

# The State of South Carolina



## Office of the Attorney General

**T. TRAVIS MEDLOCK**  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE 803-734-3680

August 8, 1986

R. Kenneth Harrill  
Compensation Section  
Division of Human Resource Management  
Post Office Box 12547  
Columbia, South Carolina 29211

Re: Maximum amount of salary for an agency head hired to fill  
a vacancy.

Dear Ken:

By your letter dated July 22, 1986, you requested legal advice concerning interpretation of a proviso contained in §16 of the 1986-87 appropriation act. You have specifically asked: "When the appropriated amount, the amount appearing on the detail line, for an agency head's salary exceeds the midpoint of the range established by the [Executive Salary and Performance Evaluation] Commission, what is the maximum amount a newly hired agency head may be paid?"

The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. See, e.g., Garris v. Cincinnati Ins. Co., 280 S.C. 149, 311 S.E.2d 723 (1984); Citizens and Southern Systems, Inc. v. South Carolina Tax Comm'n, 280 S.C. 138, 311 S.E.2d 717 (1984); Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980).

When interpreting a statute, the legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in light of the intended purpose of the statutes. Gambrell v. Travelers Ins. Companies, 280 S.C. 69, 310 S.E.2d 814 (1983). In construing a statute, words must be given their plain and ordinary meaning, without resort to subtle or forced construction for the purpose limiting or expanding its operation. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984).

R. Kenneth Harrill  
August 8, 1986  
Page Two

Statutes in apparent conflict which address similar subject matter must be read together and reconciled if possible so as to give meaning to each and to avoid an absurd result. Powell v. Red Carpet Lounge, 280 S.C. 142, 311 S.E.2d 719 (1984). Laws giving specific treatment to a given situation take precedence over general laws on the same subject. Duke Power Co. v. South Carolina Public Service Comm'n, 284 S.C. 81, 326 S.E.2d 395 (1985). Where there is a statute dealing with a subject in general terms and another dealing with a part of the same subject in a more minute and definite way, the special statute will be considered as an exception to, or qualification of, the general statute and will be given effect. Wilder v. South Carolina State Highway Dep't, 228 S.C. 448, 90 S.E.2d 635 (1956). The office of a "proviso" of a statute is either to except something from the enacting clause or to qualify or restrain its generality, or to exclude some ground of misinterpretation. State v. Standard Oil Co. of New Jersey, 195 S.C. 267, 10 S.E.2d 778 (1940).

In light of these general rules of statutory construction, consider the relevant proviso contained in §16 of the 1986-87 appropriation act.

Provided, Further, That notwithstanding any other provision of law that, in the event of an agency head vacancy, the governing board of the agency, upon approval of the Budget and Control Board, may set the salary for the agency head at a rate not to exceed the mid-point of the range established by the Executive Salary and Performance Evaluation Commission. Provided, Further, That the funding for such purpose should come from resources within the agency.

As you noted in your letter, the 1986-87 appropriation act also contains line-item appropriations for the salaries of various agency heads. You also advise that some of these line-item appropriations for agency heads' salaries exceed the mid-point of the range established by the Executive Salary and Performance Evaluation Commission.

Consequently, you inquire: Which controls the maximum amount of the salary for a newly-hired agency head - the line-item appropriation or the proviso? The line-item appropriation for an agency head's salary addresses a general situation. The legislative intent for this line-item appropriation is, inter alia, to compensate the agency head in an amount based upon factors such as, but not limited to, experience as head of the agency and longevity of State service. The

R. Kenneth Harrill  
August 8, 1986  
Page Three

proviso, on the other hand, gives specific treatment to a specific situation involving the filling of "an agency head vacancy." The legislative intent for this proviso is, inter alia, to provide the governing boards of agencies with flexibility in setting salaries, with certain restrictions, to attract and hire replacements to fill agency head vacancies. The proviso's more minute and definite treatment of the maximum salary for an agency head hired to fill a vacancy would take precedence over the line-item appropriation.

In my opinion, the specific proviso contained in §16 of the 1986-87 appropriation act would control the maximum amount of the salary paid to a newly-hired agency head who fills an agency head vacancy. If I can answer any further questions concerning this matter, please do not hesitate to contact me.

Sincerely,

*Samuel L. Wilkins*

Samuel L. Wilkins  
Staff Attorney

SLW/fg

REVIEWED AND APPROVED BY:



ROBERT D. COOK  
Executive Assistant for Opinions