicable parking requirements, accessibility requirements, and building codes." However, you are of the understanding the Department of Agriculture interprets section 46-45-60 of the South Carolina Code as

> prohibit[ing] counties from imposing parking, accessibility, or building code requirements on this type of permanent structure operated by farmers because any parking, accessibility, or building code requirements would be more restrictive than state law. However, advice given to the County by certain officials at the Department of Labor, Licensing, and Regulation and our understanding of standard building codes has been contrary to this reading.

As such, you seek our opinion as to "the propriety of enforcing building codes and the requirements of the UDO on permanent structures that operate to sell goods to the public but could be considered agricultural operations pursuant to South Carolina law."

Law/Analysis

Chapter 45 of title 46 of the South Carolina Code is entitled "Nuisance Suits Related to Agricultural Operations." In section 46-45-10 of the South Carolina Code (2017), the Legislature specifies its intent in regard to this chapter, stating:

The General Assembly finds that:

(1) The policy of the State is to conserve, protect, and encourage the development and improvement of its agricultural land and facilities for the production of food and other agricultural products.

(2) When nonagricultural land uses extend into agricultural areas, agricultural operations often become the subject of nuisance suits and as a result (a) agricultural facilities are sometimes forced to cease operations, and (b) many persons are discouraged from making investments in farm improvements or adopting new technology or methods.

(3) This chapter is enacted to reduce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural facilities and operations may be considered a nuisance.

(4) The purpose of this chapter is to lessen the loss of farmland caused by common law nuisance actions which arise when nonagricultural land uses expand into agricultural areas. This purpose is justified by the stated social desire of preserving and encouraging agricultural production.

(5) With the exception of new swine operations and new slaughterhouse operations, in the interest of homeland security and in order to secure the availability, quality, and safety of food produced in South Carolina, it is the intent of the General Assembly that state law and the regulations of the Department of Health and Environmental Control pre-empt the entire field of and constitute a complete and integrated regulatory plan for agricultural facilities and agricultural operations as defined in Section 46-45-20, thereby precluding a county from passing an ordinance that is not identical to the state provisions.

S.C. Code Ann. § 46-45-10.

With this intent in mind, we turn to section 46-45-60 of the South Carolina Code (2017). This section, entitled "Local ordinances to contrary null and void," provides as follows:

(A) Notwithstanding any local law or ordinance, an agricultural operation or facility is considered to be in compliance with the local law or ordinance if the operation or facility would otherwise comply with state law or regulations governing the facility or operation. With the exception of new swine operations and new slaughterhouse operations, to the extent an ordinance of a unit of local government:

> (1) attempts to regulate the licensing or operation of an agricultural facility in any manner that is not identical to the laws of this State and regulations of the Department of Health and Environmental Control and amendments thereto;
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> (2) makes the operation of an agricultural facility or an agricultural operation at an agricultural facility a nuisance or providing for abatement as a nuisance in derogation of this chapter; or
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> (3) is not identical to state law and regulations governing agricultural operations or agricultural facilities, is null and void. The provisions of this section do not apply whenever a nuisance results from the negligent, illegal, or improper operation of an agricultural facility. The provisions of this section do not apply to an agricultural facility or agricultural operation at an agricultural facility located within the corporate limits of a city.
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> (B) The provisions of this section shall not preclude any right a county may have to determine whether an agricultural use is a permitted use under the county's land use and zoning authority; provided, if an agricultural facility or an agricultural operation is a permitted use, or is approved as a use pursuant to any county conditional use, special exception or similar county procedure, county development standards, or other ordinances that are not identical with the laws of this State or the regulations of the Department of Health and Environmental Control are null and void to the extent they (a) apply to agricultural operations or facilities otherwise permitted by this chapter, the laws of this State, and the regulations of the Department of Health and Environmental Control, and (b) are not identical to this chapter, the laws of this State, and the regulations of the Department of Health and Environmental Control.

S.C. Code Ann. § 46-45-60. Furthermore, section 46-45-20 of the South Carolina Code (2017) provides definitions of certain terms used in chapter 45 and states "agriculture operation," includes "the operation of a roadside market."

The determination of whether or not section 46-45-60 acts to prevent the application of the UDO to roadside markets is governed by the rules of statutory interpretation, the primary of which is "to ascertain and effectuate the intent of the legislature." State v. Bolin, 381 S.C. 557, 561, 673 S.E.2d 885, 886 (Ct. App. 2009).

> Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. In re Vincent J., 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and

> unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Id. at 233, 509 S.E.2d at 262 (citing Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995)). "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." Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992).

Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

Reading section 46-45-60 in isolation, the plain language suggests agricultural facilities cannot be in violation of any local law or ordinances as long as they are in compliance with state law or regulations. Section (A)(1) makes any ordinance that regulates the licensing or operation of agricultural facilities outside of what is provided under state law null and void. Furthermore, section (A)(3) makes any ordinance not identical to state law and regulations governing agricultural operations or agricultural facilities null and void. Neither of these provisions limit the type of ordinance. These provisions indicate agricultural facilities, which include roadside markets, are exempt from all local laws including local building codes. As such, we understand why the Department of Agriculture views this statute as supplanting local authority in regard to roadside markets.

Nonetheless, the intent of the Legislature in regard to the statutes contained in chapter 45 causes us some concern. As the Legislature makes clear in its expressed intent in section 46-45-10(3), the aim of these provisions is to "reduce the loss to the State of its agricultural resources by limiting the circumstances under which agricultural facilities and operations may be considered a nuisance." Reading section 46-45-60 in the context of the stated legislative purposes of chapter 45, we believe a court could find the Legislature only intended for this provision to prohibit agricultural operations and facilities from being declared a nuisance. As explained by our Court of Appeals, a nuisance "has been defined as 'anything which works hurt, inconvenience, or damages; anything which essentially interferes with the enjoyment of life or property (citations omitted).'" Blanks v. Rawson, 296 S.C. 110, 113, 370 S.E.2d 890, 892 (Ct. App. 1988) (quoting Strong v. Winn-Dixie Stores, Inc., 240 S.C. 244, 253, 125 S.E.2d 628, 632 (1962)). While not complying with building codes could result in a nuisance, these two concepts are generally viewed separately. See Little v. Union Tr. Co. of Maryland, 412 A.2d 1251, 1254 (Md. Ct. Spec. App. 1980) ("Where an act or use does not constitute a nuisance per se, it does not become a nuisance by violation of a building code or housing ordinance."). Therefore, we are concerned a court may find section 46-45-60 does not prohibit application of local building codes to roadside markets, but only prevents the application of ordinances that form a basis for nuisance suits.

Conclusion

Reading section 46-45-60 in isolation, we find it prohibits the application of any ordinance attempting to regulate the operation of an agricultural facility, which includes roadside markets. However, given the intent expressed by the Legislature in regard to chapter 45 of title 46, we are concerned the Legislature intended to limit application of this provision to ordinances that establish a basis for nuisance suits. Given this current ambiguity, we suggest the Legislature clarify section 46-45-60 to specify its application is limited to nuisances or that it applies to all ordinances despite the stated intent of the chapter. Short of such a legislative clarification, we advise you to seek clarification from a court to determine whether section 46-45-60 acts to preempt application of local building codes to agricultural facilities.

Sincerely,

Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General