



ALAN WILSON
ATTORNEY GENERAL

November 26, 2012

The Honorable John L. Scott, Jr.
Senator, District No. 19
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Scott:

You have asked for our opinion concerning the question of "who has the authority to terminate the Director of the Board of Elections and Voter Registration of Richland County." As you note, South Carolina Code Ann. Sections 7-27-405(A)(5) and (6) provide as follows:

- (5) The board may choose to elect a vice chair, a secretary, and other officers the board considers appropriate. The initial director must be employed by a majority of the Richland County Legislative Delegation. Subsequently, the board shall employ the director, determine the compensation, and determine the number and compensation of other staff positions. Salaries must be consistent with the compensation schedules established by the county for similar positions.
- (6) The director is responsible for hiring and management of the staff positions established by the board that report to the director. Staff positions are subject to the personnel system policies and procedures by which all county employees are regulated, except that the director serves at the pleasure of the board.

Law/Analysis

In resolving your question, several principles of statutory construction are applicable. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 581 (2000). Courts "will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute's operation." *Harris v. Anderson County Sheriff's Office*, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009). "If a statute's language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and a court has no right to impose another meaning." *Strickland v. Strickland*, 375 S.C. 76, 85, 650 S.E.2d 465, 472 (2007). "[S]tatutes must be read as a whole, and sections which are part of the same general statutory scheme must be construed together and each one given effect, if reasonable." *State v. Thomas*, 372 S.C. 466, 468, 642 S.E.2d 724, 727 (2007). Pursuant to the Last Legislative Expression Rule, "in instances where it is not possible to harmonize two sections of a statute, the later legislation supersedes their earlier enactment." *Williams v. Town of Hilton Head Island*,

S.C., 311 S.C. 417, 421, 429 S.E.2d 802, 804 (1993). This latter principle is applicable where two provisions in the same Act are in conflict. As we stated in *Op. S.C. Att'y. Gen.*, February 6, 2004 (2004 WL 323935), "[a]ny ambiguity in resolving the apparent conflict between the two provisions in the same act may be resolved by the statutory rule that the last expression of legislative will is law" As we have recognized,

As a rule of construction ... where there is an irreconcilable conflict between different provisions of a statute, that provision which is last in order of position will prevail as being the latest expression of legislative will.

Op. S.C. Att'y. Gen., July 3, 1968, quoting 50 Am.Jur. *Statutes*, § 365 at 370.

In addition, as we have observed in earlier opinions, "... specific laws prevail over general laws" *Op. S.C. Att'y. Gen.*, May 30, 2008 (2008 WL 2324789), quoting *Op. S.C. Att'y. Gen.*, April 20, 2003. See also, *Op. S.C. Att'y. Gen.*, November 20, 1997. Furthermore, as set forth in a prior opinion of this Office, dated October 24, 2007, "... later specific statutes will prevail over earlier general ones."

The provisions of Sections 5 and 6 of Act 17 of 2011 appear to conflict with respect to the authority to terminate the Director of the Board of Elections and Voter Registration of Richland County. Section 5 states that "[t]he initial director *must be employed by* a majority of the Richland County Legislative Delegation." Section 6, however, provides that

[t]he director is responsible for hiring and management of the staff positions established by the board that report to the director. Staff positions are subject to the personnel system, policies and procedures by which all county employees are regulated, *except that the director serves at the pleasure of the board.*

(emphasis added). Thus, the question is whether a majority of the Richland County Legislative Delegation possesses the authority to terminate the "initial director" or whether such termination is governed by the express language in Section 6 that "the director serves at the pleasure of the [B]oard [of Elections and Voter Registration]."

A brief review of the underlying history of § 7-27-405 is instructive. For many years, county election commissions and county boards of voter registration were separate entities. The county board of voter registration was governed by § 7-5-10 and the election commission for each county by § 7-13-70. Then, beginning in the 1970s and 1980s, one-by-one, county boards of voter registration and county election commissions were consolidated in a particular county by means of local legislation.

Meanwhile, in 1989, while this process of gradual consolidation was ongoing, we addressed the question of whether § 7-13-70 or any other general law provision of Title 7 gave county election commissioners the power to hire and fire a director or other employees of the county election commission. While we found that no provision addressed the issue expressly, nonetheless, in the April 6,

1989 opinion, we concluded that the county election commission possessed inherent or implied power to hire and fire. *Op. S.C. Atty. Gen.*, No. 89-41, April 6, 1989 (1989 WL 406131).

In 2008, pursuant to Act No. 312, the General Assembly enacted legislation codifying the various local laws which had combined county election commissions and board of voter registration. Such provisions are found at § 7-27-10 *et seq.* Section 7-27-120 states that the purpose of Act No. 312 is that "[b]y codifying the provisions for county boards of registration and election commissions, the General Assembly intends to provide greater public access to the statutory provisions for registering voters and coordinating elections in this State." Section 7-27-110 provides that "[t]hose counties that do not have combined boards of registration and election commissions must have their members appointed and powers of their boards and commissions as provided by Sections 7-5-10 and 7-13-70."

