



HENRY McMASTER
ATTORNEY GENERAL

April 29, 2009

David M. Hay, Chairman
Commissioners of Pilotage
Lower Coastal Area
Post Office Box 20096
Charleston, South Carolina 29413

Dear Mr. Hay:

In a letter to this office you questioned whether Charleston Branch Pilots' Associations ("Pilots") vessels are considered to be law enforcement vessels of the State of South Carolina.

As referenced in your letter,

...the Pilots serve as the first line of defense for harbor security and coastal law enforcement in South Carolina. The Pilots represent the only government entity, state or federal or local, which operates with the frequency throughout the harbor needed to effectively monitor the state's safety and welfare (operating 24 hours per day, 7 days per week). Moreover, the Pilot vessels, by agreement serve as the transport and platform by which much of the balance of Homeland Security operates within the Charleston harbor. Further, they perform maritime domain awareness and other maritime homeland security missions on a collateral basis under the direction of the Commander, S.C. Naval Militia.

You further noted that "...the enforcement of marine safety laws and regulations role has been assigned to the Pilots since the 19th Century in accordance with State law, now codified in Title 54, Chapter 15 of the S.C. Code and the regulations promulgated in Chapter 136 of the S.C. Code of Regulations."

On occasion our Supreme Court has reviewed the pilotage laws and commented thereupon. A brief review of the Court's comments would be helpful. For example, in State ex rel. Stephens v. Comms. of Pilotage, 23 S.C. 175, 178 (1885), the Court extensively described the pilotage laws and characterized the duties of pilots and the commissioners who regulated them as follows:

[t]he position of pilot is a very important one-important to commerce, to the safety of vessels, and to the lives of their crew and passengers, and vastly important to the cities and towns built upon the harbors where pilots are needed; and the pilot commissioners are expected not only to be careful in their appointment, so as to secure safe and reliable officers, but to be watchful afterwards over their conduct, and the manner in which they discharge their duties, and to this end something must be left to their discretion in the application of general principles.

In State v. Penny, 19 S.C. 218 (1883), the Court observed:

[u]pon an examination of the whole act regulating the pilotage . . . its provisions will be found quite stringent and somewhat onerous on the pilots, the intent of the act being that an experienced and perfectly reliable body of pilots shall always be on hand ready and prepared to discharge the important duty of aiding vessels to cross the bar and be conducted with safety into port. The evil to be remedied was the danger resulting from inexperienced and unreliable parties engaged in this work. The remedy was to secure this work to persons who, upon examination . . . furnished the necessary evidence that they were qualified . . .

19 S.C. at 221. In O'Brien v. De Larrinaga, 49 S.C. 497, 503 (1896), the Court stated

[f]rom this brief view of the statutory provisions in reference to pilotage and the rules and regulations prescribed in conformity therewith, it is manifest that the scheme of the law is, that, with a view to the protection of both life and property on board of vessels proposing to enter the ports and harbors of this State, and in view of the arduous and hazardous nature of the duties required of pilots, there shall always be a sufficient number of competent and experienced pilots in the prescribed cruising grounds of the several bars and harbors, ready to offer their services to all incoming vessels . . .

Finally, in Wilson v. Charleston Pilots' Assn., 57 F. 227 (E.D.S.C. 1893), the federal district court of South Carolina commented:

[n]o person can engage in the business as pilot on the bar and harbor of Charleston unless he possesses a commission or license for that purpose from the State, called a 'branch.' This license is granted to a number limited by law, after tests of the fitness of the applicant, the execution by him of a bond, and his qualification on oath . . . The rate of compensation is fixed by law. Pilotage is compulsory on all vessels coming from other than home ports. The duties of pilots are carefully laid down. The

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reason for the existence of this privileged class is to secure safety to vessels entering or departing a port.

457 F. at 228.

In your letter you referenced that the federal government recognizes the crucial role of Pilots in Homeland Security enforcement and quoted from the letter of Rear Admiral James H. Flatley, III USN (Ret.) of the South Carolina Maritime Security Commission that "...participation of the Pilot vessels as viable resources in the quest for maritime homeland security is an absolute necessity." You further indicated that on November 18, 2008, the Commander of the South Carolina Naval Militia "...tasked the Pilot vessels with the following:

[t]he VPSF...(Volunteer Port Security Force)...collateral mission of your Pilots, Pilot Vessels and their crews under maritime Security (MARSEC) Condition I, is to support the enforcement of Maritime Homeland Security laws and regulations with respect to maritime domain awareness. These duties include surveillance, situational awareness and logistics support for the U.S. Coast Guard and other federal and state law enforcement agencies, including training in each of the above areas. In this regard, your vessels are authorized to fly the SCNM Ensign pursuant to Part 80-025 of the State regulations and your personnel are herewith authorized to wear the official SCNM emblem.

