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Subject:

Code sections 1-10-10 and 10-1-160 set forth the flags allowed to flag atop of the statehouse dome – the U.S. Flag and the State flag. Importantly, 10-1-160 specifically states that, “no other flag shall be displayed in these locations or atop the dome or roof...” (See below). There are no exceptions provided for in statute, nor are there any AG opinions or appellate court opinions assigning a meaning other than the plain language of the statute.

The reporter asks, “If there are no criminal penalties for breaking the act, what prevents the governor, someone acting on her behalf or anyone else from taking down the Confederate flag at The Citadel’s chapel or stopping the mayor of Greenwood from switching the plaques on the World War I memorial that still list dead African-American soldiers under a “colored” label?” I agree with the reporter that there are no criminal penalties for violating 1-10-10 or 10-1-160. The penalty provision he cites (10-11-20) is not applicable here. In order to remedy violations of 10-1-160, a party with legal standing would have to seek relief in the form of an injunction or a declaratory judgment action in court. See 2015 WL 1093151 (S.C.A.G.).

Just FYI – There is currently a Greenwood case in the circuit court challenging the constitutionality of the Heritage Act.

SECTION 1-10-10. Flags authorized to be flown atop State House dome, in chambers of Senate and House of Representatives and on grounds of Capitol Complex; members' offices as "chambers"; private individual wearing, carrying or displaying flag on capitol grounds.

(A) As of 12:00 noon on the effective date of this act, and permanently thereafter, the only flags authorized to be flown atop the dome of the State House, in the chambers of the Senate and House of Representatives, and on the grounds of the Capitol Complex shall be as authorized in this section.

The flags authorized to be flown atop the dome of the State House and in the chambers of the Senate and House of Representatives are the United States Flag and the South Carolina State Flag.

SECTION 10-1-160. Display of certain flags.

(A) The United States flag and the State flag shall be flown daily, except in rainy weather, from a staff upon the State House, and shall be displayed above the rostrum in the chambers of the House of Representatives and the Senate and in the first floor north foyer of the State House. **No other flag shall be displayed in these locations or atop the dome or roof, or within the foyers or common or public areas within the capitol building.** The Department of Administration shall purchase suitable flags for display at the State House locations and cause them to be displayed, the expense to be borne out of the funds appropriated to it.

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