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To: Schimsa, RebeccaRebeccaSchimsa@gov.sc.gov
CC: Pisarik, HollyHollyPisarik@gov.sc.gov
Date: 3/15/2016 10:46:40 AM
Subject: Re: Research on Confederate flag & The Citadel

Thanks, Legal.

Sent from my iPhone

On Mar 15, 2016, at 10:36 AM, Schimsa, Rebecca <RebeccaSchimsa@gov.sc.gov> wrote:

[S.1071](#) (Kimpson) – Permits boards of directors of higher ed institutions to vote to remove and relocate flags, such as the Confederate flag, from chapels or other structures of religious purpose on its property. This bill is drafted to amend the [Heritage Act of 2000](#), an amendment to which requires a two-thirds vote on third reading in both bodies of the General Assembly.

[The Citadel's Board of Visitors](#) voted on June 24, 2015 to remove the Confederate flag (Naval Jack) from the Summerall Chapel but states that approval by the General Assembly is needed, relying on language from the Heritage Act, specifically [Section 10-1-165](#). This reasoning assumes, in line with a 2014 AG Opinion (see below) that the flags in the Summerall Chapel are considered to be "monuments or memorials erected on public property of the State of any of its political subdivisions" that cannot be "relocated, removed, disturbed, or altered" unless there is a two-thirds vote on third reading in each body of the General Assembly.

The statute in question, 10-1-165, has not been litigated, but there are AG Opinions on point. An [AG Opinion from June 10, 2014](#) answers the question affirmatively as to whether the Confederate flag in the Summerall Chapel, which was placed in 1939 as a gift from the Cadet Yacht Club on year after the opening of the chapel, falls within 10-1-165, construing broadly and relying on legislative intent to ensure that all "monuments and memorials honoring the gallantry and sacrifice in this State's various wars are protected." Other opinions analyze whether the placement of names on a WWI and WWII monument in Greenwood can be altered (held that it cannot be altered); whether the Wade Hampton Veterans Park monuments in North Augusta can be moved to the center of the park (held that it cannot be moved); and whether the Cold War Submarine Memorial at Patriot's Point can be relocated to accommodate a new Congressional Medal of Honor Museum (uncertain).

Note re. Other Bills – The language of S.1071 is written as a general law, applicable to all religious structures on property of higher-ed institutions, and is therefore preferable to another bill intending to solve the same issue, H.4962 (Gilliard), which is written as a special law and therefore may be constitutionally suspect. Other bills amending Section 10-1-165 are as follows:

- H.4962 (Whipper, et al.) – Similar to S.1071.
- S.909 (Jackson) – Exempts higher-ed institutions.
- H.4620 (Mitchell, et al.) – Removes two-thirds vote requirement.

Note re. 2015 Bill – [Act 90 of 2015](#), the bill removing the Confederate flag from Statehouse grounds, only amended the portion of the Heritage Act related to Statehouse grounds, not the section that dealt with "monuments or memorials" on public property.