

## The State of South Carolina



## Office of the Attorney General

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October 26, 1987

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Post Office Box 11070  
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HAND DELIVERED

Dear Dwight:

By your letter and accompanying memorandum of September 17, 1987, you have asked that this Office re-examine a conclusion reached in an opinion dated August 3, 1987. In that opinion, it was concluded that Act No. 178 of 1987 was inapplicable to swimming pool inspection fees to be set by DHEC, because \$ 41.29 (\$ 41.31 in some earlier versions) of the 1987-88 Appropriations Act expressly authorized DHEC to implement a schedule for swimming pool fees, such schedule to be approved by the Joint Appropriations Review Committee.

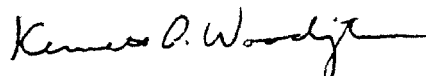
The standard employed by this Office for the review of a previously-issued opinion is that it must be clearly erroneous in order to be overruled or superseded. An opinion is clearly erroneous when, upon review, this Office is firmly convinced that a mistake has been made, that such opinion does not present sound legal reasoning or an accurate interpretation of applicable law. See, Op. Atty. Gen. dated April 9, 1984 and March 21, 1986. I have reviewed the August 3 opinion in light of the points you have raised, and have concluded that the prior opinion was not "clearly erroneous" as a matter of statutory construction. You also alluded to constitutional issues but did not specifically request an opinion on any such issues. We have therefore not researched constitutional questions, and have formed no opinion thereon.

Your letter raised the question of whether Act No. 178 superseded \$ 41.29 of the Appropriations Act because Act No. 178 took effect some eight days after the Appropriations Act became effective. This question was not expressly addressed by the prior opinion. However, a review of the legislative history indicates that for several months prior to enactment, both provisions were present for deliberation in something close to

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their final form. Under these circumstances, it is appropriate to invoke the maxim that acts passed at the same session of the General Assembly should be construed together in order to harmonize them. See, e.g., State ex rel. South Carolina Tax Commission v. Brown, 154 S.C. 55, 151 S.E. 218 (1930). Construing the statutes together, the result is that the conclusion reached in the prior opinion, i.e., that DHEC may set swimming pool inspection fees upon approval by JARC, would appear correct. The conclusion reached in the prior opinion therefore does not appear to have been "clearly erroneous."

Sincerely yours,

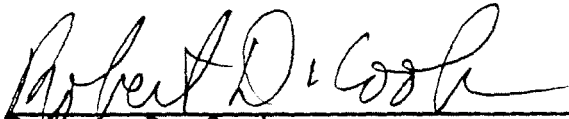


Kenneth P. Woodington  
Senior Assistant Attorney General

KPW:jca

cc: Representative Patrick B. Harris  
Ms. Tina Joseph

Reviewed and Approved By:



Robert D. Cook  
Executive Assistant for  
Opinions