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The State of South Carolina

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D. Laurence McIntosh, Esquire
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Dear Mr. McIntosh:

As attorney for Florence School District No. 1, you have asked the effect of H.3942 upon Section 12-35-1557 of the Code. Specifically you wish to know whether Section 12-35-1557 remains applicable to Florence School District No. 1 in light of a subsequent local law enacted by the General Assembly in the recently concluded session. It is our conclusion that Section 12-35-1557 continues to be applicable to Florence School District No. 1.

Section 12-35-1557 is part of the Education Improvement Act enacted by the General Assembly in 1984. That section provides in pertinent part as follows:

> Unless otherwise authorized or provided herein, school district boards of trustees or any other appropriate governing body of a school district shall maintain at least the level of per pupil financial effort established as provided in Fiscal Year 1983-84. Beginning 1985-86 local financial effort for noncapital programs shall be adjusted for an inflation factor estimated by the Division of Research and Statistics.
>
> Thereafter school district boards of trustees or other governing bodies of school districts shall maintain at least the level of financial effort per pupil for noncapital programs as in the prior year adjusted for an inflation factor estimated by the Division

> of Research and Statistics. The county auditor shall establish a millage rate so that the level of financial effort per pupil for noncapital programs adjusted for an inflation factor estimated by the Division of Research and Statistics is maintained as a minimum effort. No school district which has not complied with this section shall receive funds hereunder. School district boards of trustees may apply for a waiver to the State Board of Education from the requirements of this Section if (1) the district has experienced a loss in revenue because of reduction in assessed valuation or property or has had a significant increase in 135 average daily membership, (2) the district has experienced insignificant growth and revenue collections from the previous year. No school district shall be eligible to apply for a waiver for more than two consecutive years.

This provision of the Education Improvement Act was commented upon extensively by this Office in a previous opinion dated April 28, 1986 (copy enclosed).

In May of this year, the General Assembly enacted a local statute applicable to Florence School District No. 1 which, at first blush, appears to be in conflict with Section 12-35-1557 referenced above. That statute provides in pertinent part as follows:

> For the fiscal year 1986-87 only, the Board of Trustees for Florence School District No. 1 may call for a second election requesting the electors of the district to approve an increase in the millage rate to fund the operational budget of the district. To call for this second election, the board shall file with the county auditor its proposed budget on or before July 1, 1986. The board shall call for a second election to approve the proposed increase by setting the election date which must be not later than August 5, 1986. Notice of the election date must be advertised at least one week prior to the election day. The election must be conducted by the Florence County

> Election Commission in the same manner as other school district elections. In the event the proposed millage increase is not approved by a majority of the electors voting, then the authorized millage is limited to the millage in effect for the previous fiscal year. [Emphasis added.]

Thus, the question presented here is whether H.3942 negates, with respect to Florence School District No. 1, the EIA requirement contained in Section 12-35-1557, of maintenance of at least the level of financial effort per pupil for noncapital programs as in the prior year, adjusted for an inflation factor.

Of course, it is the recognized rule of statutory construction that general and specific statutes should be harmonized if possible; however, to the extent of any conflict between the two, the special statute usually prevails. Criterion Insurance Company v. Hoffmann, 258 S.C. 282, 188 S.E.2d 459 (1972). Nevertheless, courts have cautioned that the foregoing rule of construction is certainly not an inflexible one and contains well recognized exceptions. Certain courts have emphasized that the rule must be narrowly confined, U. S. v. Mantanky, 346 F.Supp. 116 (C. D. Cal. 1972), affd., 482 F.2d 1319 (9th Cir. 1973), and that there must be a clear and manifest intention by the legislature to repeal the earlier general statute. Id. Virtually all courts hold that the general rule does not apply where such would operate contrary to legislative intent. Sobey v. Molony, 104 P.2d 868 (Cal. 1940); Tritico v. Board of Commissioners of Lake Charles, 134 So.2d 401, 403 (La. 1961); Seran v. Biddle, 87 N.E.2d 492, 494 (Ohio 1948).

