



ALAN WILSON
ATTORNEY GENERAL

September 24, 2012

Buford S. Mabry, Jr., Chief Counsel
South Carolina Department of Natural Resources
P.O. Box 167
Columbia, South Carolina 29202

Dear Mr. Mabry:

You advise that the South Carolina Department of Natural Resources (DNR) seeks an opinion "interpreting Section 13 of Act 257 of 2012." You note that "[t]his section authorizes that for a specific period of time, the department may issue a lifetime combination license (heretofore available only to residents) to a nonresident provided certain qualifications are met." You further advise that the provision authorizing such licensure expires on September 30, 2012. Your question is "whether the Legislature intended in paragraph (2) for that applicant to personally hold title to the real property or can the applicant hold title through a corporation or limited liability corporation?" It is our understanding that DNR has concluded that, pursuant to Section 13 an applicant must personally hold title to the real property and that the applicant may not hold title through a corporation or a limited liability corporation. We advise that such a reading by DNR is consistent with the words of the statute, as well as the legislative intent and is thus correct.

Law / Analysis

Section 13 of Act 257 provides as follows:

(A) Notwithstanding any other provision of law, a nonresident may obtain a lifetime combination license which grants the same privileges as a statewide combination license from the Department of Natural Resources at its Columbia office if:

- (1) The applicant was born in this State and provides a notarized birth certificate from the South Carolina Department of Health and Environment Control;
- (2) The applicant has held title in fee simple, either in whole or in part, to real property located within this State for at least five years immediately preceding the date of application, and the applicant provides a notarized record of ownership from the appropriate county official in the county where the real property is located;
- (3) The applicant, if born after June 30, 1979, and having attained the age of sixteen or older, complies with all hunter education requirements of this State and provides a certificate of completion for the course; and
- (4) The applicant has not been charged for natural resource violations which could result in the suspension of hunting or fishing privileges.

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(B) This license is available for purchase from July 1, 2012, through September 30, 2012.
The fee is seven hundred dollars.

In resolving your question, a number of principles of statutory construction are applicable. First and foremost, is the cardinal rule that the legislative purpose must prevail, if it can be ascertained. *Hawkins v. Bruno Yacht Sales, Inc.*, 353 S.C. 31, 577 S.E.2d 202 (2003); *State v. Martin*, 293 S.C. 46, 358 S.E.2d 697 (1987). A statute must receive a practical, reasonable, and fair interpretation consonant with the purpose, design and policy of the lawmakers. *Caughman v. Cola. Y.M.C.A.*, 212 S.C. 337, 47 S.E.2d 788 (1948). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. *State v. Blackmon*, 304 S.C. 270, 403 S.E.2d 660 (1990). Any statute must be interpreted with common sense to avoid unreasonable consequences. *United States v. Rippetoe*, 178 F.2d 735 (4th Cir. 1950). A sensible construction, rather than one which leads to irrational results, is always warranted. *Sloan Const. Co., Inc. v. Southco Grassing, Inc.*, 377 S.C. 108, 659 S.E.2d 158 (2008); see also, *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 136 S.E.2d 778, 782 (1964) ["In seeking the intention of the legislature, we must presume that it intended by its action to accomplish something and not to do a futile thing."]. Finally, this Office will ordinarily defer to the interpretation of the agency charged with enforcement of the Act in question, provided such construction is reasonable. *Op. S.C. Atty. Gen.*, September 8, 2005 (WL 2250210).

In examining Section 13 of Act 257 of 2012, it is evident that the Legislature intended that, in Subsection (A)(2), the applicant *personally* hold title to real property in this State. Subsection (A)(2) expressly provides that the "applicant" must have "held title in fee simple, either in whole or in part, to real property located within this State for at least five years immediately preceding the date of application, and the applicant provides a notarized record of ownership from the appropriate county official in the county where the real property is located." When one examines the other criteria for obtaining the license, such as the "applicant" must have been "born in this state and provides a notarized birth certificate," and that the "applicant," if "born after June 30, 1979," must comply with all hunter education requirements, it is obvious that the word "applicant" refers to a natural person. Common sense would dictate, therefore, that the "applicant" must have *personally* held title to the real property for the period prescribed in Subsection (A)(2), rather than through a corporation or limited liability entity. Words used in a statute must have the same meaning throughout that statute. *Travelscape, LLC v. South Carolina Dept. of Rev.*, 391 S.C. 89, 705 S.E.2d 28 (2011). Further, it is clear that the Legislature has sought in providing for the license, to "grant the same privileges" to a nonresident as a resident. Property ownership in the State for the prescribed period of time (five years) provides the nonresident *person's* attachment to the State, in lieu of his or her actual residence.

It is clear that this is the reasoning which DNR employed to require that property ownership must be personal rather than through a corporation. For the reasons outlined above, we defer to DNR's analysis and deem it to be correct.

Sincerely,



Robert D. Cook
Deputy Attorney General\

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