Richland County was, as of 2008, one of those counties. The Board of Voter Registration and the Election Commission remained separate entities. Thus, § 7-25-405 provided in 2008 that "the Richland County Election Commission and the Richland Board of Registration must have their members appointed and powers of their board and commission as provided by Sections 7-5-10 and 7-13-70." See also, *Op. S.C. Atty. Gen.*, July 1, 2010 (2010 WL 3048334). Accordingly, as of 2008, the reasoning of our 1989 opinion would have applied to the Richland County Election Commission. That being the case, as of 2008, the Richland County Election Commission would have possessed the implied power to discharge its director.¹

However, in 2011, by Act No. 17, the General Assembly rewrote § 7-27-405 completely, altering Richland County's election oversight structure. The purpose of Act No. 17 of 2011, as stated in the Act's Title, was "to combine the Richland County Election Commission and the Richland County Board of Registration into a single entity." Such legislation required one combined election body, a consolidation similar to that legislated by local law in many other counties. Members (five) of the Richland Board are to be appointed by a majority of the Richland County Legislative Delegation. The Delegation also appoints the Board's Chairman, pursuant to Section 4. As noted, Sections 5 and 6, as quoted above, were included as part of Act No. 17 of 2011.

These two provisions of such Act appear ambiguous because the "initial director," of the Board of Elections and Voter Registration, is singled out, Section 5 providing that "[t]he initial director must be employed by a majority of the Richland County Delegation." Subsequent directors are employed, by contrast, by the Board. No mention is made that the Legislative Delegation may remove the "initial director," however. One possible reading of this provision is that the Legislature intended that, with respect to the "initial director," i.e. the director appointed by the Delegation, the Delegation also possesses the implied power to remove this individual. This reading is plausible because of the separate treatment in the Act of an "initial director" and the fact that, as we have often recognized, the power to appoint typically includes the implied power to remove. See, *Op. S.C. Atty. Gen.*, October 22, 2007 (2007 WL 3317619). There, we stated as follows:

¹ Our 1989 Opinion was reaffirmed in an opinion, dated October 22, 2007 (2007 WL 3317619). Moreover, it is well recognized the absence of any legislative enactment following the issuance of an opinion of the Attorney General strongly suggests that the views therein were consistent with the legislative intent." *Op. S.C. Atty. Gen.*, October 23, 2012 (2012 WL 5376057).

[a]s a general rule, the power to remove an officer is vested with the authority possessing the power to make the appointment. See, *Ops. S.C. Att'y. Gen.*, March 15, 2000; June 3, 1962. When the term is not fixed by law, and the removal power is not governed by constitutional or statutory provision, the power of removal is incident to the power to appoint. *State ex rel. Williamson v. Wannamaker*, 213 S.C. 1, 48 S.E.2d 601 (1948).

On the other hand, *the only express authority* relating to discharge of a director is contained in Section 6, which states that "the director serves at the pleasure of the board." Use of such broad language in a statute usually "means that the employer possesses unrestricted control over the employee's appointment, including removal." *Op. S.C. Att'y. Gen.*, August 20, 1986 (1986 WL 289820). There is no express indication in the statute that such broad "pleasure" authority in the Board is inapplicable to the "initial director." Indeed, if Section 6 does not apply to the "initial director," such would mean that other parts of Section 6, such as that portion which provides that the "director is responsible for hiring and management of the staff positions established by the board that report to the director" would be inapplicable to the "initial director" also. See, *Smalls v. Weed*, 293 S.C. 364, 360 S.E.2d 531 (Ct. App. 1987) [Where the same word is used more than once in a statute, it is presumed to have the same meaning throughout unless a different meaning is necessary to avoid an absurd result."].

Further, if the General Assembly had intended that the initial director is responsible to the Legislative Delegation in terms of his or her retention, oversight or discharge, rather than to the Board, it would be logical to have so stated expressly rather than by implication. This is especially true in light of the fact that Section 6 states specifically that the director serves at the "pleasure" of the Board. In other words, if the Legislature had wished the Delegation to possess the authority to terminate or discharge the "initial director," it should have stated that intention expressly. Any implied authority in the Delegation, stemming from the Delegation's right to "employ" the "initial director," cannot serve to limit the express authority resting in the Board of Elections and Registration of Richland County, to retain or discharge a director at its "pleasure." We cannot read into the law an exception for the "initial director" in the Board's authority to terminate any director at its "pleasure." Reading Sections 5 and 6 together, and in harmony with one another, it is the Delegation which "employs" the initial director – i.e. appoints such person, but it is the Board which possesses the authority to retain, oversee, supervise or discharge such individual at its "pleasure."

