

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph King Anderson III, Administrative Law Judge

Appellate Case No. 2013-000364

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JUN 12 2015

S.C. SUPREME COURT

Ann Dreher Respondent,

v.

South Carolina Department of Health and Environmental Control Petitioner.

**SOUTH CAROLINA COASTAL CONSERVATION LEAGUE'S
MOTION FOR CLARIFICATION OR, ALTERNATIVELY,
FOR RECONSIDERATION**

The South Carolina Coastal Conservation League ("League") seeks clarification of this Court's Order, dated June 4, 2015, granting Respondent Ann Dreher's Motion to Strike and Exclude or, alternatively, to reconsider its Order.

Dreher moved to strike and exclude documents attached to the League's amicus brief and designated in the brief's Table of Contents as "Legislative History Materials." The grounds for the motion were that the documents were "new matters" and were not included in the Record on Appeal. In response, the League asserted that the documents were part of the legislative history for the regulations at issue in this appeal and thus the Court can consider them as legal authority even though they were not included in the record.¹ The Department submitted the Affidavit of Barbara

¹Legislative history is defined as: "The proceedings leading to the enactment of a statute, including hearings, committee reports, and floor debates. Legislative history is sometimes

Neale, Senior Program Analyst, on June 1, 2015, affirming that the documents included with the League's amicus brief are maintained by the Department and accurately reflect the legislative process leading to the enactment of the bridge regulations, promulgated pursuant to the South Carolina Coastal Zone Management Act, S.C. Code Ann. § 48-39-10, et seq. Dreher served a reply on June 5, 2015. In her reply, Dreher repeated the position that the documents attached to the League's brief (also referred to as exhibits) should not be considered because they are "absent from the Record on Appeal." Reply, p. 1. Throughout this matter, Dreher only objected to the consideration of the "attachment to [the League's] brief." Reply, p. 3. Dreher has never objected to the League's brief itself.

The Court granted Dreher's motion. In the Order, the Court stated that it "will exclude from consideration the amicus filing submitted by" the League (emphasis added). As a consequence, the League is unsure about the extent and nature of the Court's decision. Specifically, the League is unsure whether the Court has struck only the "Legislative History Materials" in the amicus brief requested by Respondent Ann Dreher, or whether the Court has struck the League's entire brief. The latter decision would exceed the relief requested and seemingly contradicts this Court's decision allowing the League to submit its amicus brief in the first place. The League sought to submit its amicus brief based on its unique perspective of having participated in the promulgation process for the very regulations at issue here. See Motion for Leave to File Amicus Brief. The purpose of its

recorded so that it can later be used to aid in or influence interpretations of the statute." LEGISLATIVE HISTORY, Black's Law Dictionary (10th ed. 2014). This Court has relied upon legislative history in the interpretation of statutes concerning agency action on multiple occasions. See, e.g., Hodges v. Rainey, 341 S.C. 79, 92, 533 S.E.2d 578, 585 (2000); Lark v. Bi-Lo, Inc., 276 S.C. 130, 134, 276 S.E.2d 304, 306 (1981) ("[W]e think the legislative intent to repeal the scope of review provisions of Section 42-17-60 is explicitly implied from the provisions of the later general Administrative Procedures Act and that Act's legislative history."); Whetstone v. S. Carolina Dep't of Highways & Pub. Transp., 272 S.C. 324, 327, 252 S.E.2d 35, 37 (1979).

brief is to enlighten the Court to the background surrounding promulgation of the regulations in which the League and DHEC were involved.

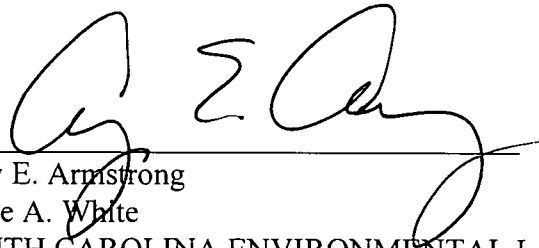
The League respectfully requests the Court to clarify the nature of its decision. Specifically, the League seeks to know if the Court has directed exclusion of the “Legislative History Materials” attached to the amicus brief or if the Court has excluded from consideration the League’s entire brief.

Alternatively, the League asks the Court to reconsider its Order. The Court’s Order is dated June 4, 2015. On the day that the League received the Court’s Order, the League also received the Affidavit of Barbara Neale, the Senior Program Analyst at SCDHEC/OCRM, dated June 1, 2015. Because of the timing, it is possible that this Court was unable to consider Ms. Neale’s affidavit in deciding Dreher’s motion. Ms. Neale explains how the documents designated as “Legislative History Materials” in the League’s amicus brief are from files maintained by the Department that reflect the legislative process for promulgating the regulations at issue. The League attached these documents as a convenience to the Court and the parties. The “Legislative History Materials” are publically available legal authority upon which this Court may rely in interpreting legislative intent without a requirement that they be a part of the Record on Appeal or even that they be physically included in the brief of any party who might rely on legislative history to support an argument. In any appeal, such documents provide legal support for the arguments related to legislative intent, similar to the legal support from case law and statutes which might be cited in a brief, but would not be considered as part of the Record on Appeal. This Court may read, consider, and cite to the legislative history in the same manner as it would any other legal authority. See Hodges v. Rainey, 341 S.C. 79, 92, 533 S.E.2d 578, 585 (2000); Lark v. Bi-Lo, Inc., 276 S.C. 130, 134, 276 S.E.2d 304, 306 (1981); Whetstone v. S. Carolina Dep’t of Highways & Pub. Transp., 272 S.C. 324, 327, 252 S.E.2d 35, 37 (1979). See also, Jean H. Toal, et al., Appellate Practice in South Carolina, 220 (2nd Ed.), which identifies “important sources of South Carolina law” for statutes and regulations to

include documents like those in the “Legislative History Materials” attached to the League’s amicus brief. Nothing would prevent Dreher from arguing that those legislative history authorities are not instructive, dispositive, nor relevant. Indeed, Dreher has an opportunity to make any argument in which a party would contest authority upon which an opposing party has relied.

The South Carolina Coastal Conservation League respectfully requests that this Court clarify its Order and allow the League to file an amended amicus brief excluding only the “Legislative History Materials” to which Dreher objected or, alternatively, to reconsider its Order in light of the legal authority asserted to constitute legislative history as a proper source of South Carolina law.

Respectfully submitted,



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June 11, 2015

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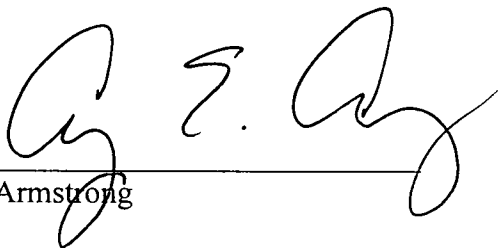
CERTIFICATE OF SERVICE

I hereby certify that on this date I served copies of the South Carolina Coastal Conservation League’s Motion for Clarification or, Alternatively, for Reconsideration upon all counsel by placing same in the United States Mail, First Class Postage Prepaid, addressed to:

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June 11, 2015

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