



ALAN WILSON
ATTORNEY GENERAL

February 10, 2017

The Honorable Sean M. Bennett, Member
South Carolina Senate, District No. 38
P.O. Box 142
Columbia, SC 29202

Dear Senator Bennett:

Attorney General Alan Wilson has referred your letter dated December 22, 2016 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Question (as quoted from your letter):

"I was contacted by a constituent regarding Charleston Aviation Authority and compliance with S.C. Code of Laws 56-3-1965. ... I would like to request an opinion on if the Charleston Aviation Authority is under the jurisdiction of the above statute that requires all government agencies who have parking facilities to give handicapped people with plates or placards free parking."

Law/Analysis:

Let us first examine the statute you reference in your question. South Carolina Code § 56-3-1965 states that:

Those municipalities having marked parking spaces shall provide appropriately designated space or spaces reserved for the parking of handicapped persons. A person who is handicapped as defined in this article must be allowed to park in metered or timed parking places without being subject to parking fees or fines. This section does not apply to areas or during times in which the stopping, parking, or standing of all vehicles is prohibited or to areas which are reserved for special types of vehicles. A vehicle must display a distinguishing license plate which must be issued by the department, or a distinguishing placard which must be issued by the department, pursuant to Section 56-3-1960 when parked in metered or timed parking places.

S.C. Code Ann. § 56-3-1965 (1976 Code, as amended) (emphasis added). This law is under Title 56 of the South Carolina Code of Laws, which is titled "Motor Vehicles." As a background regarding statutory interpretation, the cardinal rule of statutory construction is to ascertain the intent of the General Assembly and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the General Assembly controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the purpose, plan and

reasoning behind its making. *Id.* at 816. Statutes are to be interpreted with a “sensible construction,” and a “literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose.” *U.S. v. Rippetoe*, 178 F.2d 735, 737 (4th Cir. 1950). The dominant factor concerning statutory construction is the intent of the General Assembly, not the language used. *Spartanburg Sanitary Sewer Dist. v. City of Spartanburg*, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing *Abell v. Bell*, 229 S.C. 1, 91 S.E.2d 548 (1956)). Thus, the statute’s intent is clear in requiring free parking “in metered or timed parking places” for municipalities with “marked parking spaces.” S.C. Code Ann. § 56-3-1965.

Quoting from prior opinions by this Office regarding the Charleston County Aviation Authority, we stated that:

[C]oncerning the Charleston County Aviation Authority:

By way of background, the Charleston County Aviation Authority governs the Charleston County Airport District in order to perform the District’s functions. *Torgerson v. Craven*, 267 S.C. 558, 230 S.E.2d 228 (1976); www.chs-airport.com/About-the-CCAA/Airport-Authority.aspx. The South Carolina General Assembly created the Charleston County Airport District (“District”) by Act No. 1235 of 1970. It was created as a political subdivision of the State. 1970 S.C. Acts 1235, p. 2634ff (1970). The District was given authorization to “appoint officers, agents, employees and servants, and to prescribe the duties of such, including the right to appoint persons charged with the duty of enforcing the rules and regulations promulgated pursuant to the provisions of this act, to fix their compensation, and to determine if, and to what extent they shall be bonded for the faithful performance of their duties.” 1970 S.C. Acts 1235, p. 2638 (1970). Act No. 1235 of 1970 was amended by Act No. 329 of 1971.

Op. S.C. Atty. Gen., 2013 WL 4636665 (July 26, 2013). That opinion made clear that the Aviation Authority is a political subdivision. See, also, *Op. S.C. Atty. Gen.*, 1976 WL 23045 (August 20, 1976) (opining that the Charleston County Aviation Authority is a political subdivision); *Op. S.C. Atty. Gen.*, 1972 WL 26113 (December 19, 1972) (opining that the Charleston County Aviation Authority is a political subdivision of the State and an “employer” under the S.C. Retirement Act); *Op. S.C. Atty. Gen.*, 1977 WL 37425 (September 15, 1977) (opining that an airport commission is not a state agency and is subject to its own procurement specifications). 1970 S.C. Acts 1235, p. 2634.

