



ALAN WILSON
ATTORNEY GENERAL

June 10, 2014

The Honorable Larry Grooms
Senator, District No. 37
P. O. Box 142
Columbia, South Carolina 29202

The Honorable Danny Verdin
Senator, District No. 9
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator Grooms and Senator Verdin:

You have requested an opinion regarding the Heritage Act, codified at S.C. Code Ann. Section 10-1-165. By way of background, you state the following:

[y]ou will recall the legislative session of 2000 and the debate over our historical symbols and the proper placement of such. The Heritage Act that came about as a result of the debate, reads in part, as follows:

Section 10-1-165. Protection of certain monuments and memorials.

(A) 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, 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 dedicated. No person may prevent the public body responsible for the monument or memorial from taking proper measures and exercising proper means for the protection and preservation, and care of these monuments, memorials or nameplates.

As undersigned members of the General Assembly, we are seeking an opinion from you regarding the Confederate Battle Flag (sometimes referred to as the "Naval Jack") that was first placed in The Citadel's Summerall Chapel in 1939. The flag was received as a gift from the Cadet Yacht Club only one year after the opening of the chapel. General Summerall referred to it as:

"a tribute to the courage and valor shown by American manhood in fighting for a cause."

Is the presence of the flag and the context in which it came to reside in the chapel consistent with the provisions of 10-1-165? Is it, therefore, afforded the same legal protection as other memorials in the section heretofore referenced?

We believe the flag does fall under the provisions of The Heritage Act and requires the protection of law.

Law / Analysis

We have previously issued several opinions regarding interpretation and application of the Heritage Act. See, Op. S.C. Atty. Gen., September 7, 2012 (2012 WL 4283911); Op. S.C. Atty. Gen., December 13, 2004 (2004 WL 3058237); Op. S.C. Atty. Gen., July 18, 2001 (2001 WL 957759). In the 2004 opinion, we addressed the question of whether the City of North Augusta could, consistent with the Act, "move monuments located in the Wade Hampton Veterans Park from their current location to the center of the park." We noted in that opinion that it is "quite clear" in the mandate of § 10-1-165 that "none of the specified monuments or memorials [in the statute] '... erected on public property of the State or any of its political subdivisions' may be relocated, removed, disturbed or altered." We quoted from the July 18, 2001 opinion construing Section 10-1-165 as to Confederate monuments as follows:

"[t]he Legislature's purpose was obviously to protect and preserve historic monuments. A principal aim of the statute is to [ensure] ... that presently existing monuments, including those dedicated to service in the War Between the States and which are located on property of the State or its political subdivisions may not be relocated, disturbed, or altered.

Based upon that reasoning, we concluded in the 2004 opinion that "[i]t is the opinion of this office that the City of North Augusta is not permitted to move monuments located in the Wade Hampton Veterans Park from their current location to the center of the park."

In the September 7, 2012 opinion, we again construed § 10-1-165 broadly, consistent with the legislative intent of the Act, concluding therein that the Act covered monuments and memorials to those who served on submarines during the Cold War. It was our opinion that

[w]hile § 10-1-165 provides protection for certain monuments and memorials, we believe the Legislature clearly intended to protect other officially established public monuments and memorials dedicated to the men and women who served with distinction in defense of our country, including those who served on submarines during the Cold War. It seems reasonable these, too, are memorials contemplated by the Act. Any other reading of § 10-1-165 to limit the meaning of the Act thereof would be far too restrictive to the obvious mandate of the Legislature and render the underlying purpose of the Act absurd.

In the July 18, 2001 opinion, we observed that “[o]ver one hundred and seventy Confederate monuments and markers were erected throughout South Carolina.” and that “[v]ritually all were presented to South Carolina towns and villages by private groups such as the United Daughters of the Confederacy, SCV or other similar groups devoted to the preservation of Confederate heroism and heritage.” Thus, in our view, it would have been “far too restrictive a meaning of the statute to limit the meaning thereof only to governmental bodies per se.”

It is also noteworthy that our Supreme Court has recognized that the erection of monuments, markers and memorials to the gallantry of service by men and women during wartime constitutes a valuable public purpose. As was said in Powell v. Thomas, 214 S.C. 376, 382, 92 S.E.2d 782, 784 (1949),

[i]t is generally recognized that the construction of memorial buildings, monuments and other public ornaments designed merely to inspire sentiments of patriotism may properly be deemed to be public purposes for which taxes may be imposed ‘The continuity of our governmental institutions is dependent in a large measure upon the perpetuation of a patriotic impulse which is but the willingness to sacrifice all for the ideas and the ideals which form the foundation stones of our republic. It will not be gainsaid that patriotism is promoted by the erection of a memorial monument, be it granite shaft or building, symbolic of the soldier’s spirit or sacrifice, conceived consummated, in recognition of his deeds of heroic daring, and perpetuating in grateful remembrance those who dedicated their lives to the service of their country. Such a monument brings visibly and effectually before the minds of the present and future generations the sacrifices of the past. It is conceded, as it indeed must be, that the erection of a building as a memorial hall, to the extent that it would serve as a stimulus to patriotism, would be public purpose.’

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(quoting Allied Architects Assn. v. Payne, 192 Cal. 431, 221 P. 209, 210 (1923)).

You note in your letter that the Confederate Battle Flag (sometimes referred to as the "Naval Jack") was "placed in the Citadel's Summerall Chapel in 1939." You further state that "the flag was received as a gift from the Cadet Yacht Club only one year after the opening of the chapel" and that General Summerall referred to it as 'a tribute to the courage and valor shown by American manhood in fighting for a cause.'" In our opinion, this flag would be protected in its present location by the Heritage Act as a "monument[] or memorial[] erected on public property of the State"

Conclusion

The General Assembly has mandated, by virtue of the Heritage Act, that monuments and memorials honoring the gallantry and sacrifice in this State's various wars are protected. Included expressly in that protection is the War Between the States. It is thus our opinion that the Flag referenced in your letter, the Confederate Battle Flag, placed in Summerall Hall in 1939 is protected by the Heritage Act. The Flag was placed there as a "War Between the States monument[] or memorial[] erected on public property of the State" As such, both the text of the statute, as well as our earlier interpretations of the Act, conclude that the law protects this Flag as it does other memorials of other wars, referenced in § 10-1-165. Accordingly, it is our opinion that this Flag may not be moved or relocated.

Sincerely,



Robert D. Cook
Solicitor General

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