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August 30, 1985

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Dear Motte:

In a letter to this Office you referenced Act No. 163 of 1985 which amends Section 23-19-10 of the Code by increasing the fees and commissions of sheriffs for various acts. Such Act states in part:

"... (e)xcept as otherwise expressly provided the fees and commissions of sheriffs are as follows:...."

You indicated that in the past numerous special acts were enacted which provided fee schedules for sheriffs in certain counties. See, e.g., Act No. 412 of 1965 for Richland County. You have questioned whether provisions in such special acts now covered by the provisions of Act No. 163 continue in light of the enactment of such Act or should such provisions in the special acts be considered to have been repealed by the recent legislation.

Upon review, it appears that Act No. 163 is ambiguous and capable of several reasonable constructions. For that reason, we recommend that the Act be clarified with what we understand to be the underlying legislative intent.

Of course, it is fundamental that in the construction of a statute, the rule is to ascertain and give effect to legislative intent. Arkwright Mills v. Murph, 219 S.C. 438, 65 S.E.2d 665 (1951). Where the language of a statute gives rise to doubt or uncertainty as to the legislative intent, the search for that intent may range beyond the borders of the statute itself; such

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intent must be gathered from a reading of the statute as a whole in light of the circumstances and conditions existing at the time of its enactment. Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956). Legislative purpose will prevail over the literal language of a statute where the two are in conflict. Id.

It is unclear as to the meaning of the term "(e)xcept as otherwise expressly provided" as used in § 23-19-10 as recently amended. Historically, there have existed a number of local laws for particular counties which set the fee schedule which the sheriff of that county could charge for the performance of his various functions. On the other hand, the General Assembly has on occasion enacted general laws setting the fees statewide which sheriffs could charge for a specific duty. See e.g., § 15-67-630. Since it is not at all clear from the face of § 23-19-10 as amended which statutes, if any, the language "[e]xcept as otherwise expressly provided" was intended to exempt, we must look elsewhere for legislative intent. As our Supreme Court stated in Mullis v. Celanese Corp. of America, 234 S.C. 380, 389, 108 S.E.2d 547 (1959),

Manifestly, the answer is not to be found in the bare language of the statute; and we look, therefore, into the circumstances surrounding its enactment... .

We are informed that the purpose of Act No. 163 was to make uniform statewide the fees and commissions charged by sheriffs for performing certain acts, such as serving civil process. The principal sponsors of the measure have stated to this Office that the purpose of the Act was to provide a comprehensive fee schedule and thus to repeal all prior provisions in the various special laws authorizing fees and commissions which are in conflict with provisions in Act No. 163. While the subsequent views of particular members are not legally recognizable by our courts, see, Tallevast v. Kaminski, 146 S.C. 225, 143 S.E. 796 (1922), it should be noted that such views are consistent with the minutes of the Senate Judiciary Committee, dated January 15, 1985. Those who spoke on behalf of the measure noted that, under existing laws, the fees of sheriffs ran "from \$20.00 to \$1.00 in some counties." Thus, it was noted that the principal purpose of the bill was "uniformity."

We are also informed that since such legislation was enacted, certain counties having special laws relating to fees of sheriffs have interpreted such Act as controlling. Such contemporaneous construction would, of course, be given weight

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by the courts. 2A Sutherland, Statutory Construction, Section 49.01, p. 347. Furthermore, such construction is arguably consistent in certain respects with a previous opinion of this Office construing a somewhat similar statute. See: 1979 Op. No. 79-104, p. 147 (the fees provided by Section 8-21-310 for filing and satisfying tax liens "are uniform charges for all counties.") Also, it has been held that "... where the general act is an overall revision or general restatement of the law on the same subject, the special act will be presumed to have been superseded and repealed." Town of Palm Beach v. Palm Beach Local 1866, I.A.F.F., 275 So.2d 247 at 249 (1973).

We must point out, however, that problems may arise with respect to this construction of the Act. Act No. 163 amends Section 23-19-10 of the 1976 Code. Such provision was codified in the 1962 Code as Section 27-401 and was last amended in 1945. As codified in the 1976, 1962, and 1952 Codes the provision stated "except as otherwise expressly provided, the fees and commissions of sheriffs are as follows....", the same language utilized in Act No. 163.

