

1977 S.C. Op. Atty. Gen. 190 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-257, 1977 WL 24598

Office of the Attorney General

State of South Carolina

Opinion No. 77-257

AUGUST 15, 1977

\*1 The first part of the definition of 'tidelands' as it appears in Act No. 123 of 1977 includes fresh and saline waters but is limited to areas that are an integral part of an estuarine system.

TO: C. Claymon Grimes, Jr.  
Member  
South Carolina Coastal Council

QUESTION PRESENTED:

Does the South Carolina Coastal Council's authority to issue permits under Act No. 123 of 1977 extend to fresh water as well as saline tidelands as defined in the Act?

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); [Home Building and Loan Association v. City of Spartanburg](#), 185 S.C. 313, 194 S.E.2d 139 (1937); [Mitchell v. Mitchell](#), 266 S.C. 196, 222 S.E.2d 499 (1976); [Potomac Sand and Gravel Co. v. Governor of Maryland](#), 293 A.2d 241 (Md. 1972); and 2A Sutherland, [Statutory Construction](#) (4th Ed., 1973).

DISCUSSION:

Section 3(g) of Act No. 123 of 1977 defines 'tidelands' as follows:

'Tidelands' means all areas which are at or below mean high tide and coastal wetlands, mudflats, and similar areas that are contiguous or adjacent to coastal waters and are an integral part of the estuarine systems involved. Coastal wetlands include marshes, mudflats and shallows and means those areas periodically inundated by saline waters whether or not the saline waters reach the area naturally or through artificial water courses and those areas that are normally characterized by the prevalence of saline water vegetation capable of growth and reproduction. Provided, however, nothing in this definition shall apply to wetland areas that are not an integral part of an estuarine system. Further, until such time as the exact geographic extent of this definition can be scientifically determined, the Council shall have the authority to designate its approximate geographic extent.

This definition includes two types of areas. The first type is 'all areas which are at or below mean high tide.' The Act does not specify whether this is to be limited to areas having saline water. The second type is 'coastal wetlands, mudflats, and similar areas that are contiguous or adjacent to coastal waters and are an integral part of the estuarine systems involved.' The next sentence in this definition limits this second part of 'tidelands' to 'those areas periodically inundated by saline waters.' (Emphasis Added). Because of this limitation, the only question to be considered is whether the first part of the definition of 'tidelands' is limited to saline waters.

The Act does not specify whether this first type of tideland area includes fresh water. Furthermore, there is nothing in the Act that demonstrates with clarity the intent of the General Assembly. However, Section 3(e) of the Act defines 'saline waters'

in precise chemical terms. Section 3(f), which defines coastal waters, and part of Section 3(g), defining the second type of 'tidelands,' specifically limit those terms to saline waters. Since salinity was not used in the definition of the first type of 'tidelands,' it appears that the phrase 'all areas which are at or below mean high water tide' should be interpreted as including both fresh and saline waters.

\*2 This interpretation is influenced by several factors. First, the General Assembly used the phrase 'all areas' (Emphasis Added) when referring to the first type of 'tidelands.' The Supreme Court of South Carolina has held that '[w]here the terms of a statute are clear, the Court must apply them according to their literal meaning.' [Mitchell v. Mitchell](#), 266 S.C. 196, 197, 222 S.E.2d 499 (1976); [Home Building and Loan Association v. City of Spartanburg](#), 185 S.C. 313, 194 S.E. 139 (1937). Also, since salinity was specified as a limiting factor for coastal waters and the second type of tidelands, an application of the principle of *expressio unis est exclusio alterius* would not limit the first type of tidelands to saline waters. In [Home Building and Loan Association v. City of Spartanburg](#), the Court applied this principle when analyzing a statute specifying notice and publication prior to the enactment of a tax ordinance by a municipality, but listing no such limitation in the next sentence which empowered the municipality to provide for penalties in connection with the ordinance. The Court held that '[t]he inclusion of the ordinance and publication in the tax matter excludes the ordinance and publication in the penalty provision.' [Home Building and Loan Association v. City of Spartanburg](#), *supra* at 321. Finally, it is a general legal principle that environmental protection statutes are to be interpreted liberally to effectuate their purposes. 39A C.J.S. 'Health and Environment' § 128.

Although that portion of tidelands which are 'at or below mean high tide' includes areas of fresh and saline water, it is limited by the definition's third sentence to areas that are an 'integral part of an estuarine system.' This limitation is necessary to give effect to that provision. Coastal wetlands, mudflats, and similar areas are limited to integral parts of estuarine systems by the first sentence in the definition of tidelands. 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). Thus, in order to give effect to the third sentence, it is necessary to apply it to the entire definition of 'tidelands,' even though the sentence uses the phrase 'wetland areas' and the second type of tidelands refers to 'coastal wetlands.' A broad interpretation of the term 'wetlands' would also be consistent with the manner in which the phrase has been used by other states with coastal protection statutes. In Maryland: State wetlands are the lands under the navigable waters of the State below the mean high tide, which are affected by the regular rise and fall of the tide. Code, Article 66C, Section 719(a) (1970 Replacement Volume), also known as the Wetlands Act of 1970.

[Potomac Sand and Gravel Company v. Governor of Maryland](#), 293 A.2d 241, 243 (Md., 1972).

\*3 Therefore, wetlands should be interpreted as applying to the entire definition of tidelands, thus limiting the first type of tidelands to areas of fresh and saline water that are an integral part of an estuarine system.

Finally, it should be noted that another definition of the term 'tidelands' appears in Section 22(a) of the Act. Here, tidelands are determined 'without regard to the degree of salinity of . . . [the] waters.' However, this definition differs from that appearing in Section 3(g) of the Act in several other regards and is expressly limited to that Section of the Act, which concerns legal actions to determine ownership of tidelands. Therefore, the definition of 'tidelands' as it appears in Section 22(a) is of no assistance in interpreting the term as it is used in the rest of the Act.

#### CONCLUSION:

The term 'tidelands' as it appears in Section 3(g) of Act No. 123 of 1977 encompasses two types of areas. The first type includes 'all areas which are at or below mean high tide.' This is to be determined without regard to the salinity of the waters. The second type includes 'coastal wetlands, mudflats, and similar areas that are contiguous or adjacent to coastal waters and are an integral part of the estuarine systems involved.' This type is limited to areas that are 'periodically inundated by saline waters.' However, the third sentence of Section 3(g) requires that both types of 'tidelands' be an integral part of an estuarine system.

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