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Opinion 1585-75
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Office of the Attorney General

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August 6, 1985

Mr. Leonard A. Kilian, Jr.
State Forester
S. C. Forestry Commission
Post Office Box 21707
Columbia, South Carolina 29221

Dear Mr. Kilian:

You have asked whether § 48-33-10 et seq. (South Carolina Forest Fire Protection Act) has been impliedly repealed by the State Personnel Act, § 8-11-210 et seq. or the State Grievance Act, § 8-17-10 et seq. Specifically, you wish to know whether § 48-33-60 of the Forest Fire Protection Act remains the method of employment and dismissal of certain Forestry personnel. We would advise that it does.

Section 48-33-60 of the Forest Fire Protection Act provides in pertinent part as follows:

The county [forestry] boards shall assist in the efficient performance of the requirements of this chapter and the general conduct of the forestry programs in the county. They shall review, revise and adopt the annual forest fire protection plan and the county ranger, fire wardens, towermen and all other county forest fire protection officers shall be employed, retained or dismissed only with the consent of the county forestry board. (Emphasis added.)

The question which you raise is whether either the State Personnel Act or the State Grievance Act alter the requirement contained in the Forest Fire Protection Act that the enumerated officers in § 48-33-60 may be employed, retained or dismissed "only with the consent of the county forestry board."

REQUEST LETTER

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Generally, where there is an irreconcilable conflict between statutes, the latest legislation prevails. 1A Sutherland, Statutory Construction, § 23.09; Op. Atty. Gen., September 21, 1978. However, implied repeals are disfavored and will not be indulged if there is any other reasonable construction available. Strickland v. State, 276 S.C. 17, 274 S.E.2d 430 (1981). There may be an implied repeal of a statute only where the pertinent statutes irreconcilably conflict, and where provisions of two statutes can stand, the Court will so construe them. In Interest of Shaw, 274 S.C. 534, 265 S.E.2d 522 (1980).

In our view, § 48-33-60 does not irreconcilably conflict with either the State Personnel Act or the Employee Grievance Act. The State Personnel Act, § 8-11-210 et seq. was designed "to establish a State Personnel Division under the State Budget and Control Board to administer a comprehensive system of personnel administration responsible to the needs of the employees and agencies and essential to the efficient operation of State Government." § 8-11-210. Section 8-11-220(2) defines an "appointing authority" as "...any person having power by law, or by lawfully delegated authority, to make an appointment of a person for employment to any position in the State service." (Emphasis added.) The Act further authorizes the Budget and Control Board to establish procedures relating to State employee compensation and classification. § 8-11-230. With respect to the hiring of employees, the Act only mandates that agency heads "require adherence" to the Personnel Division's specifications which are developed in coordination with the agencies involved.

Nothing in the Act either explicitly or implicitly purports to alter methods of employment or appointment under previously existing law. Indeed, as mentioned above, § 8-11-220(2) defines an "appointing authority" as a person having "power by law, or by lawfully delegated authority" to make the appointment to State service. Thus, it is clear that the State Personnel Act would neither impliedly repeal § 48-33-60, nor would it alter the method of employment, retention or dismissal established therein.

With respect to the State Employee's Grievance Act, § 8-17-10 et seq., that Act simply establishes a procedural system whereby state employees can have grievances heard in a fair and timely manner. In an opinion of this Office, dated January 17, 1979; it was recognized that the State Employees' Grievance Act would have certain impact upon § 48-33-60 of the Code. The opinion referenced a previous opinion of then Attorney General Daniel R. McLeod, dated June 26, 1961, which had concluded that

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pursuant to § 48-33-60, while the county forestry board could not directly dismiss personnel, it did possess the power to withdraw its consent to the employment, retention or dismissal of any employee. The 1979 opinion further noted however that "the 1961 opinion makes no reference to the employee's right to grieve upon dismissal." Thus, in view of the "since created grievance procedure", the 1979 opinion concluded that the 1961 opinion interpreting § 48-33-10 et seq., would be altered to the extent that reasons for dismissal would have to be given. However, the 1979 opinion clearly recognized the continuing validity of § 48-33-60 subsequent to the passage of the Grievance Act, noting simply that the procedures established by the Grievance Act were now applicable. In short, this Office has heretofore concluded that the substantive method of employment and dismissal set forth in the Forest Fire Protection Act has not been repealed by the procedural safeguards established in the Grievance Act. The Grievance Act only establishes the procedures applicable in the employment and dismissal of state employees, but does not purport to redefine the appointing authority or agency head.

It has been argued nevertheless that Budget and Control Board Regulation 19-707.09(D)(2) alters this conclusion. However, the Regulation, promulgated under the authority of the State Personnel Act, simply provides that an "agency head may dismiss any employee for just cause." Again, § 8-11-220(3) defines an agency head as the chief executive of a State agency in whom is vested final appointing authority for the agency." And to reiterate, "appointing authority" is "any person having power by law, or by lawfully delegated authority, to make an appointment... ." Thus, as the case with the Grievance Statute, the Regulation does not purport to redefine how an appointment or employment by the agency is made. Consistent with the January 17, 1979 opinion, referenced above, we do not see any conflict between § 48-33-60 and Regulation 19-707.09. Moreover, even if there is any conflict, the statute would prevail. Brooks v. South Carolina Board of Funeral Services, 271 S.C. 457, 247 S.E.2d 820 (1978); Milliken v. South Carolina Dept. of Labor, 275 S.C. 264, 269 S.E.2d 763 (1980); Lee v. Michigan Mutual Ins. Co., 250 S.C. 462, 158 S.E.2d 774 (1968). See also, Op. Atty. Gen., November 8, 1982.

In conclusion, the June 26, 1961 opinion, as modified by the January 9, 1979 opinion remains the opinion of this Office. Of course, as stated in the January 9, 1979 opinion a county board "cannot directly dismiss personnel", but "it does have the

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power to withdraw its consent to the employment, retention or dismissal of any employee." 1/

Sincerely,



Robert D. Cook
Executive Assistant for Opinions

RDC:djg

1/ We understand that arguments have been made that this statutory system of employment and dismissal is outdated, cumbersome and no longer workable. If that is the case, such would be a matter for the Legislature to address and clarify.