

The State of South Carolina



Dennis No 86-111
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Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3970

November 10, 1986

Ladson F. Howell, Esquire
Beaufort County Attorney
Post Office Box 40
Beaufort, South Carolina 29901-0040

Dear Mr. Howell:

By your letter of October 23, 1986, you have asked for an interpretation of Section 28-11-10 of the Code of Laws of South Carolina (1976). You have advised that Beaufort County is in the process of drafting plans and specifications for the construction of a multi-government center for Beaufort County. Eminent domain will be utilized to acquire additional property for this project. You have advised that no federal funding will be involved, with the bulk of financing being derived from the issuance of bonds. Because several families will be displaced, you have asked whether Section 28-11-10 of the Code must be followed since no federal funding is involved.

Section 28-11-10 provides the following:

To the extent that the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646) makes relocation payments and assistance to displaced persons or other legal entities by states a prerequisite to Federal aid to such states in programs or projects involving the acquisition of real property for public uses, as such terms are defined in such Federal law, State agencies and instrumentalities and political subdivisions and local government agencies and instrumentalities involved in such programs or projects are empowered to expend available public funds for such purposes and are

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required to make such payments to such displaced persons or other legal entities, whether the program or project is federally aided or not, and such expenditures shall be deemed part of the cost of such program or project.

As noted above, no federal funds are involved in the project. Thus, Public Law 91-646 and its requirements would not be applicable. See 42 U.S.C. Section 4621 (applicable to persons displaced as a result of Federal and federally assisted programs). Whether Section 28-11-10 of the Code must nevertheless be followed must also be determined, however.

In construing a statute such as Section 28-11-10, the primary objective of both the courts and this Office is to ascertain and effectuate legislative intent if at all possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). In construing statutes, the language used therein is to be given its plain and ordinary meaning. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). Further, titles and captions may be used to aid in construction of a statute to show legislative intent. Lindsay v. Southern Farm Bureau Cas. Ins. Co., 258 S.C. 272, 188 S.E.2d 374 (1972).

Section 28-11-10 appears to authorize two actions: (1) it authorizes state agencies and political subdivisions to comply with Public Law 91-646, and (2) it requires state agencies and political subdivisions to make payments to persons displaced by any program or project which involves the acquisition of real property, whether or not federal funding is involved. It should be noted that prior to the adoption of Acts No. 1345 and No. 1577 of 1972, neither state agencies nor political subdivisions were authorized to make relocation payments to comply with Public Law 91-646. See Ops. Atty. Gen., dated June 2, 1972 and July 25, 1972. Thus, the acts now codified as Section 28-11-10 et seq., enabled the State and its political subdivisions to comply with federal law when relocation payments were to be made to displaced persons.

From the title of Act No. 1345, however, it appears that the legislature not only authorized federal law to be followed but also created a requirement for payment in other instances in which acquisition of real property resulted in relocation of persons or other legal entities. The title provides:

An Act To Enable And Require State
Agencies And Political Subdivisions To

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Expend Available Public Funds For Reloca-
tion And Relocation Assistance Purposes
When Any Program Or Project Undertaken
Involving Acquisition Of Real Property Will
Result In Displacement Of Any Person Or
Other Legal Entity,

It seems significant that the legislature did not refer to Public Law 91-646 or federal funding within the title. The plain and unambiguous language of the title urges an interpretation that relocation payments be made anytime acquisition of real property will result in displacement of persons or other legal entities.

This same conclusion was also reached in an opinion of this office dated November 21, 1975, following up on an opinion dated October 30, 1975. That opinion examined the responsibility of the Dillon City-County Building Commission to a commercial renter-occupant of a Dillon County-owned building scheduled to be demolished in order to construct a Dillon City-County building. The result reached in the earlier opinion was that no relocation payments were required to be paid to commercial renters as a prerequisite to federal aid. The opinion of November 21, 1975, concluded that the original opinion was in error; the opinion stated that

the Commission is responsible for relocation assistance payments pursuant to [Section 28-11-10 et seq.]. My original conclusion was based in large part upon the opinion of the Office of Revenue Sharing, Office of the Secretary of the Treasury, to the effect that the Federal Relocation Assistance Act (P. L. 91-646) is inapplicable to revenue sharing funds. While the Federal Act may be inapplicable to revenue sharing funds, Section [28-11-10] of our State Code requires all State and local agencies and political subdivisions of the State to provide relocation assistance to displaced persons without regard to the source of revenues used, to wit:

... State agencies ... are re-
quired to make such payments to
such displaced persons ... wheth-
er the program or project is
federally aided or not,

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Moreover, relocation assistance must be provided to persons whose businesses are displaced to the extent required by P. L. 91-646.

The reasoning of the November 21, 1975, opinion would apply to the situation which you have described in your letter. No federal funds will be received by Beaufort County for this project; in Dillon County, apparently, revenue sharing funds were to be received but were not the type of federal funds contemplated by Public Law 91-646. Therefore, even though the federal law was inapplicable, the requirements of Section 28-11-10 must still be followed. The same conclusion must thus be reached as to Beaufort County's project to construct a multi-government center.

In conclusion, our opinion dated November 21, 1975, cannot be said to be clearly erroneous in light of the title of Act No. 1345 of 1972; thus, this opinion remains the opinion of this Office and appears to resolve your question. However, we fully realize that Section 28-11-10 of the Code is susceptible to other equally logical interpretations, including the conclusion you reached in your request letter. Thus, while we are happy to provide our opinion as guidance to you, we realize that the final decision as to interpretation must rest with you, as County Attorney, taking into account all relevant facts and circumstances, of which this Office has no knowledge. Due to the lack of judicial guidance and the importance of the issue, it may be appropriate to have the matter ultimately decided by a court.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions