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STATE of SOUTH CAROLINA

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October 25, 1996

The Honorable Glenn F. McConnell
Senator, District No. 41
27 Bainbridge Drive
Charleston, South Carolina 29407

Dear Senator McConnell:

You have raised questions regarding "the recent reorganization of the Department of Health and Environmental Control (DHEC)." Particularly, your concern is that "the DHEC Commissioner has realigned the Office of Ocean and Coastal Resource Management (OCRM), formerly a DHEC division as a "bureau" within the Environmental Quality Control Division (ECQ). You further note that OCRM is the successor to the former Coastal Council, which was a "separate agency prior to the 1993 Government Accountability and Restructuring Act." (Act No. 181 of 1993). You reference several provisions in that Act and seek an interpretation regarding the interrelationship of these provisions. Your description of these provisions is as follows:

> [p]ursuant to the Restructuring Act, Coastal Council was transferred and incorporated in DHEC, with a specific requirement that DHEC "include a coastal division ...." See S.C. Code Ann. § 1-30-45. Effective July 1, 1994, Coastal Council was established as a separate division within DHEC known as the Office of Coastal Resource Management, headed by a deputy director. The Restructuring Act, in Section 1-30-10 (C), also provided:
>
> > Each department shall be organized into appropriate divisions by the governing authority of the department through consolidation or subdivision. The power to reorganize the

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Request Letter

> department supersedes any provision of law to the contrary pertaining to individual divisions:...
>
> However, Subsection (C) contained the following proviso: "provided, however, that the dissolution of any division must receive legislative approval by authorization included in the annual general appropriations act."

In the context of these facts and statutory provisions, the following questions are posed by you:

(1) How should the language in Section 1-30-10 (C) stating that the "power to reorganize the department supersede any provision of law to the contrary pertaining to individual divisions" be reconciled with the language in Section 1-30-45 requiring DHEC to include a coastal division?

(2) Does the merger of OCRM as a "bureau" within the EQC division amount to a "dissolution" of the OCRM division such as to invoke the language in Section 1-3-10(C) requiring legislative approval of the dissolution of a division?

(3) Does any other provision of law permit or prohibit this proposed reorganization?

LAW / ANALYSIS

In 1993, pursuant to Act No. 181, the General Assembly created a cabinet form of government in South Carolina, resulting in a major state agency reorganization. As part of that Act, the governing authority of each department was given broad authority to organize that particular department. Section 1-30-10 (C) provides as follows:

> [e]ach department shall be organized into appropriate divisions by the governing authority of the department through consolidation or subdivision. The power to reorganize the department supersedes any provision of law to the contrary pertaining to individual divisions; provided, however, the dissolution of any division must receive

> legislative approval by the authorization included in the annual general appropriation act.
>
> Any other approval procedures for department reorganization in effect on the effective date of this act no longer apply.

Another part of the Restructuring Act, codified at Section 1-30-45, deals specifically with the Department of Health and Environmental Control. Section 1-30-45 reads:

> [e]ffective on July 1, 1994, the following agencies, boards and commissions ... are hereby transferred to and incorporated in and shall be administered as part of the Department of Health and Environmental Control and to include a coastal division:
>
> (A) Department of Health and Environmental Control, formerly provided for at Section 44-1-10, et seq.;
>
> (B) South Carolina Coastal Council, formerly provided for at Section 48-39-10 et seq.;
>
> (C) State Land Resources Conservation Commission regulatory division, formerly provided for at Section 48-9-10 et seq.

(emphasis added).

In addition, Section 1032 of Act No. 181 reenacts Section 44-1-50 relating to the duties of the DHEC Board. First enacted in 1973, as part of Act No. 390 of 1973, this Act, creating DHEC, consolidated the old State Board of Health, the Executive Committee of the State Board of Health, the State Department of Health and the Pollution Control Authority "into one agency, to be known as the South Carolina Department of Health and Environmental Control which shall be governed by the South Carolina Board of Health and Environmental Control." Section 4 of Act No. 390 of 1973 provided that the "board shall provide for the administrative organization of the department and shall consolidate and merge existing duties, functions and officers of the former agencies as may be necessary for economic and efficient administration." The reference to "existing"

duties, functions and officers of the "former agencies" was thus obviously to those agencies which were merged under the DHEC Board in 1973.

