



HENRY McMASTER
ATTORNEY GENERAL

June 8, 2010

Anne E. Crocker, General Counsel
SC Department of Agriculture
PO Box 11280
Columbia, SC 29211

Dear Ms. Crocker:

We received your letter requesting an opinion of this Office concerning the interpretation of South Carolina Code of Laws of 1976, § 1-11-470. You asked whether “[b]ecause the head of the S.C. Department of Agriculture is a constitutional officer . . . the provisions of S.C. Code Ann. § 1-11-470 apply to brochures, print advertisements, tv commercials and radio airtime normally put forth by the SCDA [South Carolina Department of Agriculture] and paid for with state appropriated funds to promote South Carolina agricultural products.”

As a way of background, you provided that it is a primary mission of the S.C. Department of Agriculture “to promote and increase markets for South Carolina agricultural products pursuant to S.C. Code Ann. §§ 46-3-80(1) and 46-17-30(4).” You also mentioned that the “media items do not contain any reference to the Commissioner of Agriculture as a constitutional officer.”

This opinion will review the included media and promotional materials that you provided and address the relevant statutes, caselaw, legislative intent, and prior opinions to determine whether § 1-11-470 applies to such advertisements.

Law/Analysis

S.C. Code § 1-11-470 states as follows:

- (A) No funds appropriated by the General Assembly may be used by a constitutional officer to purchase space including, but not limited to, notices or advertisements, in

a print medium or time from a radio or television medium without unanimous prior written approval of the Budget and Control Board.

- (B) No funds appropriated by the General Assembly may be used by a constitutional officer to print on, or distribute with, official documents extraneous promotional material or to purchase plaques, awards, citations, or other recognitions without unanimous prior written approval of the Budget and Control Board.
- (C) If nonpublic funds are used for the purposes enumerated in subsection (A), the constitutional officer expending the funds must submit the source of the funds showing all contributors to the Budget and Control Board before the funds are expended.
- (D) The provisions of this section do not apply to the Governor or to the General Assembly.

S.C. Code § 1-11-470.

To determine if S.C. Code § 1-11-470 applies, one must find 1) whether the funds are appropriated by the General Assembly or are nonpublic funds, 2) that the Commissioner on Agriculture is a constitutional officer, and 3) that the advertisements fall under the description provided in the statute.

According to the request letter and after a conversation with the requestor, it is the understanding of this Office that the funds used for the advertisements are appropriated by the General Assembly. Therefore, subsections (A) and (B) of S.C. Code § 1-11-470 apply,¹ satisfying the first prong.

Secondly, the Constitution of the State of South Carolina makes it clear that the Commissioner of Agriculture is a constitutional officer. S.C. Const. Art. VI, § 7 (“There shall be elected by the qualified voters of the State a . . . Commissioner of Agriculture”); See, 8 S.C. Jur. Public Officers and Public Employees § 2 (“The Constitution of the State of South Carolina has created nine offices . . . including Commissioner of Agriculture”).

Finally, the examples of advertisements provided to this Office fall under the category of advertisements described in subsection (A): “advertisements in a print medium [magazine] . . . or television medium [tv commercial].”

It is a generally accepted rule that if “a statute’s language is plain, unambiguous, and conveys a clear meaning, then . . . [t]he words must be given their plain and ordinary meaning without resorting to

¹ “Nonpublic funds” are governed by subsection (C) of S.C. Code § 1-11-470.

subtle or forced construction which limit or expand the statute's operation." Strickland v. Strickland, 375 S.C. 76, 88-89, 650 S.E.2d 465, 472 (2007). Under a plain reading of the statute, it appears that the Department of Agriculture's advertisements would be subject to "unanimous prior written approval of the Budget and Control Board," as explained in S.C. Code § 1-11-470.

However, in an opinion of this Office dated March 16, 2010, we stated as follows:

Our Supreme Court has recognized that when courts are confronted with an apparent conflict between a specific statute on a subject and a more general one of the same subject, the Court is obligated to examine the statutes carefully and harmonize any apparent conflicts. Criterion Insurance Company v. Hoffman, 258 S.C. 282, 188 S.E.2d 459 (1972). Repeals by implication are not favored and thus there must be a true conflict between the two statutes. Op. S.C. Atty. Gen., August 5, 1986. Where, however, conflicts may not be reconciled, a specific statute will prevail over a general one. Id.

Op. S.C. Atty. Gen., March 16, 2010.

The duties of the Commissioner are explained in S.C. Code § 46-3-80 as follows:

The Commissioner shall:

- (1) Be charged with all work looking to the promotion of agriculture and cattle raising, including the collection and **publication of information** in regard to localities, character, accessibility, cost and modes of utilization of soils and, more specifically, the inducement of capital to invest in agriculture and cattle raising by the **dissemination of information** relative to the advantages of soil and climate and other natural resources of the State;
- (2) Collect from the farmers and landowners of the State and list information as to lands, stating the number of acres, the location and the terms upon which they may be bought; and
- (3) Keep a land registry and in connection therewith from time to time issue a publication descriptive of such listed agricultural, forest and trucking lands as may be offered to the Department for sale or share, such publication to be in an attractive form setting forth the county, township, number of acres, names and addresses of owners and such other information as may be helpful in placing inquiring homeseekers in communication with the land-owners.

