



ALAN WILSON
ATTORNEY GENERAL

July 21, 2020

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Dear Mr. Zier:

We received your request dated June 19, 2020 seeking an opinion on whether the Heritage Act applies to the Meriwether Monument located in North Augusta. This opinion sets out our Office's understanding of your question and our response.

Issue:

Based upon your letter and our subsequent telephone conversation, we understand that the sole question presented is whether the Heritage Act would prevent the City of North Augusta from taking local action with respect to the Meriwether Monument located in John C. Calhoun Park. In 2017 our Office declined to opine on an identical question because of ongoing litigation concerning the constitutionality of the Heritage Act.

Your letter enclosed a lengthy report outlining the history of the Monument and related events. Because this Office cannot make a factual finding, we set out the facts you have presented to us here based upon that report.

The Monument was erected pursuant to a Joint Resolution of the General Assembly, Joint Resolution No. 540, 1914 S.C. Acts 946, which subsequently was modified by Act No. 229, 1915 S.C. Acts 427. The Monument was erected in 1916 and stands in a public park to this day.

The Monument consists of a four-sided obelisk with an inscription on each side. The text inscribed on the Monument reads in full:

Dec. 4, 1852 – July 8, 1876 / In memory of Thomas McKie Meriwether, who on 8th of July 1876, gave his life that the civilization builded by his fathers might be preserved for their childrens children unimpaired.

In youths glad morning the unfinished years of manhood stretching before him, with clear knowledge and courageous willingness he accepted death and found forever the greatful remembrance of all who know high and generous service in the maintaining of those civic and social institutions which the men and

Kelly F. Zier, Esq.
Page 2
July 21, 2020

women of his race had struggled through the centuries to establish in South Carolina. What more can a man do than to lay down his life.

In life he exemplified the highest ideal of Anglo-Saxon civilization. By his death he assured to the children of his beloved land the supremacy of that ideal. "As his flame of life was quenched, it lit the blaze of victory."

This memorial is erected to the young hero of the Hamburg Riot, by the State, under an Act of the General Assembly, with the aid of admiring friends.

The provided report indicates that the "Hamburg Riot" referenced here is the Hamburg Massacre, which culminated in a battle on July 8, 1876 between a white mob and Black soldiers serving in Company A, Ninth Regiment National Guard of the State of South Carolina - an authorized and lawfully organized South Carolina state militia.

Thomas McKie Meriwether, age twenty-three, was a member of the white mob that besieged the Black militia and other assembled Black men in the Sibley building. He became the sole white casualty when he was shot in the ensuing gun battle. Seven Black men were killed, including some who were summarily executed after they had been captured and held prisoner by the mob. The names of the known Black casualties were First Lieutenant Allen T. Attaway, Corporal Nelder John Parker, James Cook, David Phillips, Albert Myniart, Moses Parks, and Hampton Stephens.

South Carolina Attorney General William Stone investigated the events of the Hamburg Massacre at the request of Governor Chamberlain. Eighty-seven white persons were criminally charged in connection with the massacre. None were ever tried for it. The massacre became a key catalyst and rallying point for a resurgence of white supremacy in South Carolina that opposed Reconstruction and ultimately succeeded in a political takeover.

The City of North Augusta is considering whether and how to take any action with respect to the Meriwether Monument. Your sole question to us is whether the Heritage Act protects the Monument such that the City cannot take unilateral action.

Law/Analysis:

The scope of the protections of the Heritage Act is defined by S.C. Code Ann. § 10-1-165(A) (2011), which reads in full:

No Revolutionary War, War of 1812, Mexican War, War Between the States, Spanish-American War, World War I, World War II, Korean War, Vietnam War, Persian Gulf War, Native American, or African-American History monuments or memorials erected on public property of the State or any of its political subdivisions may be relocated, removed, disturbed, or altered. No street,

Kelly F. Zier, Esq.

Page 3

July 21, 2020

bridge, structure, park, preserve, reserve, or other public area of the State or any of its political subdivisions dedicated in memory of or named for any historic figure or historic event may be renamed or rededicated. No person may prevent the public body responsible for the monument or memorial from taking proper measures and exercising proper means for the protection, preservation, and care of these monuments, memorials, or nameplates.