A close reading of Section 5 confirms this interpretation. The Legislature used the word "employed" not only to relate to the employment of the "initial director" by the Delegation, but also provided that "[s]ubsequently, the board shall *employ* the director, determine the compensation, and determine the number and compensation of other staff positions." (emphasis added). Again, it must be presumed that the Legislature intended the same meaning with respect to the word "employ" throughout this Section. Since it is undisputed, certainly, and thus safe to say, that the Board possesses the clear authority to terminate or discharge all "subsequent" directors, pursuant to Section 6, one can logically conclude that use of the word "employ" or "employed" in this instance relates only the "appointment" power and not the usually accompanying discharge power. Otherwise, Section 6's provision relating to the director serving at the "pleasure" of the Board may be seen as redundant.

Thus, reading Sections 5 and 6 together, and as a whole, the Delegation possesses only the appointment authority, but not the supervision and discharge authority over the "initial director." This interpretation gives full faith to the last expression of legislative will in the statute, and to the only specific provision relative to the discharge of the director – that the "director serves at the pleasure of the board [of Elections and Voter Registration]."²

Conclusion

Sections 5 and 6 of Act No. 17 (§ 7-27-405) are ambiguous with respect to the question of who possesses the direct authority to remove or discharge the current Director of the newly consolidated Board of Elections and Voter Registration for Richland County. The law is unclear because it distinguishes between an "initial director," appointed by the Legislative Delegation, and subsequent directors who are appointed by the Board. While the statute expressly states that the "director" serves at the Board's "pleasure," the law does not address directly whether the Legislature intended to treat the "initial director" differently in terms of the discharge of such person. Thus, we must apply a number of principles of statutory construction in order to reconcile this apparent conflict in the statute.

Despite the ambiguity, based upon various principles of interpretation, including that of common sense, we believe that the better interpretation and the one a court would likely adopt is that the direct discharge authority of the "initial director" lies with the Richland Board of Elections and Voter Registration, whose members are appointed by the Delegation. The only express authority relating to the discharge of the director contained in the statute states that "the director serves at the pleasure of the Board." There is no express indication in the law that such broad "pleasure" language, which generally conveys the power to discharge for any reason or no reason at all, is inapplicable to the "initial director." We cannot read into the law such an exception. Moreover, an exemption of the "initial director" from the Board's broad discharge authority would create other unnecessary interpretation questions in the statute, as explained above.

Thus, we must presume that if the Legislature had intended, with the passage of Act No. 17 of 2011, that the Delegation possesses the authority to directly discharge the "initial director," it would have so stated expressly. This is particularly so in light of the fact that, until 2011, the Richland County Election Commission was a separate entity from the Board of Registration and that the Election Commission's authority was governed by § 7-13-70. As we have opined, this general law provision (§ 7-13-70) implicitly provides that the discharge power with respect to the Director resides in the Commission. Moreover, in view of the fact that Act No. 17's constitutionality is now being challenged in

² We do not address herein the constitutionality of Act 17 of 2011 under Art. VIII, § 7 of the South Carolina Constitution, which prohibits "laws for a specific county" However, we note that in an Opinion, dated August 14, 2007, we concluded that a similar local law, Act 127 of 2003, a statute which abolished the Charleston County Board of Voter Registration and the Charleston County Election Commission and created instead the Board of Elections and Voter Registration for Charleston County was likely unconstitutional as being in violation of Art. VIII, § 7. See *Op. S.C. Att'y. Gen.*, August 14, 2007 (2007 WL 3244888). Whether the codification of all local laws relating to the structure and authority of the Boards of Election and Voter Registration would make any constitutional difference under Art. VIII is beyond the scope of this opinion and is for the courts to decide. Apparently, an action has been recently filed questioning the constitutionality of the Richland County Act.

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court, § 7-13-70, Richland County 's predecessor authority, may govern discharge in the event the Richland County law is declared invalid. While it may be argued that, pursuant to Act No. 17 of 2011, the Delegation possesses implied authority to remove the "initial director," since the Delegation is the appointing authority of that person, we do not believe the Legislature so intended this conclusion in light of the express authority of the Board to discharge "at pleasure" contained in the same statute. By comparison, in other local laws, the Legislature has expressly provided that the Delegation possesses the authority to discharge the executive director (§ 7-27-215 (E)) [Aiken County] or staff (§ 7-27-425(E)) [Union County].

Accordingly, reading Sections 5 and 6 together as a whole, it is our opinion that a court would likely conclude that the direct discharge authority of the "initial director" rests with the Board of Elections and Voter Registration. The Legislative Delegation, in our view, possesses the appointment authority, but not the supervision and direct discharge authority of the "initial director." Such an interpretation gives full faith to the last expression of legislative will, contained in Act No. 17 of 2011 – that the director serves at the "pleasure" of the Board.³

Sincerely,



Robert D. Cook
Deputy Attorney General

RDC/an

³ Of course, the Delegation retains its authority with respect to appointment of Board members.