



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 14, 1995

J. Christian Adams, General Counsel
Office of the Secretary of State
Post Office Box 11350
Columbia, South Carolina 29211

RE: Informal Opinion

Dear Mr. Adams:

You have sought an opinion concerning the continued viability of S.C. Code Ann. §39-55-15 et seq. You have advised that your office continually receives requests for clarification of these statutes since the State Cemetery Board has been terminated. You have specifically asked which portions of Chapter 55 of Title 39 remain in effect and which portions would be considered repealed. You stated your belief that the entire Chapter 55 of Title 39 has not been repealed; I concur with your belief, as more fully discussed below.

Pursuant to Chapter 20 of Title 1, South Carolina Code of Laws, the State Cemetery Board was terminated. The effect of termination of such an agency is governed by §1-20-30, which provides:

Upon termination an agency may be continued in existence no later than July first of the next succeeding year for the purpose of winding up its affairs, at which time it shall cease all activities. During the windup period termination shall not reduce or otherwise limit the powers or authority of such agency. At the conclusion of the windup period, all laws and regulations governing, authorizing and otherwise dealing with the terminated agency shall be deemed repealed to the extent to which such laws and regulations address the terminated agency. Termination of an agency shall not cause the dismissal of any claim or right of a citizen against any such

J. Christian Adams, General Counsel

Page 2

August 14, 1995

agency or any claim or right of an agency terminated pursuant to this act which is subject to litigation. Any and all monies remaining after the windup period shall revert back to the general fund. [Emphasis added.]

In light of the emphasized language, it is necessary to examine the laws in Chapter 55 of Title 39 to determine whether each law would be one "governing, authorizing and otherwise dealing with the terminated agency." If such law meets that description, such law would be deemed to be repealed; otherwise, such law would remain viable.

It is helpful to review certain rules of statutory construction in this regard. Laws may be repealed expressly or impliedly. State ex rel. McLeod v. Mills, 265 S.C. 21, 180 S.E.2d 638 (1971). Repeal of a statute by implication is not favored, however. Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). Repeal by implication will not be indulged if there is any reasonable construction of the statute that can be applied. State ex rel. McLeod v. Ellisor, 259 S.C. 364, 192 S.E.2d 188 (1972). The presumption is always against implied repeal when express terms of repeal are not used. E. M. Matthews Co. v. Atlantic Coast Line Ry. Co., 102 S.C. 494, 86 S.E. 1069 (1915). With these rules in mind, the statutes comprising Chapter 55 of Title 39 will be examined individually.

§39-55-15 - This statute does not refer to the Cemetery Board in any respect and thus would be considered viable.

§39-55-25 - This statute would be considered viable except to the extent that "regulation by the State" refers to regulation by the Cemetery Board.

§39-55-35 - This statute would be considered viable with the exception of subsection 1 which contains the definition of "Board," since the Cemetery Board has been terminated.

§39-55-45 - This statute would be considered repealed, as the Cemetery Board has been terminated and its existence no longer authorized.

§39-55-55 - This statute would be considered repealed, as there is no need for appointment powers to a board no longer in existence.

§39-55-65 - This statute would be considered repealed, as there is no need for an office, notice of meetings, or compensation of board members.

§39-55-75 - This statute would be considered repealed, as there is no need for meetings of the board.

J. Christian Adams, General Counsel

Page 3

August 14, 1995

§39-55-85 - This statute would be considered repealed, as there is no need for a budget, source of funds, or license fees.

§39-55-95 - This statute would be considered repealed, as there is no board to license cemeteries.

§39-55-100 - This statute would remain viable, as it relates to depth requirements for funeral vaults and has nothing to do with the Cemetery Board.

§39-55-105 - This statute would be considered repealed, since application to transfer control of a cemetery could no longer be made to the Cemetery Board.

§39-55-115 - This statute would be considered repealed, as there is no board to exercise the enumerated powers and duties.

§39-55-125 - This statute would remain viable except for the reference in subsection A to making records available for examination by a representative of the Cemetery Board and submitting a copy of the required report to the Board; the reference in subsection B as to making records of complaints available to the Board; and subsection C (3), which required the submission of regulations to the Board for its approval.

§39-55-135 - This statute would remain viable except for the provision for compliance actions which would have been taken by the Cemetery Board.

§39-55-145 - This statute would remain viable.

§39-55-155 - This statute would remain viable.

§39-55-165 - This statute would be considered repealed, as there is no longer a Board to receive the report, to prescribe the form, or request additional information.

§39-55-175 - This statute would remain viable.

§39-55-185 - Subsections A, B, C, D, G, H, and I would remain viable. Subsections E, F, and J would be considered repealed since these subsections refer to reports to be made to the Board.

§39-55-195 - This statute would be considered repealed, as there is no longer a license to be renewed annually.

J. Christian Adams, General Counsel

Page 4

August 14, 1995

§39-55-205 - This statute would be considered repealed, as there is no longer a license to be transferred.

§39-55-215 - In view of the disfavor of repeal by implication, this statute is probably still viable. The provisions therein do not relate to powers of the Board. The reference to licensees is most probably descriptive of the owner(s) of a given cemetery rather than a discussion of the status of a license holder. This conclusion is not free from doubt, however.

§39-55-225 - Subsections a (except for the last sentence therein), b, and c would remain viable. Subsection d would be considered repealed as it relates to functions of the Board.

§39-55-235 - This statute would remain viable.

§39-55-245 - This statute would remain viable.

§39-55-255 - This statute would remain viable.

§39-55-265 - This statute would remain viable except for the reference to regulations adopted by the Board and violations of Chapter 55 of Title 39 as would relate to the Cemetery Board.

§39-55-275 - This statute would be considered repealed, as it relates to powers of the Board.

§39-55-285 - This statute would be considered repealed, as it relates to powers of the Board.

§39-55-295 - This statute would remain viable.

§39-55-305 - This statute would be considered repealed, as it relates to the powers of the Board.

The foregoing is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust that it has satisfactorily responded to your inquiry and that you will advise if clarification or additional assistance should be necessary.

J. Christian Adams, General Counsel
Page 5
August 14, 1995

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General