You indicated that on May 14, 2002, the Commissioner of Pilotage directed that the Pilots Association and its pilot vessels would become part of the VPSF, a group that preceded the South Carolina Naval Militia. A letter from Captain M.F. McAlister of the United States Coast Guard states that

...the U.S. Coast Guard appreciates the assistance of organizations like the Charleston Branch Pilots to maintain awareness of potential threats to the security of our ports and waterways, to help conduct operations aimed at preventing illicit activity, and if an incident does occur, to aid in quickly restoring the maritime transportation system. Specifically, we appreciate the Charleston Branch Pilots observing and reporting suspicious activity in the normal course of their business, sharing information on vessel movements with law enforcement task forces that may help in detecting and countering criminal or terrorist threats, verifying aids to navigation following safety or security incidents, and occasionally transporting law enforcement officers, including those from the Coast Guard, in order to conduct inspections of large vessels before they are authorized to enter the port.

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Regulation 136-001(B) of the Regulations of the Commissioners of Pilotage, Port of Charleston state that

[s]afety shall be the primary objective of pilotage and shall focus upon the safety of vessels in transit, of vessels moored, of bridges and other waterfront structures, or channels and other navigable waterways, and protection of the marine environment.

Regulation 136-070(C) states that “[e]very vessel described in the 1976 Code Section 54-15-270 requiring a state pilot shall receive on board such pilot to direct the vessel movement of every inbound and outbound transit of the port and for shifting berths and anchorages within the port.”

According to a Joint Resolution of the General Assembly, S.620,

[t]he Commissioners of Pilotage is adding Regulation 136-080 to ensure that every vessel subject to maritime pilotage receives a pilot on board, as charged under Section 54-15-110 and 54-15-280 of the 1976 S.C. Code, as amended, as well as Part 136-070C. No person, other than a duly licensed pilot, is permitted to conduct and pilot any vessel over the bar, into and out of any South Carolina harbor. Part 136-070C of the S.C. Code of Regulations requires that a licensed pilot shall consider any circumstance wherein a master or operator of any seagoing vessel refuses to take a pilot as a “hazardous condition” and must immediately be reported to the Coast guard.

According to a letter from Mr. James H. Flatley, III, RADM, USN (Ret.), Chairman of the South Carolina Maritime Security Commission,

[t]he referenced draft regulation will facilitate the continued participation of Charleston Harbor’s Pilot Vessels, regulated by the Commissioners of Pilotage, in performing collateral missions as units of the Naval Militia’s Voluntary Port Security Force. As importantly, this draft regulation will clearly sanction the continued use of the Pilot Vessels in frequently supporting law enforcement and homeland security efforts related to inspecting crews and cargos of designated commercial ships arriving in the Port of Charleston. Our Commission further recognizes the outstanding design capabilities of these vessels in also supporting offshore homeland security surveillance and the pursuit of maritime domain awareness, given that few, if any, other available vessels offer the same high degree of sea worthiness in a wide range of sea and/or weather condition.

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A letter from Mr. John F. Hassell, III, Interim President and CEO of the S.C. State Ports Authority states that

[w]e understand that existing Regulation 136-040A inhibits the Charleston Branch Pilots from providing support to law enforcement due to regulatory limits on the appropriate use of their vessels. The proposed regulation, 136-080, would correct that situation.

We recognize the Charleston Branch Pilots' Association as a potentially valuable partner in support of our maritime security missions. Their continued vigilance over their operational area is of particular value, as is the designation of their vessels to be assets for use in law enforcement. The proposed regulation authorizing pilots, their vessel operators, and their assets, to be continually engaged in the support of law enforcement and maritime homeland security would significantly advance local marine law enforcement capability.

Another letter from David K. Shimp, RADM/SCNM, Commander, South Carolina Naval Militia, states that

Existing State Regulation 136-040A inhibits the Charleston Branch Pilots from providing support to law enforcement due to regulatory limits on the appropriate use of their vessels. The proposed regulation, 136-080, would correct this situation.

As components of the South Carolina Naval Militia...the pilot vessels are fundamental to the accomplishment to its maritime surveillance mission. The proposed regulation authorizing pilots, their vessels operators, and their assets to be continually engaged in support of maritime homeland security would synchronize state regulations and facilitate broader cooperation among the S.C. Naval Militia and federal, state, and local law enforcement assets.

A letter from Chief Gregory Mullen of the Charleston Police Department states that

[w]e recognize the Charleston Branch Pilots' Association as a potentially valuable partner in support of our missions. Their continued vigilance over their operational area is of particular value, as is the designation of their vessels to be assets for use in law enforcement. The proposed regulation authorizing pilots, their vessels operators, and their assets, to be continually engaged in the support of law enforcement and maritime homeland security would significantly advance local marine law enforcement capability.

As stated above, you have questioned whether Charleston Branch Pilots' Associations vessels are considered to be law enforcement vessels of the State of South Carolina. As set forth

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above, it is clearly recognized that such vessels provide a valuable service in protecting public safety on the water, insuring the safety of vessels and the lives of crew and passengers on these vessels. As such, in the opinion of this office, these vessels exercise a quasi-law enforcement function to protect public safety and should be considered law enforcement vessels of the State of South Carolina.

If there are any questions, please advise.

Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General