As noted, the pertinent portion of 1973 Act was codified as Section 44-1-50 and remained in existence until the Restructuring Act of 1993. It was simply reenacted as Section 1032 of Act No. 181.

Thus, the issue central to your question is the relationship between these various provisions of the Restructuring Act.

A number of principles of statutory construction are important in resolving this question. First and foremost, in interpreting a statute, the primary purpose is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The enactment should be given a reasonable and practical construction, consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). Words used therein should be given their plain and ordinary meaning, unless something in the statute requires a different interpretation. First South Sav. Bank, Inc. v. Gold Coast Associates, 301 S.C. 158, 390 S.E.2d 486 (Ct. App. 1990).

Moreover, the full effect must be given each section of a statute, giving the words their plain meaning, and in the absence of ambiguity, words must not be added or taken from the statute. Home Building & Loan Assn. v. City of Sptg., 185 S.C. 313, 194 S.E. 139 (1938). The statute should not be construed by concentrating upon an isolated phrase. Laurens Co. Sch. Districts 55 and 56 v. Cox, 308 S.C. 171, 417 S.E.2d 560 (1992).

Any apparent conflicts within a statute must be resolved if reasonably and logically possible. Adams v. Clarendon Co. Sch. Dist. No. 2, 270 S.C. 266, 241 S.E.2d 897 (1978). Moreover, the Court has held that there is "a presumption that the legislature intended to accomplish something with a statute rather than to engage in a futile exercise." Berkebile v. Outen, 311 S.C. 50, 426 S.E.2d 760 (1993).

Finally, the general language of a statutory provision, although broad enough to include matter specifically dealt with in another part of the statute, will not be held to apply to such matter, since specific terms prevail over general terms in the same statute. Barnwell Bros. v. S.C. State Highway Dept., 17 F.Supp. 803 (D.S.C. 1937), revd. on other grounds, 303 U.S. 177, 58 S.Ct. 510, 82 L.Ed. 734 (1938). The last expression of the legislative will is the law, and therefore, where conflicting provisions are found in the same or different statutes, the last in point of time or order of arrangement

prevails. 1960-61 Op. Atty. Gen. 258. In addition, unsubstantial changes in language, incident to codification of a statute are not to be taken as changing the meaning of the original enactment. Raggio v. Woodmen of the World Life Ins. Soc., 228 S.C. 340, 90 S.E.2d 212 (1955). When a preexisting statute is codified, mere rearrangement of sections or restructuring of the form with no substantial change in phraseology, does not change the meaning, purpose, operation or effect thereof unless the intention to do so clearly appears. State v. Connally, 227 S.C. 507, 88 S.E.2d 591 (1955).

Applying these principles of statutory construction, it is my opinion that the better reading of the various statutes which are relevant here is that only the General Assembly could alter the status of OCRM as a separate division, or approve its placement as a bureau into another division. It is true that Section 1-30-10 (C) requires that "the power to reorganize" a department of state government "supersedes any law to the contrary pertaining to individual divisions". However, in this instance, the Restructuring law contained the subsequent provision in Section 1-30-45 requiring that the transfer and incorporation of the various agencies enumerated to DHEC should "include a coastal division". The use of this language is particularly striking when it is compared to other provisions in the Restructuring legislation relating to divisions in other agencies. Compare, e.g. § 1-3-75 [Department of Natural Resources to be "divided initially" into certain division]; § 1-3-105 [similar language relating to the Department of Transportation]. Virtually every agency's enabling authority uses the language "to be divided initially ... [into certain divisions]", rather than the phrase used in Section 1-30-45, "to include" a particular division, such as here a "coastal division". It is well-settled that the Legislature is presumed to have fully understood the import of words used in a statute, Powers v. Fidelity & Deposit Co. of Md., 180 S.C. 501, 186 S.E. 523 (1936), and that the enumeration of particular things excludes the idea of that which is not material. Pa. Nat. Mut. Cas. Insurance Co. of Parker, 282 S.C. 546, 320 S.E.2d 458 (Ct.App. 1984).

