

1981 S.C. Op. Atty. Gen. 87 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-62, 1981 WL 96588

Office of the Attorney General

State of South Carolina

Opinion No. 81-62

July 6, 1981

***1 SUBJECT: INSURANCE**

(1) ACT 488, ACTS AND JOINT RESOLUTIONS, 1980 reconstituted the Insurance Commission and realigned its duties and responsibilities.

(2) Any section of Title 38, South Carolina Code of Laws, 1976, which conveys upon the Insurance Commission the power or duty to perform or approve a purely routine or administrative function has been implicitly amended or repealed by ACT 488.

TO: John G. Richards, V.

Deputy and Secretary to the Insurance Commission

QUESTION:

Do the broad provisions of ACT 488 repeal by implication statutory references to the Insurance Commission in the numerous sections of Title 38 not specifically amended by that Act?

You have asked for a review of Act 488, Acts and Joint Resolutions (1980) as it affects the duties and responsibilities of the Insurance Commission (Commission). You have specifically requested that particular attention be paid to repeal or amendment by implication by said Act of various sections contained in Title 38, South Carolina Code of Laws (1976).

For the sake of brevity, I refer you to a memorandum prepared for the Chief Insurance Commissioner by Mrs. Lyn H. Hensel, formally associated with this office. As Mrs. Hensel has correctly and succinctly outlined the case law which is generally applicable and pertinent to this discussion, I have attached a copy of her memorandum hereto and incorporate it herein by reference.

Generally speaking, any provision of Title 38 which calls for the Commission to handle matters which would normally be considered routine or administrative would be repugnant to the broad language of Act 488 and would, therefore, be amended by implication. A statute or a provision thereof may be repealed by implication where it is repugnant to or inconsistent with a subsequent statute concerning the same subject. [South Carolina Electric & Gas Company, et al. vs. South Carolina Public Service Authority](#), 54 S.E.2d 777, 215 S.C. 193 (1949); [Ward vs. Cobb](#), 28 S.E.2d 850, 204 S.C. 275, [Home Building and Loan Association vs. City of Spartanburg](#), 194 S.E. 143, 185, S.C. 353 (1937); 83 C.J.S. 'Statutes' Section 291; 73 AmJur2d 'Statutes' Section 401. The clear legislative intent as expressed by Act 488 was to reconstitute, realign, and alter the powers and duties of the Commission so that it would become responsible for the promulgation and oversight of broad policies and objectives. The routine administrative functions, including 'developing and implementing specific plans, programs and techniques necessary to further the Commission's policies and objectives' are left to the Commissioner. An analysis of specific Code sections which are amended by implication follows:

1. Sections 38-27-90, 38-37-1210, 38-39-70, 38-39-80, 38-39-100, 38-39-120, 38-39-130, 38-39-140, 38-43-610, 38-43-1040, 38-47-30, 38-51-50, 38-39-10(1), 38-39-10(3) and 38-39-80 are amended by implication to replace the term 'Commission' each time it appears with the phrase 'Department of Insurance.'

*2 2. Sections 38-5-100, 38-5-120, 38-5-165, 38-37-710, 38-37-720, 38-37-730, 38-37-770, 38-37-950, 38-37-1130, 38-37-1490, 38-39-150, 38-59-190, 38-37-1220, 38-39-40, 38-39-50, 38-39-70, 38-39-100 and 38-27-90(e) are amended by implication to replace the term 'Commission' each time it appears with the phrase 'Chief Insurance Commissioner.'

3. Section 38-3-280 is amended by implication to replace the term 'Commission' as it appears in the phrase 'has been licensed by the Commission' on line four and in the phrase 'as conferred by the Commission' on line seven with the term 'Commissioner.'

4. Section 38-5-1090(b) is amended by implication to replace the term 'Insurance Commission' as it appears on line three with 'Chief Insurance Commissioner.'

5. Section 38-37-110 is amended by implication to delete the words 'with the approval of the Commission' wherever they appear. Further, the word 'Commission' as it appears in Section 38-37-110(6) is replaced by 'Chief Insurance Commissioner.'

6. Section 38-37-320 is amended by implication to delete references to approval by the Insurance Commission of plans promulgated by the Commissioner.

7. Section 38-37-520, 530, 540, and 550 are amended by implication to delete references to approval by the Insurance Commission of plans promulgated by the Rate Division. Parts (d), (e) and (f) of Section 38-37-540 are amended to replace the term 'Commission' where found therein with the term 'Commissioner.'

8. Section 38-37-790 is amended by implication to delete references to the 'Commission' and replace them with 'Commissioner.' Any approval authority vested in the Commission by this section now rests with the Commissioner.

9. Section 38-37-910 is amended by implication to delete references to approval by the Commission of plans promulgated by the Commissioner.

10. Section 38-37-1500 is amended by implication to delete references to 'the Commission.' Part (a)(1) of this section is repealed by implication. The powers formally vested in 'the Commission under sub parts (2), (3) and (4) of part (a) are now vested in the Commissioner.

11. Section 38-39-10(1), (3), and (5) is amended by implication to replace references to 'the Insurance Commission of South Carolina' with 'Chief Insurance Commissioner.'

12. Section 38-39-110 is amended by implication to replace the term 'Commission' wherever it appears throughout the section with the term 'Chief Insurance Commissioner.'

13. Section 38-51-150 is amended by implication to delete the phrase 'subject to review by the Insurance Commission.'

Although Act 488 is a relatively brief enactment, it has broad and sweeping effects upon the Insurance Commission and the Chief Insurance Commissioner. It was clearly the intent of the General Assembly to remove from the Insurance Commission the duty to oversee routine administrative functions and to place that duty with the Chief Insurance Commissioner. Based upon the applicable principles of law, it is the opinion of this office that Act 488 goes far beyond the specific amendments found within the body of that Act. It repeals or amends by implication those sections from Title 38 listed above.

*3 Clifford O. Koon, Jr.
Assistant Attorney General

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