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The State of South Carolina
# OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 14, 1996

The Honorable Robert L. Waldrep, Jr.
Senator, District No. 3
Post Office Box 597
Anderson, South Carolina 29622

RE: Informal Opinion

Dear Senator Waldrep:

By your letter of May 7, 1996, to Attorney General Condon, you had enclosed a copy of Act No. 819, 1970 Acts and Joint Resolutions, relative to the provision of ambulance services in Pickens County.[1] Referencing that act, you had inquired as to whether it is lawful for a county to restrict an ambulance service. You are concerned as to whether the rule may perhaps violate the rights of competition in Pickens County.

Act No. 819 creates the Pickens County Ambulance District, provides for the collection of certain fees, and purports to restrict the operation of ambulance service except in accordance with the provisions of the act. Section 2 mandates that the governing body of the district (the governing body of the county, according to section 1 of the act) is to provide adequate ambulance service in the district. The service may be provided by the county itself, or franchises or certificates of convenience and necessity to private concerns may be granted to provide the service. Section 5 of the act provides a criminal penalty for operation of ambulance service except as stated in the act:

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[1]I observe that this is a local law for Pickens County. It is possible that, after the advent of home rule, Pickens County Council may have adopted an ordinance which may have modified this local law. No comment is offered herein as to such ordinance if such exists.

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ambulance permit issued by the Department of Health and Environmental Control for that vehicle. Clearly, a state-wide scheme has been effectuated by the legislature.

In addition, the Department of Health and Environmental Control is directed by §44-61-30 to develop standards and prescribe regulations[2] for the improvement of emergency medical services, which encompasses ambulance service. The emergency medical service program

> shall include, but not be limited to, the regulation and licensing of public, private, volunteer or other type ambulance services; provided, however, that in developing such programs for regulating and licensing ambulance services, the programs shall be formulated in such a manner so as not to restrict or restrain competition; inspection and issuance of permits for ambulance vehicles; training and certification of EMS personnel; development, adoption and implementation of EMS standards and State plan; ... . [Emphasis added.]

Thus, a general and comprehensive scheme, applicable to all types of ambulance services, was envisioned. Additionally, the legislature stated its intention that competition not be restrained or restricted by licensing of ambulance services of any type.

Within this general and comprehensive legislative scheme, I was able to locate only one instance in which local governments would be permitted to deviate in some fashion from state law. Section 44-61-105, as to size requirements and exemptions for convalescent transport units,[3] provides:

> The governing body of any county may exempt, by ordinance, any ambulances used primarily as convalescent transport units from the size

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[2]Regulations concerning ambulances or emergency medical services are found in Volume 24 of the South Carolina Code. See R.61-7 (1976 & 1995 Cum. Supp.).

[3]A "convalescent vehicle" is defined at §44-61-20(s) as

> a vehicle that is used for making nonemergency calls such as scheduled visits to a physician's office or hospital for treatment, routine physical examinations, x-rays or laboratory tests, or is used for transporting patients upon discharge from a hospital or nursing home to a hospital or nursing home or residence, or other nonemergency calls.

> provisions of this chapter or any regulations relating to size requirements promulgated pursuant to this chapter. [Then follows a list of requirements which a vehicle must meet to be used as a convalescent transport unit if the vehicle does not meet size requirements named in federal specification KKK-A-1822.]

With that sole exception, I am of the opinion that the statutory scheme encompassed by §44-61-10 et seq. is intended to be the sole regulatory mechanism on ambulance services. To say that section 5 of Act No. 819 of 1970 should be given effect would be to permit Pickens County Council to veto the provision of ambulance services which have presumably otherwise met the licensure and other requirements of §44-61-10 et seq., an absurd and anomalous result at best.[4]

In construing any legislative enactment, it is the primary objective of both the courts of this State and this Office to determine and effectuate legislative intent if at all possible to do so. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. Caughman v. Columbia Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Construction will not be given a statute which would make its application unreasonable or absurd. Stephens v. Hendricks, 226 S.C. 79, 83 S.E.2d 634 (1954). A construction which best secures the rights of all the parties affected is the proper construction, in case of conflicting statutes. Feldman v. South Carolina Tax Comm'n, 203 S.C. 49, 26 S.E.2d 22 (1943). If conflicting statutes cannot be harmonized, the last in point of time or order of arrangement prevails, under the principle that the last expression of the legislative will is the law. Id.

In addition, while the implied repeal of a law is disfavored, Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970), the last expression of the legislative intent is the law and has the effect of repealing all prior inconsistent laws. Ward v. Cobb, 204 S.C. 275, 28 S.E.2d 850 (1944). Repeal of a special law by a subsequent general law has been addressed, as well; in 1A Sutherland Statutory Construction §23.15 is found the following:

> [S]ince there is no rule of law to prevent the repeal of a special by a later general statute, prior special or local statutes may be repealed by implication from the enactment of a later general statute where the legislative intent to effectuate a repeal is unequivocally expressed. A repeal will also result by

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[4]Such is not to say that Pickens County could not require a business providing ambulance services to obtain a business license, for example.

> implication when a comprehensive revision of a particular subject is promulgated, or upon the predication of a statewide system of administration to replace previous regulation by localities. [Emphasis added.]

The same principle is stated another way in 73 Am.Jur.2d Statutes §417:

> There is no rule which prohibits the repeal by implication of a special or specific act by a general or broad one. Thus, a special or specific act must yield to the later general or broad act where there is a manifest legislative intent that the general act shall be of universal application notwithstanding the prior special or specific act.

Considering all of the foregoing principles, I am of the opinion that Act No. 819 of 1970, as to certain aspects of provision of ambulance services in Pickens County, would be required to yield to the state-wide statutory scheme regulating the provision of ambulance services provided in §44-61-10 et seq. I am further of the opinion that section 5 of Act No. 819 of 1970 probably would not be given effect by the courts of this State because such would be inconsistent with the licensing and regulatory statutes of §44-61-10 et seq., as Pickens County Council would effectively have veto power over operation of ambulance services which the Department of Health and Environmental Control would have licensed and permitted; that would be an absurd result at best. Because I am of the opinion that the 1970 act would be required to yield to the general and comprehensive statutory scheme, I do not believe it necessary to address the anti-competitive nature of the 1970 act.

This letter 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.

With kindest regards, I am

Sincerely,

Patricia D Petway

Patricia D. Petway
Senior Assistant Attorney General