4921 Library

The State of South Carolina

T. Travis Medlock
Attorney General

803-734-3970
Columbia 29211

Attorney General

July 28, 1992

The Honorable Harriet H. Keyserling
Chairman, Joint Legislative Committee on Energy
Box 1108
Beaufort, South Carolina 29901

The Honorable Timothy F. Rogers
Member, House of Representatives
Post Office Box 5151
Columbia, South Carolina 29250

Dear Representative Keyserling and Representative Rogers:

You ask whether the Joint Legislative Committee on Energy continues in existence despite a line-item veto by Governor Campbell of funding for the Committee. You state that Governor Campbell vetoed funding for the Committee on June 16, 1992.

The Joint Legislative Committee on Energy (hereinafter Committee) was created by the General Assembly in 1978 by Act No. 644, Part II, §19A, for the purpose of studying and making recommendations regarding state energy law, long range energy planning, and state agency and department energy related program administration. By passage of Act No. 680, §1 in 1988, the General Assembly also required the Committee to review and make recommendations as to approval and adoption of the state's energy policy and to review and approve or remand energy program projects approved by the Governor's Office as well as to provide oversight on the expenditure and use of oil overcharge funds.

Relevant to this discussion is proviso 3.25, which was included by the General Assembly in the 1992-93 Appropriation Act. The proviso states that:

> Only the Joint Legislative Committees for which funding is provided herein are authorized to continue operating during the current fiscal year under the same laws, resolutions, rules or regulations which provided for their operations during the prior fiscal year.

We have previously opined that provisos in an annual appropriations act inconsistent with general law would have the effect of suspending any conflicting provisions of the general law during the time the appropriations act is in effect. See S.C. Op. Atty. Gen. June 5, 1990. See also State ex rel McLeod v. Mills, 256 S.C. 21, 180 S.E.2d 638 (1971). You have asked whether the Committee may continue to perform the functions and duties as directed by the General Assembly. We must answer whether a funding veto by the Governor would activate proviso 3.25 as to the Committee and have the effect of repealing or suspending the functions, powers, and duties of the Committee during fiscal year 1992-93.

The authority is clear that, generally, lack of funding does not invalidate or abolish an office. See Carter v. Rathburn, 209 P. 945 (1922). However, proviso 3.25 must be considered to the extent that veto of funding by the Governor may work to impliedly repeal or suspend S. C. Code Ann. §§ 11-39-10, et seq. and 2-53-10 et seq.

In interpreting a statute or legislative act, it is of primary importance to ascertain and give effect to the intention of the legislature. Wright v. Colleton County School District, 301 S.C. 282, 391 S.E.2d 564 (1990); Langley v. Boyter, 284 S.C. 162, 325 S.E.2d 550 (1984). Also, repeal of statutes by implication is not favored and will not be allowed if any other construction is reasonable. City of Rock Hill v. S.C. D.H.E.C., 302 S.C. 160, 394 S.E.2d 327 (1990); State v. Bodiford, 282 S.C. 378, 318 S.E.2d 567 (1984); Todd's Ice Cream, Inc. v. S. C. Employment Security Commission, 281 S.C. 254, 315 S.E.2d 373 (S.C. App. 1984). Further, a statute which is specific is generally not considered repealed by a later general statute unless there is explicit legislative intent or a direct reference therein to the earlier statute. Rock Hill v. S. C. D.H.E.C., supra.

It would at most be speculation to say that proviso 3.25 concerning funding is indicative of legislative intent to repeal S. C. Code Ann. §§ 11-39-10, et seq and 2-53-10 et seq. Proviso 3.25 states that only the joint committees "for which funding is provided herein" are authorized to continue operating during the current fiscal year. Lack of legislative intent that proviso 3.25 is to work as a repeal or suspension of the authority of the Committee lies in the fact that only the General Assembly can provide funds or appropriations through the appropriations act. It is the General Assembly which would

"provide funds herein" for the joint legislative committees within the meaning of proviso 3.25. Proviso 3.25 appears to contemplate that the General Assembly intended to control the existence of joint legislative committees through the provision by it of funding. Effectuation of the proviso through a veto mechanism appears unintended by the Legislature. It is also doubtful that the Governor, in a funding veto measure, intended to repeal the explicit Committee authority which was created by separate statutes which have been in place since 1978 and 1988. To do so would, in effect, provide a veto of S. C. Code Ann. §§ 11-39-10 et seq., and 2-53-10, et seq. -- legislation, passed by the General Assembly in 1978 and 1988, and not now before the Governor for consideration. It is reasonable to conclude that the authority of the Committee would be retained but that the functions would be accomplished without the specific funding which was vetoed.

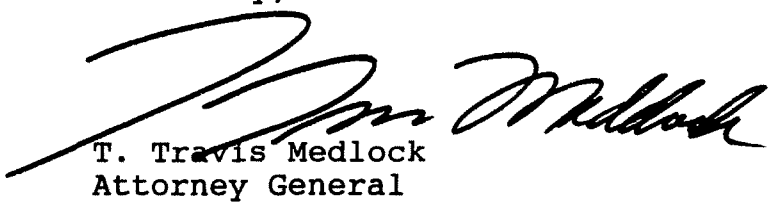
Also, to give effect in this instance to proviso 3.25, through the operation of the Governor's veto, would result in a repeal by implication, which is not favored. It would also allow a general proviso in which no reference to the Committee is made and which has been adopted in substantially the same form in each appropriations act since 1981 to repeal specific statutory authority for the Committee. It would be reasonable to construe 3.25 as inoperable in this instance.

While it is our opinion that the authority of the Committee has not been repealed or suspended, only a court can address the question with certainty. Acts of the legislature are presumed valid until held otherwise by a court and actions of the officers carrying out the duties required by the legislative enactment are valid, even if the enactment is later determined unconstitutional or invalid. State ex rel McLeod v. Court of Probate of Colleton County, 266 S.C. 279, 223 S.E.2d 166 (1975). Any future acts by the Committee are deemed valid as taken during de facto status until such time as a court determines whether a repeal or suspension has resulted. Schroeder v. O'Neill, 179 S.C. 310, 184 S.E. 679 (1935); 67 C.J.S., Officers, §266. Where an office is created, an officer elected or appointed, and acts accomplished under authority of the legislation, the officer is considered an officer de facto until such time as the act creating the office is declared by the courts to be unconstitutional or invalid, 99 ALR at 292, even "where no provision is made by law for his holding over...". Heyward v. Long, 178 S.C. 351, 365, 183 S.E. 145 (1935).

In conclusion, we would advise that, in our view, the General Assembly did not intend to repeal the authority for the Joint Committee on Energy, notwithstanding the veto by the Governor of appropriations for the Committee's operation. This is in accord with the well recognized doctrine that implied repeals of enactments are not favored. In any event, should the Committee continue its operation, it appears that until a court determines otherwise, all actions of the Committee are valid and effectual.

I hope that I have been sufficiently responsive to your question. Please contact me if you would like to discuss the matter further.

Sincerely,



T. Travis Medlock
Attorney General

TTM:klw