Our Office is not aware of any prior court decision addressing the applicability of the Heritage Act to the Meriwether Monument. Therefore, a court faced with this question would seek to apply the Act consistent with the rules of statutory construction. In the words of the South Carolina Supreme Court,

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.

Hodges v. Rainey, 341 S.C.79, 85, 533 S.E.2d 578, 581 (2000) (internal citations and quotations omitted).

Turning to the text of the Heritage Act, we observe that the first sentence establishes protections for monuments to specific wars ranging from the Revolutionary War to the Persian Gulf War, and for “Native American, or African-American History monuments.” S.C. Code Ann. § 10-1-165(A) (2011). There is no indication that the Meriwether Monument is a monument to any of the specific wars listed in Section 10-1-165(A). As noted above, Thomas Meriwether was killed in 1876 at the age of twenty-three. He would have been twelve years old at the conclusion of the Civil War on April 9, 1865, and presumably did not serve therein. Additionally, we do not see any basis to conclude this is an “African-American History monument.” Although the massacre was a significant event in the history of race relations in South Carolina, the Monument omits any reference to the Black victims of the massacre.

The next sentence of the Heritage Act protects any “street, bridge, structure, park, preserve, reserve, or other public area of the State or any of its political subdivisions dedicated in memory of or named for any historic figure or historic event.” S.C. Code Ann. § 10-1-165(A) (2011). For the purposes of this opinion, we will focus on the requirement of a “historic figure or historic event.” There is one person named on the Monument, Thomas Meriwether, and one event, the “Hamburg Riot.”

Kelly F. Zier, Esq.
Page 4
July 21, 2020

As to Mr. Meriwether, your provided report states: “[f]or over 100 years the Meriwether Monument has occupied a place of prominence in the center of North Augusta, yet, until recently, few people knew much about it or the text it contains.” We are not aware of any public accomplishments of Thomas Meriwether or any notable distinctions of the kind that are generally considered historically significant, apart from having been killed while participating in the massacre. The question of whether a particular person is historically significant is admittedly a difficult one in certain cases. It may be fair to characterize the Monument itself as an attempt to ascribe to Meriwether that level of historic significance. However, we believe that this is a case where a name was recorded but the owner did not leave a public legacy of the kind that monuments typically intend to memorialize.

The Hamburg Massacre, on the other hand, is a historic event without question. Your report recounts how the massacre was a key catalyst and rallying point for a resurgence of white supremacy in South Carolina that opposed Reconstruction and ultimately succeeded in a political takeover.

However, we are mindful that we are not discussing a Hamburg Massacre monument, but the Meriwether Monument. The historical record included in your report indicates that the Monument was originally conceived as a headstone to be placed upon Meriwether’s grave. The reference to the “Hamburg Riot” is incidental and occurs in the context of calling Meriwether the “young hero” of it.

The Meriwether Monument, in our view, is offensive for what it stands for – White Supremacy. It fails even to mention the many African Americans murdered at Hamburg, instead honoring the one white man killed there as a testimonial to “the highest ideal of Anglo-Saxon civilization.” As the North Augusta City Council declared in its 2019 Resolution, “[t]he Monument to Thomas McKie Meriwether contains text offensive to and inconsistent with the beliefs of current day North Augusta citizens.” We wholeheartedly agree. As we have recognized previously, racial discrimination is “odious to a free people” and “[t]he days of Jim Crow are long gone. The clock must not be turned back.” Op. S.C. Att’y Gen., 1989 WL 406179, No. 89-89 (September 8, 1989).

However, if such an abhorrent reverence of Jim Crow is to be removed, it must be done through the proper legal process. We cannot imagine that the General Assembly intended the Heritage Act to protect such an obviously hateful testament to the racial practices of the past as this Monument is. Nevertheless, this Office possesses no authority to determine with finality whether or not the Heritage Act applies to a particular monument or memorial.

Regardless, however, of whether the Heritage Act is applicable to the Meriwether Monument – a fact-specific question which an opinion of the Attorney General cannot resolve – the fact remains that the Monument itself states that it was erected “by act of the General Assembly” long before the Heritage Act was enacted. The local newspapers at the time recounted how Rep. J.P. DeLaughter of Edgefield, who had not made a speech on the floor of the

Kelly F. Zier, Esq.

