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REPLY TO:  
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June 19, 2024

Mr. Andrew L. Ritter  
Executive Director  
North Carolina Board of Examiners  
For Engineers and Surveyors  
4601 Six Forks Road, Suite 310  
Raleigh, North Carolina 27609

*Re:* Advisory Letter Regarding Session Law 2023-142,  
§ 1.(a), Effective July 1, 2024, to be Codified at N.C.  
GEN. STAT. § 89C-19.2.

Dear Mr. Ritter:

The North Carolina Board of Examiners for Engineers and Surveyors (the “Board”), has requested from this Office an opinion regarding whether the provision protecting surveyors from criminal or civil liability for trespass contained in Session Law 2023-142, § 1.(a)<sup>1</sup>, subsection (a), applies only if surveyors make reasonable efforts to notify adjoining landowners prior to entry, pursuant to subsection (c).<sup>2</sup>

After examining the plain language and legislative intent of SL 2023-142, § 1.(a), it is our opinion that the provision protecting surveyors from criminal or civil liability for trespass in subsection (a) is not contingent on whether surveyors make reasonable efforts to notify adjoining landowners prior to entry, pursuant to subsection (c). Subsection (c) is a stand-alone requirement that does not affect the protections in subsection (a). However, there are other provisions within the statutory scheme that may impose other civil penalties for violations of subsection (c) that might apply. *See, e.g.*, N.C. Gen. Stat. §§ 89C-20-23. This advisory letter does not discuss how those provisions may apply to violations of subsection (c).

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<sup>1</sup> Effective July 1, 2024 and to be codified at N.C. Gen. Stat. § 89C-19.2.

<sup>2</sup> Because district attorneys are responsible for “prosecut[ing] in a timely manner in the name of the State all criminal actions and infractions requiring prosecution in the superior and district courts,” this advisory letter focuses only on potential civil liability under § 1.(a). N.C. Gen. Stat. § 7A-61.

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The purpose of the Board is to “safeguard, life, health, and property, and to promote the public welfare” by regulating “the practice of engineering and the practice of surveying” in the “public interest.” N.C. Gen. Stat. § 89C-2. One of the duties of the Board is to “administer the provisions of” Chapter 89C. N.C. Gen. Stat. § 89C-4.

SL 2023-142 became law on October 21, 2023. Section 1.(a) amends Chapter 89C by adding a new section entitled, “[l]imited right of entry by professional land surveyors.” This section will be codified at N.C. Gen. Stat. § 89C-19.2. Subsection (a) states:

“[a] professional land surveyor licensed under this Chapter shall have the right to enter upon the lands of others, if necessary to perform surveys for the practice of land surveying, including the location of property corners, boundary lines, rights-of-way, and easements, and may carry with them their customary equipment and vehicles. An entry by a professional land surveyor to perform the practice of land surveying under this section shall not constitute trespass under Article 22A or 22B of Chapter 14 of the General Statutes or shall not cause the professional land surveyor to be subject to arrest or a civil action by reason of the entry.”

Subsection (c) of SL 2023-142 states that: “[a] professional land surveyor shall make reasonable efforts to notify adjoining landowners upon whose land it is necessary to enter.”

In your letter, you write that subsection (c)’s mandate is “susceptible to two different interpretations.” One can interpret subsection (c)’s notification provision “as a stand-alone requirement” or alternatively as “protecting surveyors from criminal or civil liability for trespass only if they make reasonable efforts to notify adjoining landowners prior to entry.”

