



State of North Carolina

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April 12, 2012

The Honorable Phillip D. Frye
North Carolina House of Representatives
300 N. Salisbury Street, Room 639
Raleigh, North Carolina 27603-5925

Re: Executive Order 116

Dear Representative Frye:

This letter is in response to your letter dated March 9, 2012. In that letter, which you advise was forwarded upon a unanimous motion passed by the House Appropriations Subcommittee on Transportation, you inquire as to our opinion on the legal effectiveness of Governor Perdue's Executive Order 116.

As I understand the facts, Section 31.30 of S.L. 2011-145 amended G.S. § 136-82 to read:

The Department of Transportation is vested with authority to provide for the establishment and maintenance of ferries connecting the parts of the State highway system, whenever in its discretion the public good may so require, and to prescribe and collect such tolls therefor as may, in the discretion of the Department of Transportation, be expedient. The Board of Transportation shall establish tolls for all ferry routes, except for the Ocracoke/Hatteras Ferry and the Knotts Island Ferry.

This amendment was effective April 1, 2012.

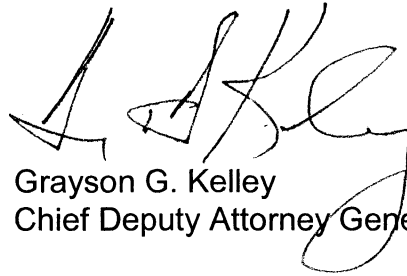
On February 29, 2012 Governor Perdue issued Executive Order 116, entitled "Establish a Moratorium on the Collection of New Tolls For the North Carolina Ferry System". By this Executive Order, the Governor directed the Department of Transportation to delay collection of the newly established tolls for a minimum of twelve months. The stated basis for this moratorium was the economic well-being of citizens in coastal counties recovering from the impact of Hurricane Irene.

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Your question is therefore whether Executive Order 116 precludes the Department of Transportation from collecting the tolls required to be established by Section 31.30 of S.L. 2011-145. Our research has not identified a North Carolina case in which the courts have resolved a direct conflict between a law passed by the General Assembly and an Executive Order subsequently issued by the Governor. However, Article II of the North Carolina Constitution clearly vests the legislative branch with the power to enact laws.

We believe that an Executive Order which directly conflicts with a law enacted by the General Assembly raises substantial concerns under our Constitution. It is therefore our opinion that a direct conflict between a law enacted by the General Assembly and an Executive Order issued by the Governor must be resolved through implementation of the law.

Very truly yours,

A handwritten signature in black ink, appearing to read 'G. Kelley', with a large, stylized flourish at the end.

Grayson G. Kelley
Chief Deputy Attorney General

GGK/ml