Early provisions for sheriffs' fees provided a general fee schedule for sheriffs statewide. See: Section 2561 of the 1893 Revised Statutes of South Carolina. However, as early as 1895, separate sheriffs' fee schedules for particular counties were established. See: Act No. 623 of 1895 (Anderson County). Successive Codes similarly provided general fee schedules for sheriffs while recognizing the enactment of separate sheriffs' fee schedules for certain individual counties. See: Civil Code 1902, Section 3118 ("Except in Anderson and Orangeburg Counties...."); Civil Code 1912, Section 4230 ("Except in Anderson County...."); Civil Code 1922, Section 5753 ("Except in Anderson County...."); 1932 Code of Laws, Section 4950 ("Except in Anderson County...."); 1942 Code of Laws, Section 4950 ("Except in Anderson County....").

Beginning in the 1952 Code of Laws, the statute providing the general fee schedule for sheriffs stated "Except as otherwise expressly provided the fees and commissions of sheriffs shall be as follows:...." Section 27-401 of the 1952 Code of Law. Such language, as noted, is the same language appearing in the 1962 and 1976 Codes. It is generally recognized that when a legislature reenacts a statute employing the same language, prior interpretations of such statute are controlling. See: 2A Sutherland, Statutory Construction, Section 49.09, p.400. An examination of the 1952 Code reveals several sections following Section 27-401 which recognized numerous special laws providing

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varying fees for sheriffs for particular purposes. See, e.g., Section 27-406 (special provisions for Anderson County); Section 27-407 (special provisions for Barnwell County); Section 27-409 (special provisions for Greenwood County); Section 27-410 (special provisions for Newberry County); Section 27-412 (special provisions for Richland County). The 1962 Code of Laws, which was officially codified by the General Assembly in 1962, also contains several statutes recognizing special provisions for certain counties. See: Sections 27-402 through 27-412 of the 1962 Code of Laws. Thus it is clear that the General Assembly considered these special laws to be applicable to the various specified counties despite the fact that a general law also provided fees for a sheriff. Such legislative construction indicates that the General Assembly recognized that in certain instances special laws were controlling.

Referencing the above, reasonably a court could construe the language utilized in Act No. 163, "except as otherwise expressly provided", as recognizing that the general fee schedule for sheriffs provided by such Act would be applicable except in those instances in which special acts, such as Act No. 412 of 1965 for Richland County, specifically provide different fee schedules. Such a construction is consistent with the general meaning of the phrase "except as otherwise expressly provided." See: Carroll v. Carroll, 108 P.2d 420 (1940); Switkes v. Laird, 306 F.Supp. 358 (D.N.Y. 1970); State v. Aronson, 165 S.W.2d 404 (1942). Moreover, this Office in several past opinions has recognized the validity of such fees and commissions authorized by the special acts. See: 1966 Op. Atty. Gen. No. 2044, pp. 122-123 and Opinion to Pruitt dated July 26, 1978 (Anderson County); Opinion to Chester County Sheriff dated January 12, 1978; Opinion to Lexington County Sheriff dated February 5, 1980; Opinion to Richland County Sheriff dated January 16, 1980. Moreover,


"... it is a canon of statutory construction that a later statute general in its terms and not expressly repealing a prior special or specific statute will be considered as not intended to affect the special or specific provisions of the earlier statute, unless the intention to effect the repeal is clearly manifested or unavoidably implied by the irreconcilability of the continued operation of both. 73 Am.Jur.2d, Statutes, Section 417 pp. 521-522. See also: Connor v. State, 153 So.2d 787 (1963).

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In short, the question as to whether § 23-19-10 (Act No. 163) repeals existing local laws relating to sheriffs' fees is extremely close. On the one hand, it is clear that the legislative intent and contemporaneous construction of the Act supports a reading that the Act was intended to be uniform. On the other hand, the language contained in the statute "except as otherwise expressly provided", is carried forth from previous general laws; it is evident that in the past such language exempted those special laws which provided for the charging of sheriffs' fees in particular counties. A court could thus interpret the Act either way. However, since legislative intent must always prevail, we believe the better reading is that the Act was intended to apply to every county. Because of the obvious arguments to the contrary however, we suggest that the Legislature clarify the law as quickly as possible.

If we can be of further assistance, please let us know.  
With kindest regards, I remain

Very truly yours,



Robert D. Cook  
Executive Assistant for Opinions

RDC:djg