

October 24, 2007

Buford S. Mabry, Jr., Chief Counsel  
South Carolina Department of Natural Resources  
P. O. Box 167  
Columbia, South Carolina 29202

Dear Buford:

In a letter to this office you referenced the provisions of S.C. Code Ann. §50-3-310 which was amended in 1998 to state that

[t]he director...(of the Department of Natural Resources)... shall appoint the enforcement officers of the Natural Resources Enforcement Division, subject to their receiving a commission from the Governor. An enforcement officer shall be issued a commission by the Governor upon the recommendation of the director. An enforcement officer may be removed by the director at his discretion. (emphasis added).

Formerly, such provision stated in part that “[a] conservation officer may be removed by the...(South Carolina Wildlife and Marine Resources)...Commission upon proof satisfactory to it that he is not fit for the position.” You have questioned whether the 1998 amendment supersedes grievance rights for state employees, and in this case, law enforcement officers, as provided in S.C. Code Ann. §§ 8-17-310 et seq., first enacted in 1982 and amended as late as 2006. These provisions establish a state employee grievance procedure and, based upon my review, there are no provisions applicable to the procedure specifically established for enforcement officers. See: Section 8-17-370.

In Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979), the State Supreme Court addressed the question of the authority of a sheriff to terminate a deputy who violated the sheriff’s policy which prohibited “moonlighting” at an establishment that sold alcoholic beverages. The Court noted that S.C. Code Ann. § 23-13-10 provides that deputy sheriffs serve at the “pleasure” of the sheriff. Notwithstanding such “pleasure” statute, the deputy appellant argued that the county grievance

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policy, consistent with S.C. Code Ann. §§ 8-17-110 et seq., served as a limitation on the unbridled “pleasure” of the sheriff. The Court disagreed stating 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[s]tatutes of a specific nature are not to be considered as repealed by a later general statute unless there is a direct reference to the former statute or the intent of the legislature to repeal the earlier statute is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...Title 8 contains no direct reference or implication that is supersedes Title 23. Therefore, a deputy sheriff in South Carolina serves at the “pleasure” of the sheriff.

273 S.C. at 16. Therefore, a sheriff’s decision to terminate the deputy was upheld.

In Anders v. County Council for Richland County, 284 S.C. 142, 325 S.E.2d 538 (1985), the chief investigator for the solicitor’s office was terminated by the solicitor. The termination was challenged by the investigator by an appeal to the county council who determined that the investigator was wrongfully terminated. The investigator was then reinstated. On appeal to the Supreme Court, the solicitor alleged that S.C. Code Ann. §1-7-405, which states that employees of a solicitor serve at his “pleasure”, controls over S.C. Code Ann. § 4-9-30(7), which provides for challenging employment termination by an elected official. The Court ruled 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...(citing Rhodes, supra)...

284 S.C. at 144.

In Heath v. Aiken County, 295 S.C. 416, 368 S.E.2d 904 (1988), the Supreme Court again addressed the relationship between the sheriff’s “pleasure” statute and the relevant grievance statute, Section 4-9-30(7). In Heath, the Court again repeated its rationale in Rhodes stating

We therefore hold that for purposes of personnel system policies under Section 4-9-30(7)...(which authorizes personnel systems for county employees)..., the legislature did not intend the term “employees” to include deputies. The statutory grievance procedure is...inapplicable to deputies. First, as stated above, deputies are not “employees” for purposes of Section 4-9-30(7). Next, the statutes establishing the relationship between sheriff and deputy should not 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”...Section 4-9-30(7) is general; it “speaks in a broad generalization referring only to elected officials.”...In Anders, we held that Section 4-9-30(7) is subordinate to a statute specifically stating that employees of a solicitor serve at his “pleasure”.

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295 S.C. at 419.

Furthermore, in Botchie v. O'Dowd, 299 S.C. 329, 384 S.E.2d 727 (1989), the Supreme Court reiterated that its holding that "Heath stands for the proposition that a sheriff's hiring and firing of deputies is 'unreviewable' in terms of a council-implemented grievance procedure." 299 S.C. at 332. Similarly, the Court reiterated its holding in Anders that "...Section 4-9-30(7) is subordinate to a statute specifically stating that employees of a solicitor serve at his 'pleasure'." 299 S.C. at 334.

A prior opinion of this office dated June 20, 1990 citing these referenced decisions determined that "...specific 'pleasure' statutes are not to be considered repealed or amended by general grievance provisions unless a legislative intent to do so is evident." Furthermore, as referenced in a prior opinion of this office dated September 5, 2006, it is a general rule that "...specific laws prevail over general laws..." See also: Op. Atty. Gen. dated November 3, 2003 ("later specific statutes will prevail over earlier general ones.").

Section 50-3-310 is similar to S.C. Code Ann. §1-3-240(B) which states that

[a]ny person appointed to a state office by a Governor, either with or without the advice or consent of the Senate, other than those officers enumerated in subsection (c) may be removed from office by the Governor at his discretion by an Executive Order removing the officer. (emphasis added).

An opinion of this office dated May 23, 1990 stated that "...whether the instant situation is one appropriate for the Governor to initiate his authority under Section 1-3-240 is, of course, a matter to be exclusively decided by the Governor." See also: Ops. Atty. Gen. dated March 16, 2004 and August 31, 1990.

In further support of the conclusion that Section 50-3-310 is controlling in allowing removal of an enforcement officer by the Director at his discretion is the rule cited by you from Denene, Inc. v. City of Charleston, 352 S.C. 208, 574 S.E.2d 196 (2002). In its decision, the Court cited the rule of statutory construction that a court "...must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something." 574 S.E.2d at 198. Such would be applicable to the amendment to Section 50-3-310.

Consistent with the above, in the opinion of this office, the provisions of Section §50-3-310 which state that "[a]n enforcement officer may be removed by the director at his discretion" controls. Any provisions of Sections 8-17-310, *et seq.* establishing the state employee grievance procedure which may pertain to the removal of such enforcement officers are superseded by such provision.

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If there are any questions, please advise.

Sincerely,

Henry McMaster  
Attorney General

By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Assistant Deputy Attorney General