

The State of South Carolina



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Ms. Carla C. Sanders
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Dear Ms. Sanders:

You have asked whether § 31-3-130 of the Code of Laws of South Carolina (1976 as amended) has been impliedly repealed by the provisions of the State Personnel Act, § 8-11-210 et seq. as to classification and compensation. We would advise that until such time as a court rules otherwise, the provisions of the State Personnel Act as to compensation and classification would be controlling where in conflict with § 31-3-130.

Section 31-3-130 of the Code provides as follows:

The commissioner shall appoint an executive director, who shall serve at the pleasure of the Authority, and such other officers and employees as they may require for the performance of their duties and shall prescribe the duties and compensation of each officer and employee.

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 responsive 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 "appointing authority" as "any person having power by law, or by lawfully delegated authority, to make an appointment of a person for employment in the State service." (Emphasis added.) The Act further authorizes the Budget and Control Board to establish

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procedures relating to State employee compensation and classification. § 8-11-230. More specifically, the Board is authorized and directed to "[e]stablish procedures for the regulation of compensation of all State employees where not otherwise regulated directly by the General Assembly." The Board is also authorized and directed to "[d]evelop and revise as necessary in coordination with agencies served specifications for each position in the classified service concerning the minimum educational training experience and other qualifications considered necessary to assure adequate performance of the duties and responsibilities." Section 8-11-260 sets forth certain exceptions to the Personnel Act, none of which are applicable here.

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).

With respect to the authority of the commissioners of the Housing Authority to appoint officers and employees, there is no irreconcilable conflict between § 31-3-130 and the State Personnel Act. Section 8-11-220(2) defines "appointing authority" as "any person having power by law or by lawfully delegated authority" to make an appointment to the State service. Of course, § 31-3-130 delegates such authority to the commissioners of the Housing Authority. Moreover, § 8-11-230 requires the Personnel Division to coordinate with the various State agencies as to the duties and qualifications of classified employees. Thus, the Housing Authority maintains the authority to appoint and prescribe the duties of its employees, subject to any applicable regulations governing classification, promulgated by the Budget and Control Board pursuant to the State Personnel Act. Op. Atty. Gen., August 6, 1985.

As to compensation, § 8-11-230 authorizes and directs the Budget and Control Board to "[e]stablish procedures for the regulation of compensation of all State employees...." There appears to be a conflict between this provision and § 31-3-130 which authorizes the Housing Authority commissioners to "prescribe the ... compensation of each officer and employee." It is generally recognized that there is an "intent to repeal all

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former laws upon a subject ... made apparent by the enactment of subsequent comprehensive legislation establishing elaborate inclusions and exclusions of the persons, things and relationships ordinarily associated with that subject." 1A Sutherland Statutory Construction, § 23.13.

It is clear that the State Personnel Act was intended to fall within the type of "comprehensive legislation" discussed above, with respect to the compensation of State employees. 1/ The Act relates to "all" State employees, not otherwise excluded. Section 8-11-260 specifically enumerates those State employees exempted from the State Personnel Act and Section 8-11-270 designates those State employees exempted from the classification and compensation plan. Since Housing Authority employees do not appear to fall within any of the designated exceptions, it would appear these employees would be subject to Budget and Control Board regulations regarding compensation. Therefore, while the Housing Authority commissioners may make recommendations regarding compensation, clearly Budget and Control Board regulations would be controlling, subject only to appropriations by the General Assembly.

Sincerely,



Robert D. Cook
Executive Assistant for Opinions

RDC:djg

1/ Our Supreme Court has, however, concluded otherwise in the context of the interrelationship between statutes which provide that employees serve at the "pleasure" of the appointing authority and grievance acts. See, Rhodes v. Smith, 254 S.E.2d 49 (S.C. 1979) [deputy sheriffs]; Anders v. County Council for Richland County, 325 S.E.2d 528 (S.C. 1985) [solicitor's employees]. These cases were expressly decided on the basis that a specific statute controls over a general one. Underlying the decisions however was the idea that the positions of sheriff and solicitor are uniquely sensitive, as well as elective, thus requiring these employers to have absolute control over their employees. The position of Housing Authority commissioners does not appear to be nearly so unique in nature and thus, until a court concludes otherwise, we believe the Rhodes and Anders decisions should be limited to their facts.