Moreover, in the much earlier House Judiciary Report on the Restructuring Bill, the Department [in that version, the Department of Environmental Regulation] was "to be divided initially into divisions for Coastal, Environmental Quality Control, Land Resources Regulatory and Water Resources Regulatory ...." Of course, this "initially divided" language was subsequently not contained in the final version. Nor was there, in final form, explicit mention of any DHEC division except a "coastal division" in Section 1-30-45 as a division to be included at DHEC. The final version's specific requirement that DHEC "include a coastal division", without the original "initially divided" language, as before, and without mention, as earlier, of any other division to be "include[d]," certainly indicates the legislative importance ultimately placed upon the "coastal division" in the Restructuring legislation.

As the much more specific instruction given by the Legislature in the Act, the ordinary rules of statutory construction would consider the requirement contained in Section 1-30-45 to govern. Moreover, to conclude that the more general language in Section 1-30-10 (C) controls with respect to OCRM, would mean that the Legislature, in essence, enacted a meaningless provision in Section 1-30-45; if a "coastal division" was required only until such time as reorganization might occur, such a reading would be to give little or no weight to the 1-30-45 provision requiring a "coastal division" to be "include[d]". One must assume that if the General Assembly went to the trouble to require that the "coastal division" be so "include[d]", such language meant something more than a momentary creation.[1]

Moreover, Act No. 181, Section 1235 [Restructuring law] also contained specific authority creating the Coastal Division of the Department of Health and Environmental Control. Now codified at Section 48-39-35, this provision states that "[t]he Coastal Division of the Department of Health and Environmental Control is created July 1, 1994." Notably, such language was not included in the earlier House Judiciary version of the Restructuring law. Upon creation of this "Coastal Division" by law, it is my

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[1] This reading is buttressed by various other legislative provisions. For example, the Restructuring Act contained a number of other references to the "coastal division", assigning various duties thereto. See, § 3-5-130; § 48-39-10 (C); § 48-39-345; § 48-55-10.

Significant also in terms of legislative intent is Section 49-6-30. This Section creates the Aquatic Plan Management Council. Section 49-6-30 provides that "[t]he council shall include one representative from each of the following agencies, to be appointed by the chief executive officer of each agency ... .

> (b) South Carolina Department of Environmental Control ... .
>
> (d) Coastal Division of the Department of Health and Environmental Control ... . (emphasis added).

It is evident that the General Assembly considered the "coastal division" a discrete entity, thus requiring separate representation from it, in addition to representation from DHEC. Under the present structure, such statutory provision cannot be followed. See also, Section 48-55-10 (same).

understanding that DHEC set this "division" up at the Deputy Commissioner level, which has continued as such, until recently.

Also instructive in this regard is Section 1-30-10 (E) which states that "[t]he department director [of a cabinet agency] may appoint deputy directors to head the divisions of their department, with each deputy director managing one or more of the divisions ... . The deputy director of a division is vested with the duty of overseeing, managing, and controlling the operation and administration of the division under the direction and control of the department director and performing such other duties as delegated by the department director." (emphasis added). It would appear at the very least from this Section and the language which it uses that the "division" level of the cabinet agency was intended in post-Restructuring to be the highest level under the department director - to be maintained at the Deputy Director level.[2]

Especially significant too is Section 1-30-10 (G). This provision, like Sections 1-30-45, 48-39-35, as well as the limiting proviso contained in Section 1-30-10 (C) (concerning "dissolution" of a division) were inserted in the Restructuring legislation at the end of the legislative process, in the Free Conference Committee. Section 1-30-10 (G) (1) provides as follows:

> Department governing authorities must, no later than the first day of the 1994 legislative session and every twelve months thereafter for the following three years, submit to the Governor and General Assembly reports giving detailed and comprehensive recommendations for the purposes of merging or eliminating duplicative or unnecessary divisions, programs, or personnel within each department to provide a more efficient administration of government services. Thereafter, the Governor shall periodically consult with the governing authorities of the various departments and upon such consultation the Governor shall submit a report of any recommendations to the General Assembly for review and consideration. (emphasis added).

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[2] Of course, the phrase used in Section 1-30-10 (E), "with each deputy director managing one or more of the divisions", cannot serve to authorize the elimination of a "division" by placing it as a "bureau" under a deputy director who is head of another "division."

