

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 25, 1986

Senator John E. Courson
Richland County Legislative Delegation
P. O. Box 192
Columbia, South Carolina 29202

Representative Jean Hoefer Toal
Richland County Legislative Delegation
P. O. Box 192
Columbia, South Carolina 29202

C. Heyward Belser, Chairman
Richland County Election Commission
P. O. Box 192
Columbia, South Carolina 29202

Dear Senator Courson, Representative Toal and Mr. Belser,

Your recent letter has been referred to me for reply. You have stated that you have been advised that the U.S. Department of Justice has precleared the Act bearing ratification number 350 which concerns the election of Richland County School District Trustees. You have inquired as to the correct procedure for receiving candidate filings and conducting this election. This question has arisen due to a possible conflict in the provisions of Act No. 344 of 1986.

Act R350 states in part at Section 5 of that Act that

[a]ll persons desiring to qualify as a candidate and be elected to the boards shall file written notice of candidacy with the county election commission at least sixty days before the date set for the election but not earlier than ninety days prior to the election.

This Act was approved by the Governor on March 5, 1986.

Senator Courson
Representative Toal
Mr. Belser

August 25, 1986

The General Assembly last year also enacted a general law, Act 344, that provides uniform dates for filing statements of candidacy. Section 3 of that Act which is now Section 7-13-352 provides that

[a]ny candidate for a nonpartisan office, multi-county district, county-wide or less than county-wide, to be voted on at the time of the general election, who qualifies by statement of candidacy shall file the statements of candidacy with the authority responsible by law for conducting the election not later than twelve o'clock noon on September first, or if September first falls on Sunday, not later than twelve o'clock noon on the following Monday.

This Act was approved by the Governor on March 7, 1986, making it the Act enacted last in time. This Act also has been precleared by the Justice Department and, therefore, has taken effect. This Act would allow a shorter period of time for receiving filings of candidacy.

Statutes that appear inconsistent must be reconciled whenever possible; to the extent of any inconsistency, the special statute generally will prevail. Criterion Insurance Company v. Hoffmann, 258 S.C. 282, 188 S.E.2d 459 (1972). However, there are instances when a general statute will prevail over a special statute. See, Associated General Contractors of California v. Secretary of Commerce, 441 F.Supp. 955 (C.D. California 1977); United States v. Windle, 158 F.2d 196 (8th Cir. 1946).

In Rhodes v. Smith, 273 S.C. 13, 254 S.E.(2d) 49 (1979) the Supreme Court held that

[s]tatutes of a specific nature are not to be considered as 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. State v. Brown, 154 S.C. 55, 151 S.E. 218 (1930); State v. Harrellson, 211 S.C. 11, 43 S.E. (2d) 593 (1947); Guilbreth v. Prudence Life Insurance Company, 241 S.C. 46, 127 S.E.(2d) 132 (1962)

There is no direct reference in Act 344 to the specific act regarding Richland County School Districts 1 and 2; nor is there a clear intent to repeal this specific act. In Sutherland

Senator Courson
Representative Toal
Mr. Belser

August 25, 1986

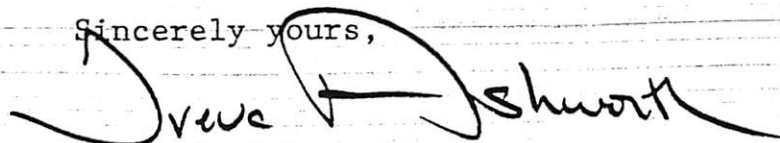
Statutory Construction, Vol. 2A §51.05 (4th Ed.) the following rule of statutory construction is set out

[w]here one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict the latter will prevail, regardless of whether it was passed prior to the general statute, unless it appears that the legislature intended to make the general act controlling. (Emphasis added)

The Legislature is presumed to be aware of a legislation dealing with the same subject. Bell v. S.C. Highway Department, 204 S.C. 462, 30 S.E.2d 65 (1944). The legislature, therefore, is presumed to be aware of the provisions of these two acts and would be presumed to specifically intend R350 to provide an exception to the general law that they enacted two days after the specific act. The legislature process leaves somewhat to chance the timing of the passage of various bills, it would be absurd to read into the chance passage of an act two days later in time the specific intent to repeal by implication the specific filing requirements of R350. Further repeal by implication is not favored and will not be found without a clear showing of intention to repeal. Buchanan v. State Treasurer, 68 S.C. 411 (1903); Miller v. Railroad Company, 90 S.C. 249 (1911); State v. Hood, 181 S.C. 488 (1936); 16 CJS Constitutional Law. §§26, 42.

Of course, only a court of competent jurisdiction could make a definitive ruling on this question. However, it would appear that the provisions of R350 which state that filing will end sixty days before the election, would control over the general provisions of Act 344 which would have filing end at an earlier date of September 1.

Sincerely yours,



Treva G. Ashworth
Senior Assistant Attorney General

TGA/ss



ROBERT D. COOK
EXECUTIVE ASSISTANT OPINIONS