Page 5

July 21, 2020

House in his two years as a Legislator, worked tirelessly to overcome the veto of Governor Blease of the legislation requiring the Meriwether Monument's erection. According to the Edgefield Advertiser of March 11, 1914,

[i]n picturesque terms, Mr. DeLaughter, painted a word picture of the scenes of the Hamburg riot in 1876 in which young McKie Meriwether laid down his life to redeem Radical rule. Mr. DeLaughter told the House that Mr. Meriwether snatched a rifle from the hands of his aged father, rushed into the fighting at Hamburg and died for his State and white supremacy.

“He was a hero,” declared Mr. DeLaughter.

As odious as this narrative is, as abhorrent as the message of the Meriwether Monument is, it is clear that the General Assembly has not repealed the legislation that placed the Monument in North Augusta. This Office, of course, possesses no authority to repeal an Act of the General Assembly. Moreover, as our Supreme Court has written,

[i]t is worse than folly, in a legal argument or legal opinion, to hold that we have been living under a usurpation, and hence are at liberty to abide by such laws . . . as are pleasing, and to disregard such as are odious. . . . [N]evertheless, the laws which [are] . . . placed upon the statute books are nonetheless binding upon us until repealed. . . .

Walker v. State, 12 S.C. 200, 242, 1879 WL 49462007 (1879).

Thus, North Augusta must seek relief from the General Assembly to repeal or modify the laws erecting the Meriwether Monument before such action can occur. See Joint Resolution No. 579 of 1914; Joint Resolution 540 of 1914; Act No. 229 of 1915. As the Court of Appeals has stated, “[t]he responsibility for the justice or wisdom of legislation rests exclusive with the legislature, whether or not we agree with the law it enacts.” Busby v. State Farm Mut. Auto Ins. Co., 280 S.C. 330, 337, 312 S.E.2d 716, 720 (Ct. of App. 1984). Regardless of how offensive to human decency the Meriwether Monument is, it may only be removed at the direction of the General Assembly.

Conclusion:

In our opinion, the Meriwether Monument is an abhorrent testament to Jim Crow and is thus offensive. Moreover, the Monument is a grossly inaccurate account of the Hamburg Massacre in 1876. The Monument mourns the death of a single white man, while ignoring the murders of many African Americans.

Kelly F. Zier, Esq.

Page 6

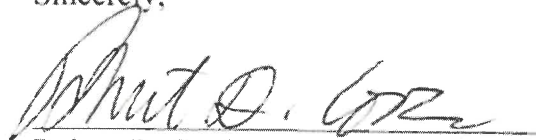
July 21, 2020

However, we possess no authority to determine with finality whether the Heritage Act is applicable here. We cannot imagine that the General Assembly intended to protect such a racist symbol when it enacted the Heritage Act. Nevertheless, as we only recently stated, the Attorney General cannot “serve as judge and jury as to the applicability of the Heritage Act for the hundreds of monuments and memorials in South Carolina” and that “any question about the applicability of the Act to a particular monument must necessarily be resolved by a court. . . .” Op. S.C. Att’y Gen., 2020 WL _____, (July 14, 2020).

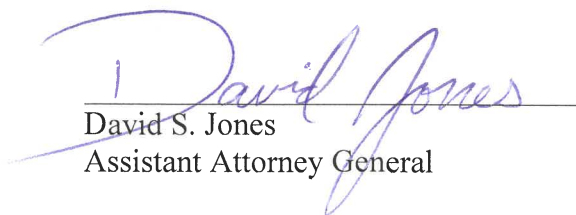
Here, however, there is no need to resolve the Heritage Act’s applicability to answer your question. The Meriwether Monument was erected pursuant to legislation enacted by the General Assembly in 1914-15 and this legislation has never been repealed. As our Supreme Court has explained, no matter how “odious,” an act of the Legislature must be followed until amended or repealed. Only the Legislature may amend or repeal an Act.

Accordingly, it is our advice that North Augusta proceed directly to the General Assembly for relief from the offensive nature of this Monument. This Office supports and would applaud the General Assembly’s repeal of these statutes erecting the Meriwether Monument.

Sincerely,



Robert D. Cook
Solicitor General



David S. Jones
Assistant Attorney General