But nothing in this section shall be construed to give the Commissioner the right to do scientific, educational or extension work in agriculture.

S.C. Code § 46-3-80.

The qualifications of the Commissioner of Agriculture are explained as follows:

The chief officer of the Department of Agriculture shall be denominated the Commissioner of Agriculture. The Commissioner shall have a competent knowledge of agriculture, manufacturing and general industries, commerce, chemistry and **publicity**.

S.C. Code § 46-3-30.

The qualifications and responsibilities of the Commissioner of Agriculture make it clear that publicity and sharing information with the public is a required and necessary function for the Department of Agriculture.

In an opinion of this Office dated March 23, 1998, to draw a distinction between the purpose of certain statutes, we referenced § 1-11-470 as follows:

In my opinion § 1-11-470, requiring unanimous approval of the Budget and Control Board for a constitutional officer to print “extraneous promotional material”, along with official documents, is not applicable, because the name of the Treasurer on a State check does not fall in the category of “promotional material”, but is instead otherwise authorized by § 11-3-140.

Op. S.C. Atty. Gen., March 23, 1998. Here, Title 11, chapter 3 governed the situation, harmonizing itself with the provisions of S.C. Code § 1-11-470.

Title 1, chapter 11 is dedicated to the State Budget and Control Board. S.C. Code § 1-11-470 governs advertisements by constitutional officers in general. This statute was enacted by 1997 Act No. 155, Part II, § 42A.² As mentioned above, the Constitution of the State of South Carolina has created nine offices: “Governor, Lieutenant Governor, Secretary of State, Attorney General, Treasurer, Superintendent of Education, Comptroller General, Commissioner of Agriculture, and Adjutant general.” 8 S.C. Jur. Public Officers and Public Employees § 2. Title 46, chapter 3 is dedicated to the Department and Commissioner of Agriculture. Specifically, S.C. Code § 46-3-30 governs the qualifications of the Commissioner of Agriculture - which includes a “competent knowledge of . .

² Under one reading, the 1997 Act appears to emphasize that the *constitutional officer* is prohibited from expending monies appropriated by the general assembly. This emphasis possibly indicates that the legislative intent is to prevent these constitutional officers from personally benefitting from advertisements, tv or radio time, and name recognition at the expense of the state. Hence, approval by the Budget and Control Board is necessary to keep such activity in check, ensuring that public money is used for the good of the state or a specific state department or office.

. publicity;” S.C. Code § 46-3-80 governs the duties of the Commissioner - which includes the “promotion of agriculture and cattle raising, including the collection and publication of information . . . [and] the dissemination of information”

Legislative intent is also evidenced by H.3584 which was introduced this session. H.3584, Session 118 (2009-10). The Governor vetoed this bill on May 11, 2010; however the House and Senate overrode the veto on May 12, 2010 and May 13, 2010 respectively. Section 4 of the bill explains that Chapter 49, Title 11 of the 1976 Code will be amended by adding the following:

Section 11-49-55. Notwithstanding any other provision of law, and to the extent that funds are available and not otherwise committed or restricted by law or by contract, from the trust fund created pursuant to this chapter, the State Treasurer shall direct one million dollars annually for five fiscal years beginning with the first fiscal year in which funds are available, to the Department of Agriculture to cause the marketing and branding of South Carolina agricultural crops or produce as being grown in South Carolina when offered for sale in retail establishments and to assist in relief from natural disasters affecting state-grown crops.

H.3584, Section 4, Session 118 (2009-10).

The above referenced bill indicates that the General Assembly intends for the Department of Agriculture to receive funding for advertising. The Commissioner of Agriculture is charged with overseeing the publicity. Hence, a constitutional officer would be using funds appropriated by the General Assembly, yet no mention of receiving approval by the Budget and Control Board is made. The Department of Agriculture provisions, S.C. Code §§ 46-3-30 and 46-3-80, appear to be in conflict with S.C. Code § 1-11-470. However, one may “harmonize the two provisions” if it is found that the General Assembly is making an exception for specific advertisements for the Department of Agriculture. Criterion Insurance Company v. Hoffman, 258 S.C. 282 (1972).

Conclusion

On its face, S.C. Code § 1-11-470 seems to apply to the advertisements done by the Commissioner for the Department of Agriculture. However, the Commissioner of Agriculture is given a specific command by the General Assembly to promote agriculture and publicize information. See, S.C. Code §§ 46-3-30 and 46-3-80.

It is the opinion of this Office that a court would likely find that the two provisions can be harmonized. The specific statutes, S.C. Code §§ 46-3-30 and 46-3-80, instructing the Commissioner of Agriculture to advertise simply creates an exception to the general statute of S.C. Code § 1-11-470. If a court finds that the two cannot be harmonized, the specific statute would trump the general statute. Nevertheless, one should note that the Commissioner of Agriculture is likely bound by S.C.

Ms. Crocker
Page 6
June 8, 2010

Code § 1-11-470, meaning he or she may not use funds appropriated by the General Assembly for personal benefit or to gain name recognition across the state except in compliance with said provision. The duties specifically assigned to the Commissioner in S.C. Code §§ 46-3-30 and 46-3-80 simply carves out an exception to S.C. Code § 1-11-470, allowing the Commissioner of Agriculture to satisfy the duties assigned to him by the General Assembly.

Sincerely,

Henry McMaster
Attorney General



By: Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General