Op. S.C. Att’y Gen., 2014 WL 1398599 (S.C.A.G. Jan. 14, 2014). This Office has also previously opined that the Charleston County Aviation Authority is a political subdivision of this State, but may not be a special purpose district. See *Op. S.C. Att’y Gen.*, 1987 WL 342715 (S.C.A.G. October 28, 1987). However, the Authority’s attorney has also referred to it as a special purpose district. See *Op. S.C. Att’y Gen.*, 2014 WL 3352176 (S.C.A.G. June 18, 2014). Moreover, our State’s Supreme Court has upheld tax exemptions for private businesses whose services were incidental to public use for the Charleston County Aviation Authority. See *Charleston County Aviation Authority v. Wasson*, 277 S.C. 480, 289 S.E.2d 416 (1982). This Office has also previously opined that the Charleston County Aviation Authority, as a political subdivision of the State, would likely be exempt from municipal taxes but would have to comply

with building permits and fees. See Op. S.C. Att’y Gen., 2014 WL 3352176 (S.C.A.G. June 18, 2014). Furthermore, Act No. 1235 of 1970 established the entire County of Charleston as the Airport District, whose corporate powers and duties are performed by the Charleston County Aviation Authority. 1970 S.C. Acts 1235, p. 2634. The 1970 Act also states that the Charleston County Aviation Authority’s rates charged are not subject to review. Act No. 1235, 1970 S.C. Acts 2634 at 2644. Quoting from the Act, it states that:

SECTION 8. Rates not subject to regulation.—The rates charged for services furnished by any revenue-producing facility of the District as constructed, improved, enlarged or extended shall not be subject to supervision or regulation of any State bureau, commission, board, or other like instrumentality or agency thereof.

Act No. 1235, 1970 S.C. Acts 2634 at 2644. Additionally, regarding the Charleston County Airport District’s authority, the 1970 Act states that it is empowered:

6. To license, lease, rent sell or otherwise provide for the use of any of its airport facilities, and facilities auxiliary thereto...
8. To place in effect, and, from time to time, revise such schedules of licenses, rates , and charges for the use of its facilities as may be necessary or desirable to the orderly operation of its airport facility; provided that all such licenses, rates and charges shall be reasonable and nondiscriminatory; ...

Act No. 1235, 1970 S.C. Acts 2634 at 2636.¹ Thus the Charleston County Airport District has a specific act exempting its rates from regulation and authorizing it to charge for the use of its facilities.

Nevertheless, one may argue that a political subdivision could be subject to municipal ordinances based on our June 18, 2014 opinion, but the 2014 opinion should be narrowly applied based on the specific language of the statute analyzed. In the June 18, 2014 opinion we opined that building codes listed in Chapter 9 of Title 6 of the South Carolina Code of Laws were likely applicable to special purpose districts and political subdivisions such as the Airport District, but that conclusion was based on the specific language of the title of the statute. See Op. S.C. Att’y Gen., 2014 WL 3352176 (S.C.A.G. June 18, 2014). The statute’s title specifically expresses application to special purpose districts and political subdivisions. S.C. Code § 6-9-10 et seq. (“Provisions Applicable to Special Purpose Districts and Other Political Subdivisions”). Additionally, one could also argue that since portions of the Charleston County Airport District are located physically within the bounds of a municipality that all municipal ordinances could apply there. However, we do not see a court interpreting this where there is a clear act in place authorizing charges and prohibiting the review of rates charged by the Airport District. As this Office has previously opined concerning local laws passed before Home Rule:

[t]he Home Rule Act did not retroactively abolish the legislation already passed concerning local laws. As our Court has stated, “[t]he Home Rule Act, while preventing the General Assembly from enacting ‘special legislation’ and voiding any ‘special legislation’ which contradicts the general law, does not operate

¹ Please note this opinion does not preclude S.C. Code § 56-3-1971 (authorizing uniform parking tickets for violations of parking designated for handicapped) and other statutes regarding criminal violations, whether on public or private land. See, e.g., Op. S.C. Att’y Gen., 2013 WL 3243066 (S.C.A.G. June 18, 2013).

retroactively to abolish all ‘special legislation’ which was in effect in South Carolina prior to the enactment of the Home Rule Act.” Graham v. Creel, 289 S.C. 165, 168, 345 S.E.2d 717, 719 (1986). Furthermore, this Office has previously opined that “[our State] Supreme Court held that “[s]tatutes of a specific nature are not to be considered repealed by a later general statute [grievance] unless there is a direct reference to the former statute or the intent of the legislature to repeal the earlier statute is implicit.” Op. S.C. Att’y Gen., 1986 WL 289871 (July 3, 1986) (citing Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979)). Furthermore, as you note, the South Carolina Supreme Court has consistently chosen to prefer a constitutional interpretation over an unconstitutional one. In State v. 192 Coin-Operated Video Game Machines, the Court said “[a] possible constitutional construction must prevail over an unconstitutional interpretation.” State v. 192 Coin-Operated Video Game Machines, 338 S.C. 176, 196, 525 S.C.2d 872, 883 (2000) (citing Henderson v. Evans, 268 S.C. 127, 132, 232 S.E.2d 331 (1977)).