Your question is one of statutory interpretation of first impression. No appellate court has addressed the issue presented by your request. Therefore, in answering your question, we rely on the applicable statutory authority and the following applicable principles of statutory interpretation. “The goal of statutory interpretation is to determine the meaning that the legislature intended upon the statute’s enactment.” *State of North Carolina v. Rankin*, 371 N.C. 885, 889, 821 S.E.2d 787, 792 (2018). “Statutory interpretation properly begins with an examination of the plain words of the statute.” *Correll v. Div. of Soc. Servs.*, 332 N.C. 141, 144, 418 S.E.2d 232 (1992). “Where the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must construe the statute using its plain meaning.” *Burgess v. Your House of Raleigh, Inc.*, 326 N.C. 205, 209, 388 S.E.2d 134, 136 (1990). Courts will “give effect to the words actually used in a statute” without adding or removing words. *Lunsford v. Mills*, 367 N.C. 618, 623, 766 S.E.2d 297, 301 (2014). When the statutory language is ambiguous, we must ascertain the General Assembly’s intent. *Winkler v. N.C. State Bd. of Plumbing*, 374 N.C. 726, 730, 843 S.E.2d 206, 207, 210 (2020). A statute’s language is ambiguous if it “could reasonably be construed” in two ways. *State of North Carolina v. Conley*, 374 N.C. 209, 214, 839 S.E.2d 805,

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808 (2020). In determining legislative intent, the statute must be read as a whole to avoid construing any of its words and phrases out of context. *In re Hardy*, 294 N.C. 90, 95-96, 240 S.E.2d 367, 371-372 (1978). “The intent of the General Assembly may be found first from the plain language of the statute, then from the legislative history, the spirit of the act and what the act seeks to accomplish.” *Rankin*, 371 N.C. at 889, 821 S.E.2d at 792.

In examining the plain language of SL 2023-142, § 1.(a), the provision in subsection (a) does not seem to be conditioned on surveyors making reasonable efforts to notify adjoining landowners prior to entry. Subsection (a) makes no reference to subsection (c). Likewise, the notification requirement in subsection (c) makes no reference to subsection (a). There is no explicit nexus between subsection (a) and subsection (c) in the text of SL 2023-142, § 1.(a). If the legislature had intended subsection (c) to limit subsection (a), it could have drafted such language; however, it did not. “It is always presumed that the legislature acted with care and deliberation.” *State of North Carolina v. Benton*, 276 N.C. 641, 658-59, 174 S.E.2d 793, 804-05 (1970).

Therefore, the plain language of SL 2023-142, § 1.(a) demonstrates that it was not intended to be contingent on the mandate that surveyors make reasonable efforts to notify adjoining landowners prior to entry on their property, as required by subsection (c).

Beyond the text of the statutory provision, the non-partisan, professional staff at the General Assembly’s Legislative Analysis Division, produced three separate analyses summarizing SL 2023-142, dated April 26, 2023, September 21, 2023, and December 18, 2023<sup>3</sup>. None of these bill summaries interprets the notification requirement of subsection (c) as a necessary prerequisite to the protections of subsection (a).

Therefore, after examining the plain language and legislative intent of SL 2023-142, § 1.(a), it is our opinion that the provision protecting surveyors from liability for trespass in subsection (a) is not contingent on whether surveyors make reasonable efforts to notify adjoining landowners prior to entry, pursuant to subsection (c). Subsection (c) is a stand-alone requirement that does not affect the protections in subsection (a).

Nothing in this letter, however, should be interpreted as diminishing the stand-alone notification mandate of SL 2023-142, § 1.(a), subchapter (c). A professional land surveyor who fails to make reasonable efforts to notify adjoining landowners upon whose land it is necessary to enter on or after July 1, 2024, may be subject to discipline pursuant to other provisions of the statutory scheme, including N.C. Gen. Stat. §§ 89C-21(a)(4) and 89C-21(c).

Please note that this letter is only an advisory letter. It has not been reviewed and approved in accordance with procedures for issuing a formal Attorney General’s Opinion. Please be aware that advisory letters are public record, a copy must be provided to anyone who requests it, and that this

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<sup>3</sup> Accessed at <https://www.ncleg.gov/Legislation/Bills/Summaries/2023/S677>.

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office routinely posts all advisory letters on our internal website. Please inform me if you would prefer this letter not be placed online and/or not be shared with anyone absent a public records request.

Should you have any further questions regarding this matter, please feel free to contact me.

Sincerely,



Alexander H. Ward  
Assistant Attorney General