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June 23, 1986

The Honorable Herbert U. Fielding
Senator, District No. 42
608 Gressette Building
Columbia, South Carolina 29202

Dear Senator Fielding:

Referencing two acts of the General Assembly adopted in 1985 concerning Section 41-35-120, Code of Laws of South Carolina (1976, as revised), you have asked whether a provision formerly codified as subsection 7 is still of force and effect. For the reasons following, it is the opinion of this Office that subsection 7 was repealed by the re-enactment of Section 41-35-120 in Act No. 154, 1985 Acts and Joint Resolutions.

Section 41-35-120 of the Code provides for disqualification of workers from receiving unemployment compensation upon the occurrence of certain conditions such as leaving work voluntarily, failure to accept work, and so forth. Subsection 7 was added by Act No. 323 of 1982 and provided a disqualification for workers who received separation wages, though if the amount received by a worker were less than the amount he would have received as unemployment benefits, he would be eligible for prorated benefits. By Part II, Section 69 of Act No. 512 of 1984, the operation of subsection 7 was suspended for fiscal year 1984-85.

In 1985, by Part II, Section 53 of Act No. 201, the operation of subsection 7 was again suspended, this time for fiscal year 1985-86, effective June 20, 1985 (the effective date of Act No. 201). However, Section 41-35-120 of the Code was amended and adopted as revised by Section 6 of Act No. 154 of 1985; subsection 7 was not within the amended version and was not placed within the revised volume 14A of the South Carolina Code, which contains the provisions of Title 41 relative to labor and employment. The question thus becomes whether the General Assembly meant to merely suspend or repeal entirely the provisions of subsection 7.

The Honorable Herbert U. Fielding

Page 2

June 23, 1986

The primary objective of both the courts and this Office in construing statutes is to ascertain and give effect to the legislative will if at all possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). It is clear that the legislature intended that subsection 7 not be operational; the duration is still questionable at this point. Thus, other rules of statutory construction must be considered.

Statutes such as these, which relate to the same subject matter and thus are in pari materia, must be construed together and reconciled, if possible, to render both operative. Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). If the statutes are found to be ambiguous or inconsistent, they may be reconciled into one harmonious statute, where both statutes were adopted in the same legislative session. State v. Liggett & Myers Tobacco Co., 171 S.C. 511, 172 S.E. 857, app. dismd. 291 U.S. 652, 54 S.Ct. 564, 78 L.Ed. 1046 (1933). If it is not possible to harmonize apparently inconsistent provisions, the one most recently enacted by the legislature will prevail. Jolly v. Atlantic Greyhound Corp., 207 S.C. 1, 35 S.E.2d 42 (1945).

Applying these rules of statutory construction, it may be concluded that subsection 7 was intended to be repealed, not merely suspended for fiscal year 1985-86. An examination of legislative history as found in the Digest published by Legislative Information Systems (July 3, 1985) shows that the Appropriations Act, which became Act No. 201, was ratified by the General Assembly and assigned ratification number 232 on June 14, 1985; that act became effective on June 20, 1985. Act No. 154 was actually ratified by the legislature and assigned ratification number 237 on June 18, 1985, later than the Appropriations Act; that act also became effective June 20, 1985, though it actually was a later expression of the legislative will.

Keeping this sequence in mind, it is possible to read these two acts consistently. The provisions of Act No. 201 merely suspended the operation of subsection 7; at the time of ratification of that act, the act repealing subsection 7 was not yet an absolute certainty since it had not yet been ratified. Subsequently, it too was ratified, and subsection 7 would be deemed to be repealed since it was not adopted in the new and independent act which revised Section 41-35-120. Independence Ins. Co. v. Independent Life & Acc. Ins. Co., 218 S.C. 22, 61 S.E.2d 399 (1950). Had Act No. 154 not completed the enactment process, subsection 7 would merely have been suspended for fiscal year 1985-86; but because Act No. 154 expresses a later legislative will, it is the opinion of this Office that the General Assembly intended to repeal subsection 7 by failing to

The Honorable Herbert U. Fielding
Page 3
June 23, 1986

readopt it in the more recently ratified act. Put another way, it could also be said that operation of subsection 7 was suspended for fiscal year 1985-96, and then Act No. 154 would effectively repeal the subsection.

Even if it should be assumed that the provisions of Act No. 201 took effect on a date later than Act No. 154, or on July 1, 1985 rather than June 20, 1985, we would still reach the same conclusion because it is necessary to give a sensible interpretation and avoid absurd results in harmonizing the statutes. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). It would be nonsensical to interpret the statutes so that subsection 7 was impliedly reinstated and then suspended for one year after having just been repealed.

As noted above, the re-enactment of Section 41-35-120 omitted subsection 7, as did the revision of Title 41 of the Code. A leading authority on statutory construction has advised that "[a]ll matter that is omitted in the Act or Section which the amendment purports to set out as amended, is considered repealed." 1A Sutherland Statutory Construction, § 23.12. See also Independence Ins. Co., supra, and Windham v. Pace, 192 S.C. 271, 6 S.E.2d 270 (1940). Because subsection 7 was omitted in the amendment and revision, it can be deemed to have been repealed. While this rule of statutory construction is not absolute, Op. Atty. Gen. dated September 18, 1985, such rule is followed where, as here, there is legislative intent that the subsection was not to continue in force and effect.

In conclusion, it is the opinion of this Office that the provisions formerly codified as Section 41-35-120(7) of the Code were repealed by the adoption of Act. No. 154 of 1985.

Sincerely,

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REVIEWED AND APPROVED BY:

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