

1977 S.C. Op. Atty. Gen. 165 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-211, 1977 WL 24553

Office of the Attorney General

State of South Carolina

Opinion No. 77-211

July 6, 1977

*1 TO: Mr. W.D. Workman, III
Executive Assistant to the Governor
Office of the Governor
The State House

QUESTION

Is scientific experimentation leading to the possible development of commercial uses for noxious weeds such as the water hyacinth prohibited by state law?

STATUTES

S.C. Code Ann. Section 46-23-10 et seq. (1976).

DISCUSSION

The S.C. General Assembly in enacting S.C. Code Ann. Section 46-23-10 et seq. (1976)—provided for the designation of certain plants the introduction and spread of which would be both a menace to agriculture and ‘injurious to public health, crops, livestock, or agriculture including but not limited to waterways and irrigation canals.’ The legislature thereby intended ‘to prevent the introduction into and the dissemination within’ the State of any new noxious weeds not already prevalent. Whereas Sections 46-23-40, 46-23-60, and 46-23-70 pertain to quarantines, inspections and seizures, and inter-governmental cooperation, respectively, it can be concluded on the basis of a close examination of Chapter 23 of Title 46 that Section 46-23-50 is most applicable to the question presented.

The import of S.C. Code Ann. Section 46-23-50 (1976), which seeks to exercise the State's police power, is to provide the Commissioner of Agriculture with authority to control the dispersment and distribution of noxious plants throughout the State. Since administrative agencies such as the Department of Agriculture arise solely from legislation without inherent or common-law powers, the established rule applied in construing such originating legislation which grant powers to them is that only those powers are granted which are conferred either expressly or by necessary implication. 3 Sands, Statutes and Statutory Construction Section 65.02 (1973). The usual manner of stating what is ‘necessarily implied’ is that the statute embraces such consequential applications and effects as are found to be essential to the effective operation of the law. 2A Sands, Statutes and Statutory Construction Section 55.03 (1973).

A close analysis of this most applicable statutory provision together with the rules of construction reveals that while there is given to the Commissioner express authority to engage in activities to control the spread of specific types of flora detrimental to agricultural lands and water courses, the statute establishes no prohibition against the possession and use of officially designated noxious weeds. Such a prohibition is not to be implied because the complete denial of the right to own such plants is not essential to the attainment of the statutory goals of detection, suppression, and control. Reading all of the sections in Chapter 23 as a whole, however, requires the inclusion of one proviso, namely, that if ownership and use of noxious plants is to be undertaken,

it must be done under sufficiently controlled conditions as to ensure that no living stage of the noxious plants, including the seed or reproductive parts, will become a hazard to the public health or agriculture.

CONCLUSION

*2 The possession and employment for experimental purposes of plants designated as noxious weeds is not prohibited by state law provided that such use is made under conditions which will ensure that no hazard to the State's public health, agricultural interests, or water use is created.

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