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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

October 21, 2002

The Honorable Sherry Shealy Martschink  
Commissioner, SC Workers' Compensation Commission  
P. O. Box 1715  
Columbia, South Carolina 29202-1715

Dear Commissioner Martschink:

You have asked the following questions:

[i]f [Workers' Compensation] commissioners have the statutory authority to employ court reporters to work "at his pleasure", can the board by policy or any other means restrict a commissioner's authority to employ and retain court reporters?

Since each commissioner operates his or her office, are the two employees in each commissioner's office subject to agency RIFs?

It is our opinion that state law places the employment, retention and discharge of a Workers' Compensation Commissioner's secretary and court reporter exclusively within the discretion of that particular Commissioner.

**Law / Analysis**

S.C. Code Ann. Sec. 42-3-10 et seq. creates the South Carolina Workers' Compensation Commission, "composed of a judicial and administrative department and constituted and administered as provided for in this title." The Commission consists of seven members appointed by the Governor with the advice and consent of the Senate "for terms of six years and until their successors are appointed and qualify." Section 42-3-20. The purpose of the Workers' Compensation Commission is to administer and decide issues under South Carolina's Workers' Compensation Law. Pursuant thereto, "[t]he commissioners shall hear and determine all contested cases, conduct informal conferences when necessary, approve settlement, hear application for full Commission reviews and handle such other matters as may come before the department for judicial disposition." Id.

Section 42-3-25 establishes the Chairman as the chief executive officer of the Commission. The Chairman is empowered to "execute the policies established by the Commission in its capacity as the governing body of the judicial and administrative departments." The executive assistant for

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the judicial department and the administrative director of the administrative department are responsible to and report to the Chairman. Section 42-3-40 authorizes the Commission to promulgate necessary regulations.

Pursuant to § 42-3-50, the executive assistant for the judicial department “with the approval of the chairman of the commission shall be authorized to employ and, if necessary, discharge all support personnel required to exercise the functions herein prescribed for his office.” Likewise, § 42-3-80 (a) authorizes the administrative director of the administrative department “[w]ith the approval of the chairman of the Commission [to] appoint and discharge, if necessary, all support personnel within the administrative department except division directors.”

However, § 42-3-60 appears to create an exception in terms of hiring and discharge for each Commissioner’s secretary and court reporter. That provision states that “[e]ach commissioner shall be authorized to employ a secretary and a court reporter to serve at his pleasure.” (emphasis added). Thus, the issue here is whether § 42-3-60 controls over the other more general provisions, such as 42-3-50 and 42-3-80 (a), referenced above, with respect to the hiring and retention of each Commissioner’s secretary and court reporter. We believe § 42-3-60 controls.

A number of principles of statutory construction are relevant here. First and foremost, is the cardinal rule that the primary purpose in interpreting a statute is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation. State v. Blackman, 304 S.C. 270, 403 S.E.2d 660 (1991). A court must apply the clear and unambiguous terms of a statute according to their literal meaning. Id.

Moreover, statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative. Bell v. S.C. State Hwy. Dept., 204 S.C. 462, 30 S.E.2d 65 (1944). Generally speaking, specific laws prevail over general laws. Lloyd v. Lloyd, 295 S.C. 55, 367 S.E.2d 153 (1988).

Two cases decided by the Supreme Court of South Carolina go far in resolving your questions. In Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979), the Supreme Court addressed the question of a sheriff’s authority to terminate a deputy who violated the sheriff’s policy prohibiting “moonlighting” at an establishment which sold alcoholic beverages. The Court noted that § 23-13-10 expressly provides that deputy sheriffs serve at the “pleasure” of the Sheriff. Notwithstanding the presence of the “pleasure” statute, appellate argued that the county grievance act served as a “limitation on the previously unbridled ‘pleasure’ of the sheriff.” However, the Court rejected appellant’s argument, concluding that the “pleasure” statute was “of a specific nature” as to deputy sheriffs and thus was “not to be considered repealed by a later general statute unless there

is a direct reference to the former statute or the intent of the legislature to repeal the earlier statute is implicit." 254 S.E.2d at 50. Thus, the Sheriff's decision to terminate the deputy was upheld.

Likewise, in Anders v. County Council for Richland Co., 284 S.C. 142, 325 S.E.2d 538 (1985), the chief investigator of the Solicitor's Office was terminated by the Solicitor. The investigator challenged the termination through an appeal to Richland County Council which concluded that the investigator was wrongfully terminated and reinstated him. To the Supreme Court, the Solicitor contended that § 1-7-405, which states that employees of a Solicitor serve at his "pleasure," controlled.

The Court agreed with the Solicitor. Referencing Rhodes v. Smith, the Court stated that

[i]t is apparent that Section 1-7-405 controls. This section specifically applies to Solicitors. On the other hand, Section 4-9-30(7) speaks in a broad generalization referring only to elected officials. The language of Section 1-7-405 gives a solicitor broad power to fire employees. See Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979) [construing S.C. Code Ann. § 23-13-10 (1976) which gives similar power to Sheriffs].

325 S.E.2d at 539.

Turning now to your specific questions, and based upon the Court's analysis in Rhodes and Anders, it is evident that § 42-3-60 is controlling. Section 42-3-60 is the specific statute with respect to the hiring, employment and termination of a Workers' Compensation Commissioner's secretary or court reporter. Accordingly, § 42-3-60 prevails over more general statutes relating to other personnel of the Commission. Indeed, § 42-3-60 was re-enacted in 1980, alongside §§ 42-3-50 and -80 and together with other sections of the Workers' Compensation Law. As the more specific statute, which governs the employment of an individual Commissioner's secretary and court reporter, such Section rightfully controls in this situation. In other words, each Commissioner possesses, by virtue of § 42-3-60, the exclusive right to decide who to employ as his or her secretary and court reporter. Such individuals serve solely at the "pleasure" of that individual Commissioner. Any decision as to whether to retain a Commissioner's secretary and/or court reporter remains in the province of that Commissioner rather than the Commission, its Chairman, the executive assistant for the judicial department, the administrative director, or other person.

In response to your specific question, therefore, as to whether the board [Commission] by policy or other means restrict a Commissioner's authority to employ and retain court reporters, the answer is "No." By statute, such employment and retention lies in the hands of the individual Commissioner for whom that court reporter works. Only the General Assembly can amend or repeal a statute. See; Society of Profess. Journalists v. Sexton, 283 S.C. 563, 324 S.E.2d 313 (1984) [DHEC cannot alter FOIA statute by rule or policy].

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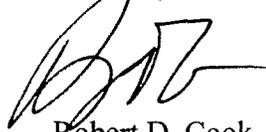
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In response to your question whether the two employees in each Commissioner's office are subject to agency RIF's, again, the answer is "No."

Any change in § 24-3-60 is a matter for the General Assembly rather than the Workers' Compensation Board or Commission or any officer or employee thereof. Until the Legislature changes the governing statutes, it is my opinion that § 24-3-60 is controlling.

Sincerely,

A handwritten signature in black ink, appearing to read "RDC", with a long horizontal flourish extending to the right.

Robert D. Cook  
Assistant Deputy Attorney General

RDC/an