Of course, it is well understood that a "recommendation" is not an act of final decisive power, but merely suggests the desirability of course of action to be followed by another. Mora County Bd. of Ed. v. Valdez, 300 P.2d 943 (N.M. 1956). It is the act of urging. State v. White, 535 So.2d 544, 545 (La.1988). Recommendatory action is advisory in nature. Lucas v. Bd. of County Road Comrs. of Wayne County, 348 N.W.2d 660, 670 (Mich. 1984). A "merger", in ordinary connotation, is to "absorb into" or "combine". Webster's New World Dictionary. Thus, it would appear that if the governing body of an agency desires to merge or eliminate a division, the director must make such a recommendation to the Governor and General Assembly, with the obvious inference that such is advisory only to be ultimately decided by the General Assembly.

Our conclusion need not rest alone upon any one of these various provisions, however. It would appear that all provisions in the Restructuring Act are consistent with one another. Even aside from the fact that the "coastal division" is singled out for special protection by separate Code provisions, Section 1-30-10 (C) itself contains a general proviso which we believe would be applicable here. The Legislature has mandated that "the dissolution of any division must receive legislative approval by authorization included in the general appropriation act." (emphasis added). While it is true that OCRM's functions have not changed, and it is also the case that OCRM still exists in another form, just not at the division level. However, Section 1-30-10 (C) references the "dissolution" of a division and the unassailable fact is that OCRM is no longer present as a "division." The term "dissolution" means "complete destruction". 27 C.J.S., "Dissolution". "Dissolution" also means to "adjourn" or "melt" or "disappear" or the termination of an entity such as a corporation. Webster's New World Dictionary. Clearly, as a discrete division, OCRM has disappeared or has been terminated from DHEC's organizational chart. To my mind, even though OCRM has not been abolished completely, the fact that it has been eliminated as a division, is sufficient to invoke Section 1-30-10 (C)'s requirement of legislative approval.

A good analysis of this situation, by analogy, can be found in the case Petry et al. v. Harwood Elec. Co, 124 A. 302 (Pa. 1924). There a company merged with other companies. Stock certificates required that upon "dissolution of the company, the preferred stock shall be first paid and redeemed at its par value in preference to common stock." The Court thus analyzed the question whether the merger of the company into other companies resulted in a "dissolution" for purposes of this requirement. The Supreme Court of Pennsylvania concluded it did. Said the Court,

> [d]id the merger work a dissolution of the company so far as the preferred stockholders are concerned? That in the domain of the practical a dissolution resulted from the merger there

> can be no doubt; after it was accomplished, the defendant's existence ended, so far as being a going, operating entity is concerned; its property and good will passed into the control and ownership of the new corporation, and it ceased to do business. The effect was to wipe out the merging companies and fuse them all into the new one created.

124 A. at 303. See also. 19 C.J.S., Corporations, § 807. ["[T]he merger of two corporations contemplates that one corporation will be absorbed by the other and will cease to exist while the absorbing corporation remains, generally a consolidation affects the dissolution of the original corporation and brings into existence a new corporation."]; Op.Atty.Gen., June 28, 1978 ["(i)n a merger, the absorbed corporation is automatically dissolved by force of law."]; City of Cola. v. Sanders, 231 S.C. 61, 97 S.E.2d 210 (1957) [in consolidation of two municipal corporations, the identity of the component elements is lost and becomes absorbed into the new creation].

If one analogizes the two divisions at DHEC to corporations, it is easy to see that the merger of OCRM into the Environmental Quality Control Division works a "dissolution" of OCRM as a division. It is well recognized that "[i]n the case of a merger, in the strict sense of the term, one of the combining corporations continues in existence and absorbs the other. In other words, the merged corporation is dissolved or ceases to exist." 19 Am.Jr.2d, Corporations, § 2627. See also Frandsen v. Jensen-Sundquist Agency, 802 F.2d 941 (7th Cir. 1986); U.S. v. Seaboard Coast Line R. Co., 326 F.Supp. 897 (M.D. Fla. 1971); Shannon v. Sam Langston Co., 379 F.Supp. 797 (W.D. Mich. SD. 1974) [merger contemplates the absorption of corporation's operations by the acquirer and practically contemporaneous dissolution of the acquired corporation as a legal entity]. It is well established that if a district is annexed into a municipal corporation, there is a dissolution by operation of law of the district, whose functions are then under the direction and control of the municipality. People v. Downey County Water District, 202 Cal.App.2d 786, 21 Cal.Reptr. 370 (1962). Likewise, here, while OCRM still continues to function as a bureau it is not as a division. Its status as a division is thus no more. Therefore, in my judgment, it was the intent of the General Assembly that the proviso requiring legislative approval for the "dissolution" of a division would be controlling here. The "coastal division" as a discrete division has now been "dissolved" by DHEC's reorganization.

