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Office of the Attorney General

State of South Carolina

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\*1 The phrase 'commenced a use' as it appears in Section 13(c) of Act No. 123 of 1977 requires an active utilization of the property in question and is not satisfied by the mere obtaining of the permits or loans listed in that Section.

Senator James M. Waddell  
Chairman  
South Carolina Coastal Council

QUESTION PRESENTED:

What is the proper interpretation of the phrase 'commenced a use' as it appears in Section 13(c), Act No. 123 of 1977?

AUTHORITIES:

Act No. 123 of 1977; [Bradford v. Byrnes](#), 221 S.C. 255, 70 S.E.2d 228 (1952); [Federal Insurance Co. v. Speight](#), 220 F.Supp. 90 (E.D.S.C., 1963); 2A Sutherland, [Statutory Construction](#) (4th Ed., 1973); [Webster's Third International Dictionary](#) (Unabridged, 1964).

DISCUSSION:

Section 13(c) of Act No. 123 of 1977 provides that:

Ninety days after the effective date of this act no person shall fill, remove, dredge, drain or erect any structure on or in any way alter any critical area without first obtaining a permit from the Council. Provided, however, that a person who has legally commenced a use such as those evidenced by a state permit, as issued by the Budget and Control Board, or a project loan approved by the rural electrification administration or a local building permit or has received a United States Corps of Engineers or Coast Guard permit, where applicable, may continue such use without obtaining a permit. Any person may request the Council to review any project or activity to determine if he is exempt under this section from the provisions of this act. The Council shall make such determinations within forty-five days from the receipt of any such request. (Emphasis Added).

Whether a person has 'legally commenced a use' of an area is thus determinative of whether that person may 'continue such use without obtaining a permit.'

Section 13(c) provides some guidance for interpreting the phrase in question. That Section requires that '[n]inety days after the effective date of this act no person shall utilize a critical area for a use other than the use the critical area was devoted to on such effective date unless he has first obtained a permit from the Council.' The term 'use' as it appears in 13(a) seems to refer to an active use of the land. This active use is to be distinguished from a passive use, such as one that the owner intends to pursue or has been authorized by permit or license to pursue at some future date. This interpretation is necessary to give meaning to the phrases 'utilize a critical area for a use' and 'the use the critical area was devoted to.' Thus, the term 'use' in Section 13(a) involves the actual utilization of land by an owner on a certain date.

Under this analysis, an active utilization of the area would also be necessary to have ‘commenced a use’ under Section 13(c) of the Act. The first sentence of that Section lists the activities that an owner may not engage in without a permit. The second sentence provides that if a person has ‘legally commenced a use such as those evidenced by’ certain permits or loans, he may ‘continue such use’ without obtaining a Council permit. The mere obtaining of a permit or a loan from the specified groups would not qualify for such an exemption. If the General Assembly had intended otherwise, the Act could have provided that anyone receiving such a permit or loan was exempted. Instead, the Act specifies that the person must have ‘legally commenced a use such as those evidenced by’ certain permits or loans. (Emphasis Added). The use of the phrase ‘such as those evidenced by’ indicates what types of uses will qualify; it does not provide that the permits or loans themselves will suffice. Furthermore, meaning must be given to the adverb ‘legally.’ This word indicates that the use of the land must be in accordance with applicable statutes, such as those requiring permits. Meaning is given to this word if the phrase ‘commenced a use’ refers to an active use of the land. The word is devoid of meaning if commencing a use is satisfied by the mere obtaining of a permit or loan, since that permit or loan itself would be legal. The basic rules of statutory construction require that effect be given to all words in a statute whenever possible. E.g., [Bradford v. Byrnes](#), 221 S.C. 255, 70 S.E.2d 228 (1952); [Federal Insurance Co. v. Speight](#), 220 F.Supp. 90 (E.D.S.C., 1963); 2A Sutherland, [Statutory Construction](#), § 46.06 (4th Ed., 1973). Interpreting the phrase in this manner also affords meaning to the phrase ‘continue such use’ as it appears later in the same sentence. This phrase is meaningful if use is interpreted as meaning actively utilizing the land; it makes no sense if interpreted passively, since one may not continue something that he has not yet begun.

\*2 Finally, one may qualify as having ‘commenced a use’ without actually completing that project. The word ‘commence’, means ‘. . . to enter upon: begin, start . . .’ [Webster's Third New International Dictionary](#) (Unabridged, 1964). Thus, one needs only to have begun or started a use of property to qualify under Section 13(c)'s provision for those who have ‘commenced a use.’

#### CONCLUSION:

The phrase ‘commenced a use’ as it appears in Section 13(c) of Act No. 123 of 1977 requires an active utilization of an area in accordance with the various permits or loans specified in that Section. The phrase is not satisfied by the mere obtaining of such a permit or loan, but instead requires that the owner actually engage in the activity the permit or loan allows. The phrase in question does not require that the use be completed; it needs only to be begun, or ‘commenced,’ to fall within the exemption provided in this Section.

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