

1978 WL 35105 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
September 8, 1978

***1 RE: Startex-Jackson-Wellford-Duncan Water District**

Robert L. Stoddard, Esquire
Moore, Stoddard & Stoddard
Post Office Box 5178
Spartanburg, South Carolina 29304

Dear Mr. Stoddard:

With apologies for the delay, I am responding to your letter of July 10, 1978 which concerns fishing and boating rights at a lake owned by the Startex-Jackson-Wellford-Duncan Water District. The issue appears to be whether the grantors of lands abutting the lake reserved the right to exercise the above privileges free of charge, and if so, whether the successors to the grantors can also exercise such privileges. Also in issue is whether the public may use the lake.

Paragraphs (3) and (6) of restrictions in the deeds granting land to the District provide as follows:

3. The right to fishing, boating, stock water, irrigation and other reasonable agricultural and recreational uses shall be permitted on the lake; provided, such is not inconsistent with the full use by the Water District for water development.

6. It is further understood and agreed that the Grantor(s) herein, shall be subject to any and all Startex-Jackson-Wellford-Duncan Water District rules and regulations presently in effect or that may hereinafter be promulgated.

Paragraph (3) reserved to the grantor an unencumbered right to use the lake. While this right may be subject to a number of reasonable regulations, it cannot be made subject to regulations which would completely abrogate it unless some condition such as the payment of a fee was met. Payment of a fee goes beyond regulation of use itself and amounts to regulation of the right to use. It is therefore the opinion of this Office that fees may not be charged the grantors of the abutting land as a precondition to their use of the lake. On the other hand, assuming that the grantor conveyed the fee title in abutting lands to the District, there is nothing to indicate that this right was intended to be anything more than a personal right. It is not reserved to the grantor and his heirs, and there is nothing to indicate that it should constitute an easement by necessity for some purpose of the grantor's.

As to public use of the lake by persons other than the grantors, the restrictions are somewhat ambiguous. Restriction No. 4 provides:

'It is understood the multiple purpose pool shall not be used by public or commercial recreation, such as boating, fishing and swimming, nor in any way that will encroach upon the rights, privileges and well-being of other landowners and the right and lawful uses of the water.'

We are informed that the draftsman's intent in writing these restrictions was to prohibit 'public commercial recreation' rather than use by the public in general. This intent is clearly proven by the fact that the Soil Conservation Service, U.S. Department of Agriculture, provided partial funding for this project under a contract which incorporated, inter alia, a federal regulation providing that 'The improvement must be available to the general public.' Since it is manifestly unlikely that the district and the grantors intended to prohibit that public use which is clearly a precondition to some

of the funding for the project, it is the opinion of this Office that the restriction must be interpreted to prohibit only commercial public recreation rather than all public recreation.

Sincerely yours,

*2 Kenneth P. Woodington
Assistant Attorney General

1978 WL 35105 (S.C.A.G.)

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.