Moreover, when courts are confronted with an apparent conflict between a specific statute on a subject and a more general one on the same subject, the court is obligated to examine the statutes carefully and harmonize any apparent conflicts. Criterion Insurance Company v. Hoffmann, supra. The reason for this requirement is that repeals by implication are not favored, and where two statutes can be construed together and thus preserve the objects to be obtained by each, they should be so construed, where no contradiction or unreasonableness will result. State v. New Mexico State Authority, 411 P.2d 984, 1004 (New Mexico 1966). There must indeed be a true

conflict between the two statutes, State v. O'Brien, 123 Ariz. 578, 601 P.2d 341 (1979), and even so, the duty remains to reconcile such conflicts if at all possible. Banana River Properties v. City of Cocoa Beach, 287 So.2d 377 (Fla. Ct. App. 1974).

Even where conflicts may not be reconciled, courts have noted two particular exceptions to the generally recognized principle that later specific statutes will prevail over earlier general ones. In Association of General Contractors of California v. Secretary of Commerce of U. S. Department of Commerce, 441 F.Supp. 955 (C. D. Cal. 1977) vacated on other grounds, 438 U.S. 909 (1978), it was noted that this general rule of construction is not to be applied when the results are extraordinary or where the results do not reflect the true presumed intention of the legislature. These exceptions are also recognized in cases such as Shelton v. U. S., 165 F.2d 241 (D. C. Cir. 1947) and U. S. v. Windle, 158 F.2d 196 (8th Cir. 1946).

Applying these principles and their recognized exceptions to the present situation, it would appear that Section 12-35-1557 remains unaffected by H.3942. First, it is not at all clear that the two statutes are in actual conflict. It could be argued that the purpose of the referendum as authorized by H.3942 was to determine voter sentiment with respect to a major tax increase for the school district, not the type of increase which may be required by Section 12-35-1557 to "maintain at least the level of financial effort per pupil for noncapital programs as in the prior year adjusted for an inflation factor." Indeed, it is our understanding that there is a factual distinction between the two increases, i.e. the referendum sought to increase taxes by 8 mills, while the EIA requires an increase which would be considerably less, probably no more than 2 mills. Thus, there is some doubt in our minds as to whether the two statutes are actually in conflict at all.

Assuming that a conflict between the two enactments does exist, we simply do not regard the General Assembly as having intended to create an exception as to one school district in the state from the EIA requirement that a school district maintain its previous level of funding. Clearly, the Education Improvement Act was intended by the legislature to be a comprehensive and uniform act, applicable to all school districts. See, Handbook entitled The Education Improvement Act of 1984, published by the School Council Assistance Project, College of Education, University of South Carolina, February 1985 ["The Education Improvement Act of 1984 is a comprehensive package of educational reform ..."]. It would be both extraordinary and

inconsistent with the presumed legislative intent that H.3942 should impliedly repeal or suspend Section 12-35-1557 for Florence School District No. 1 only. Instead, we read H.3942 as an expression of finality with respect to local school tax increases in Florence District No. 1 in 1986-87; we believe, the Legislature simply intended by H.3942 that if the second referendum were not approved by the voters of Florence School District No. 1, the authorized millage for that school district would then be limited to that otherwise required by state law. In short, we construe the two statutes together as requiring that a failure of passage of the referendum means that Florence School District No. 1 would have no additional tax increases in 1986-87 beyond those which may be required by Section 12-35-1557, a statute applicable to school districts generally. Such a construction not only preserves the uniformity and integrity of the Education Improvement Act, but gives effect to the intent of the General Assembly and the voters for Florence School District No. 1 that additional school taxes be limited for this year. This conclusion is consistent with an opinion issued by this Office wherein it was concluded that "[t]o render Section 12-35-1557 operative, it must be construed to be controlling as to local legislation with respect to the setting of millage for the local effort." See, Op. Atty. Gen., August 5, 1986 (copy enclosed).

Accordingly, it is our conclusion that H.3942 does not impliedly repeal or limit Section 12-35-1557, but instead the two provisions may be read in conjunction with and in harmony with one another. If we can be of further assistance, please let us know. With kindest personal regards, I remain

Very truly yours,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:

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