



City of Salisbury

North Carolina

Office of the
City Attorney

MEMORANDUM

To: Salisbury City Council
From: J. Graham Corriher, City Attorney JGC
Date: June 12, 2019
Re: *City Authority to Relocate the Confederate Monument*

You requested a legal opinion about whether the City has the authority to relocate the Confederate Monument. As is explained further below, a State law passed in 2015 prevents the City from removing the monument permanently and places strict limits on where and under what circumstances the City may relocate the monument. Even in the absence of that State law, the City's 1908 resolution granting to the UDC the right to use the site where the monument is located prevents the City from acting contrary to the resolution except where the City is required to act in the interest of public safety.

I. Background

The Confederate Monument is purportedly owned by the Robert F. Hoke Chapter, United Daughters of the Confederacy (UDC), which purchased the monument in 1909. On August 6, 1908, pursuant to a request from the UDC, the Salisbury Board of Alderman (the predecessor body to the City Council) adopted a resolution granting to the UDC a portion of the median on West Innes Street to be "used perpetually" for the monument.¹ The resolution was subsequently recorded in the Register of Deeds.

The legal rights granted by the resolution are in the nature of a license or an easement and are not a conveyance of the real estate itself. After the resolution was adopted, the North Carolina Department of Transportation (NCDOT) assumed control of Innes Street as part of the State Highway System. However, NCDOT has informed the City that, while it maintains the paved portion of Innes Street, it (*i.e.*, the State) does not own the median.

II. *Cultural History Artifact Management and Patriotism Act*

In 2015, the General Assembly passed a law specifically aimed at limiting the authority to remove or relocate monuments such as the Confederate Monument. The law was titled the *Cultural History Artifact Management and Patriotism Act* (the "Act")² and its relevant provision applies to, among other things, "object[s] of remembrance" located on public property. G.S. § 100-2.1. The law defines an "object of remembrance" as a "monument, memorial, plaque, statue, marker, or display of a permanent character that commemorates an event, a person, or military service that is part of North Carolina's history." *Id.* The

¹ Deed Book 191, Page 344, Rowan County Registry. See also *Site Arranged For. Monument Will Be Given Conspicuous Place in City Street*, Carolina Watchman, August 12, 1908, at 6.

² 2015 N.C. Sess. Laws 435, 435-36 (codified as amended at G.S. §§ 100-2, 100-2.1, 144-5, 144-9, 147-36, 160A-400.13 (2015)).

Confederate Monument constitutes an object of remembrance located on public property, and is therefore within the scope of the Act.

The law prohibits an object of remembrance from being permanently removed and restricts the extent to which it can be relocated. The law only allows an object of remembrance to be relocated when relocation is required to preserve the object or when relocation is necessary because of a construction project. Id. Even then, an object of remembrance that is relocated must either be returned within 90 days or relocated “to a site of similar prominence, honor, visibility, availability, and access” within the City. Id. The law specifically prohibits an object of remembrance from being “relocated to a museum, cemetery, or mausoleum unless it was originally placed at such a location.” Id.

The law contains three exceptions where its provisions do not apply. The first is for signs that are part of the North Carolina Historical Markers program and is inapplicable here. Id. The second exception applies where there is “[a]n object of remembrance owned by a private party that is located on public property and that is the subject of a legal agreement between the private party and the [City] governing the removal or relocation of the object[.]” Id. Therefore an agreement with the UDC would remove the monument from the law’s application, and could govern removal, relocation, or alteration. The third exception applies where “an object of remembrance for which a building inspector or similar official has determined poses a threat to public safety because of an unsafe or dangerous condition.” Id.

Pursuant to State law, the City is prohibited from removing or relocating the monument absent an agreement with the UDC. Without such an agreement, State law prohibits the City from permanently relocating the monument except where relocation is required to preserve the object or where relocation is required because of a construction project. In the latter two instances, the monument would have to be returned to its present location within 90 days or relocated to a site of similar prominence within the City.

III. 1908 Resolution

Even if the Act were amended or repealed, the City would be prohibited from terminating the rights granted to the UDC in the 1908 resolution. The language of the resolution indicates that that the Board of Alderman intended to grant to the UDC the right to use a portion of the median for the monument in perpetuity.³ The UDC has ever since used the monument for the purpose described in the resolution. Except where the City is required to act in the interest of public safety, the City is prohibited from acting contrary to the rights granted by the resolution.

IV. Conclusion

For the foregoing reasons, the City’s authority to relocate the monument is strictly limited by application of State law and by the City’s prior resolution granting to the UDC the perpetual right to use the median.

³ The resolution includes language that the monument will be a “perpetual tribute[.]” that the site for the monument will be “used perpetually[.]” and that the monument will be under the care of the UDC “and its successors, from generation to generation[.]” Supra note 1.