It is true that the first two sentences of Section 1-30-10 (C) are particularly broad in scope. These two sentences provide that "[e]ach department shall be organized into appropriate divisions by the governing authority of the department through consolidation or subdivisions. The power to reorganize supersedes any provision of law to the contrary

pertaining to individual divisions ... ." As indicated, these two sentences were in the original versions of the Restructuring legislation, while the limiting proviso - requiring that the "dissolution of any division must receive legislative approval by the authorization included in the annual general appropriation act" - was not added until the very end of the restructuring process. A reconciliation of all three of the sentences is that the agency possesses broad authority to restructure itself and to initiate such internal reorganization; but if it desires to dissolve a division as part of such restructuring, it must receive legislative "approval" for its initiated actions of reorganization before such actions are finalized. When the word "approval" appears in a statute, it generally means an affirmative sanction by one person or by a body of persons of precedent acts of another person or body of persons. In Re Rooney, 11 N.E.2d 1937 (Mass. 1937). See also, State v. Duckett, 133 S.C. 85, 130 S.E. 340 (1925) ["approval" requires knowledge and the exercise of discretion after knowledge]. Here, in light of the fact that a DHEC division has been dissolved, the Legislature must be given the opportunity to approve or disapprove such action before it becomes effective.

Although also broad in scope, Section 44-1-50 does not alter this conclusion, in my opinion. As stated earlier, the general authority given DHEC to "consolidate and merge existing duties, functions and officers of the former agencies as may be necessary ..." was enacted in the specific context of the 1973 creation of DHEC. Such language was simply repeated and reenacted in the 1993 Restructuring Act. It is similar in substance and content to that authority given all governing bodies of departments in Section 1-30-10 (C) and is no broader than such authority. Like that statute, Section 44-1-50 would not be deemed to override the 1993 requirement in Section 1-30-10 (C) that any "dissolution" of a division requires legislative approval.

Reading all these various provisions together, and in harmony with one another, as the law requires that we do, it is my opinion that, while DHEC possesses broad authority to reorganize the Department pursuant to the Restructuring Act, such reorganization, where it includes the "dissolution" of a division, must be approved by the General Assembly in the Appropriations Act. Particularly in view of the special status given a "coastal division" by the Legislature, OCRM could not be removed or dissolved as a separate "division" unless so authorized by the General Assembly in the Appropriations Act.

CONCLUSION

Administrative efficiency and streamlining are certainly worthy objectives, and to fulfill these purposes, executive agencies such as DHEC were given broad authority under the Restructuring Act to reorganize and consolidate. In that regard, DHEC officials have

vigorously and credibly asserted their position that the Restructuring Act presently permits the placement of OCRM as a bureau under the Environmental Quality Control Division without the need for further legislative action.

However, I must disagree that the Act goes this far. The argument that OCRM still exists intact in another form at a lower level and is, therefore, not "dissolved" is not persuasive. Nothing in the Act suggests that the term "dissolution" is limited only to those instances where the elements of a division are dispersed or scattered. The proviso is designed, instead, to require legislative approval where a division has been abolished as such regardless of the particular method used. The Restructuring statute preserves a clear balance between executive reorganization and legislative review thereof. It is indisputable that OCRM, although not abolished completely, has been eliminated as a separate division and is now answerable to another division. To my mind therefore, the statutory mandate that agency divisions not undergo a "dissolution" without legislative approval must be deemed here controlling.

Moreover, the express requirement that the governing body of an agency desiring to merge or eliminate divisions must make a "comprehensive recommendation" of such plans to the Governor and General Assembly confirms this intent and thus must also be met. Finally, separation of powers dictates as well that the clear legislative will that DHEC "include a coastal division" must also be carried out unless and until the General Assembly changes the law itself.

Accordingly, it is my opinion that DHEC's placement of the Office of Coastal Resource Management under the Environmental Quality Control Division as a bureau must have the approval of the General Assembly prior to its becoming effective.

With kind regards, I am

Very truly yours,

Charles Molony Condon

Charles Molony Condon
Attorney General

CMC/ph