

October 9, 2007

Rodger E. Stroup, Ph.D., Director  
South Carolina Department of Archives & History  
8301 Parklane Road  
Columbia, South Carolina 29223-4905

Dear Dr. Stroup:

In a letter to this office you referenced legislation codified as S.C. Code Ann. § 59-103-200 which states:

[u]pon approval by the Commission, the agency may remove certain record and nonrecord materials from its collections by gift to another public or nonprofit institution or by sale at public auction. This is a supplemental form of disposition beyond that recognized in the Public Records Act for the retention, copying, and destruction of public records, and it pertains only to those accessioned archives materials having a market value and which duplicate existing archival material, fall outside the scope of the archives collection policy, or have no further possible research value. All funds realized through sale by public auction must be placed in a special account to be used for improved access to and preservation of the state archives collections. The commission shall report annually of the Budget and Control Board regarding these dispositions.

You referenced that during the legislative process, the referenced provision was placed in Title 59, dealing with the Commission on Higher Education, rather than Title 60 where the Archives legislation is set forth. You have questioned the propriety of proceeding under Section 59-103-200.

Upon review, Section 59-103-200 appears in the Code following other provisions referring to the Commission on Higher Education. See, e.g., S.C. Code Ann. §§ 59-103-165 and 59-103-170. However, in the General Appropriations Act of 2002, Act No. 289 of 2002, such provision is identified as Section 15.3 of “Section 15-H79-Department of Archives and History”. Other

Dr. Stroup  
Page 2  
October 9, 2007

legislation enacted in 2002, Act No. 356 of 2002, also specifically placed Section 59-103-200 in a section identified as “Part III, Department of Archives and History”. Such Part III followed another section identified as “Part II, Commission on Higher Education”.

In the opinion of this office, it is clear that the provision codified as Section 59-103-200 appearing in the Code along with other provisions related to the Commission on Higher Education is a mistake. It is evident from other provisions identified above that placed such provision in sections identified as “Department of Archives and History” that it was intended that “the Commission” referred to in Section 59-103-200 refer to the “Commission on Archives and History” as authorized by S.C. Code Ann. § 60-11-40 et seq. The whole matter of records and nonrecord materials in a collection would only be a matter for consideration by the Department of Archives as that department is generally assigned duties related to public records generally. See, e.g., S.C. Code Ann. §§ 30-1-10 et seq. For instance, Section 30-1-80 provides for a records management program generally. I am unaware of any responsibilities given the Commission on Higher Education of a similar nature. Moreover, again, the body of Acts No. 289 of 2002 and 356 of 2002 place such provision in a section specifically labeled “Department of Archives and History”.

As referenced in a prior opinion of this office dated October 19, 2006,

[a] court should not consider a particular clause or provision in a statute as being construed in isolation, but should read it in conjunction with the purpose of the statute and the policy of the law. State v. Gordon, 356 S.C. 143, 588 S.E.2d 105 (2003). As our Supreme Court has recognized, “[i]n ascertaining the intent of this Legislature, a court should not focus on a single section or provision but should consider the language of the statute as a whole.” Croft v. Old Republic Ins. Co., 365 S.C. 402, 412, 618 S.E.2d 909, 914 (2005). Additionally, in determining legislative intent, a court will, if necessary, reject the literal import of words used in a statute. It has been said that “words ought to be subservient to the intent, and not the intent to the words.” Arkwright Mills v. Murph, 219 S.C. 438, 443-44, 65 S.E.2d 665, 667 (1951) (quoting Greenville Baseball, Inc. v. Bearden, 200 S.C. 363, 20 S.E.2d 813, 816 (1942)). (emphasis added).

Consistent with such, in the opinion of this office, there is no ambiguity as to which Commission is given the responsibilities under Section 59-103-200 as it is clear that it was intended by the General Assembly that the State Department of Archives and History through the State Commission on Archives and History assume that responsibility.

Dr. Stroup  
Page 3  
October 9, 2007

If there are any questions, please advise.

Sincerely,

Henry McMaster  
Attorney General

By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

---

Robert D. Cook  
Assistant Deputy Attorney General  
Approved