



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
 ATTORNEY GENERAL

August 15, 1997

The Honorable Ronald N. Fleming
 Member, House of Representatives
 P.O. Box 575
 Jonesville, South Carolina 29379

RE: Informal Opinion

Dear Representative Fleming:

Attorney General Condon has forwarded your recent opinion request to me for reply. You have asked whether the Union County School Board has the power to increase their per diem pay or if that power rests with the Union County Legislative Delegation.

Act No. 124 of 1969 merged the County Board of School Trustees and the County Board of Education to form a new governing body: the Union County Board of School Trustees. Section 6 of this legislation provides that members of the Board shall receive ten dollars and mileage as allowed by law for each meeting attended.

As an initial matter, after reviewing the relevant legislative materials, I believe that the Union County Legislative Delegation, in and of itself, has not been granted the authority to change the per diem of the members of the Board. Thus, the question turns to whether the Board has this power.

In order to answer this question, focus must be paid to two conflicting pieces of legislation.¹ The first is Act No. 124. As stated, Act No. 124 was adopted in 1969

¹ As noted in your letter, the Board was given fiscal independence in determining the tax levy necessary for financing current school operations and shall make an annual
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specifically for the Union County Board of School Trustees and sets each member's payment for attendance at meetings at ten dollars. From my research, it does not appear that there were comprehensive statutes at the time Act No. 124 was adopted addressing the payment of a per diem to school board members.

The second is a comprehensive law adopted in 1974 (Act No. 878). This act, codified as S.C. Code Ann. § 59-1-350, provides as follows:

Members of the county board of education or board of trustees may serve without pay. Each member of the board may receive a per diem for attendance at board meetings and may be paid mileage to and from such meetings. No member may receive per diem and mileage unless in actual attendance upon a meeting of the board. When any member of a board is directed to travel outside the county or school district on official business of the board, he may be allowed actual expenses incurred as a result.

This Office has concluded that the amount of the per diem and mileage payments provided by Section 59-1-350 are to be set by the school districts. Op. Atty. Gen. dated October 5, 1979.

In determining which one of these two conflicting legislative acts is controlling, rules of statutory construction must be analyzed. The repeal of a statute by implication is not favored under the law. In the Interest of Shaw, 274 S.C. 534, 265 S.E.2d 522 (1980). However, where two legislative acts are repugnant to, or in conflict with, each other, the one last passed, being the latest expression of the legislative will, will, although it contains no repealing clause, govern, control, or prevail, so as to supersede and impliedly repeal the earlier act to the extent of the repugnancy. City of Newberry v. Public Service Commission of South Carolina, 287 S.C. 404, 339 S.E.2d 124 (1986). Stated another way: "[T]he last act of the Legislature is the law." Id.

In addition, a repeal will result by implication when a comprehensive revision of a particular subject is promulgated. Sutherland Stat Const § 23.15 (5th Ed). Our

¹(...continued)

estimate in budget form of the funds necessary to carry on an efficient educational program for the school district and the tax millage necessary to provide such funds. Act No. 6 of 1975. In my opinion, based on the limited scope of this legislation, this Act should not be interpreted to grant the Board the power to increase their per diem.

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Supreme Court has ruled that as a general rule, the enactment of revisions and codes manifestly designed to embrace an entire subject of legislation, operates to repeal former acts dealing with the same subject, although there is no repealing clause to that effect. Independence Ins. Co. v. Independent Life and Acc. Ins. Co., 218 S.C. 22, 61 S.E.2d 399 (1950); See also Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981)(Administrative Procedures Act impliedly repeals inconsistent portions of Workmen's Compensation Act).

While not entirely free from doubt, in my opinion, since Act No. 124 and Section 59-1-350 are conflicting legislative acts, Section 59-1-350, as the last expression of the legislative will, is controlling.² Furthermore, Section 59-1-350 is comprehensive legislation on the subject of a per diem for members of school boards throughout the State and controls over the earlier legislation specific to Union County. This conclusion is supported by the fact that Section 59-1-350 was enacted after Act 124 and provides a greater basis for reimbursement than the act particular to the Union County Board of School Trustees inasmuch as it authorizes reimbursement to a board member for actual expenses incurred while traveling outside the county or school district on official business of the board. The act particular to Union County only authorizes payment and mileage for each meeting attended. Therefore, based on the specific facts of this case, in light of Section 59-1-350 and this Office's interpretation thereof, the Union County Board of School Trustees has the authority to set their per diem.

This letter is an informal opinion only. It has been written by a designated 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 remain

Very truly yours,



Paul M. Koch
Assistant Attorney General

² The conclusions reached in this Opinion are limited to the specific facts raised in your request. This Opinion should not be interpreted as to comment on those acts of the General Assembly which address a specific school board's per diem enacted after the adoption of Section 59-1-350.