Op. S.C. Att’y Gen., 2015 WL 7046008 (S.C.A.G. Oct. 28, 2015) (emphasis added). Additionally, Home Rule does not apply to special purpose districts in the same manner as it does to municipalities without specific reference. See Op. S.C. Att’y Gen., 2014 WL 1398599 (S.C.A.G. January 14, 2014) (citing Evins v. Richland County Historic Preservation Commission, 341 S.C. 15, 532 S.E.2d 876 (2000)). Thus, not only does Home Rule not abolish the laws concerning the Aviation Authority, Home Rule does not apply to special purpose districts (or political subdivisions other than municipalities and counties).² Id.

While initially referred to as the “municipal airport” by the General Assembly (see Act No. 222, 1941 S.C. Acts 310), the General Assembly created the Charleston County Airport District in 1970 and established its corporate powers and duties to be performed through the Charleston County Aviation Authority. Act No. 1235, 1970 S.C. Acts 2634. As further intent to expand the Airport Authority’s powers and to distinguish it from a municipality, in 1974 the General Assembly changed its power of eminent domain from the equivalent of a municipality’s to those “conferred on any State body under such provisions.” See Act No. 1164, 1974 S.C. Acts 2677. Thus, based on the statutory history, the General Assembly intended to distinguish the Charleston County Aviation Authority from a municipality.

Please note this Office has previously opined on earlier versions on South Carolina Code § 56-3-1960 and § 56-3-1965. See, e.g., Op. S.C. Att’y Gen., 1995 WL 803344 (S.C.A.G. March 24, 1995). However, those statutes were amended in 2009 by Act No. 24. Act No. 24, 2009 S.C. Acts 685 (“TO AMEND SECTION 56-3-1960, RELATING TO FREE PARKING FOR HANDICAPPED PERSONS, AND THE ISSUANCE AND DISPLAY OF HANDICAPPED LICENSE PLATES AND PLACARDS, SO AS TO DELETE THE PROVISION THAT PROVIDES FOR THE ISSUANCE OF HANDICAPPED LICENSE PLATES, AND TO REVISE THE PROVISIONS REGARDING THE CONTENT, ISSUANCE PROCEDURE, PROPER USE AND DISPLAY OF HANDICAPPED PLACARDS, AND TO PROVIDE PENALTIES FOR VIOLATIONS OF THE PROVISION; TO AMEND SECTION 56-3-1965, RELATING TO MUNICIPALITIES DESIGNATING PARKING SPACES FOR HANDICAPPED PERSONS, SO AS TO REVISE THE PROCEDURES THAT ALLOW A HANDICAPPED PERSON TO PARK IN METERED OR TIMED PARKING PLACES WITHOUT BEING SUBJECT TO PARKING FEES OR FINES;”). The 2009 amendment clearly intended application to all municipalities and, as discussed above, it is this Office’s opinion that the Charleston

² We interpret the court’s holding to imply all political subdivisions other than municipalities and counties.

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County Airport District falls outside the scope of a municipality. To the extent any prior opinions are inconsistent with the 2009 amendments to South Carolina Code § 56-3-1960 and § 56-3-1965, those inconsistent portions are hereby overruled by this opinion.

Conclusion:

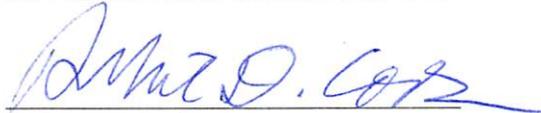
It is for all of the above reasons we believe a court will determine that South Carolina Code § 56-3-1965 would not include the Charleston County Aviation Authority (or the Charleston County Airport District) within the scope of the term “municipality” as used in the statute.³ However, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



Anita (Mardi) S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

³ We limit the scope of this opinion to the question asked. We have not reviewed any laws outside the scope of your question. If you have any additional questions, please submit them to us for a follow-up opinion, and we will be glad to address them.