

The State of South Carolina



Office of the Attorney General

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May 19, 1987

The Honorable Peden B. McLeod
Senator, District No. 45
501 Gressette Building
Columbia, South Carolina 29202

Alfred H. Vang, Executive Director
South Carolina Water Resources Commission
Post Office Box 4440
Columbia, South Carolina 29240

Dear Senator McLeod and Mr. Vang:

With reference to the act of the General Assembly regulating the interbasin transfer of water, Act No. 90 of 1985, you have inquired as to the effect of this legislation upon Act No. 84 of 1963 and Act No. 835 of 1956. It is the opinion of this Office that since these acts have been categorized as general and permanent laws by the Code Commissioner, these two acts would remain in effect notwithstanding the terms of Act No. 90 of 1985.

Act No. 90 of 1985 added Chapter 21 of Title 49 to the Code of Laws of South Carolina to regulate the interbasin transfer of water. Section 2 of that act provides: "All local acts purporting to create a right to transfer water from one river basin to a different river basin as designated in Section 49-21-60 are repealed." Act No. 835 of 1956 authorized the City of Walterboro to divert waters from the Edisto River; Act No. 84 of 1963 conveyed the same rights given to the City of Walterboro to Colleton County, reserving rights of the Commission of Public Works of the City of Charleston to obtain eighty million gallons of water per day through its intakes at Givhans. Whether the two acts relative to Colleton County and the cities of Walterboro and Charleston would be local acts and thus have been repealed by Act No. 90 of 1985 is the issue at hand.

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Section 2-13-60 of the Code of Laws of South Carolina (1976) provides:

The Code Commissioner shall:

* * *

- (7) Divide the acts and joint resolutions into such as may be of a general permanent kind and such as may be local or of a temporary nature, with indices and cross-indices. ...

Each of the two acts referenced above were codified in the respective Acts and Joint Resolutions by the Code Commissioner within the general and permanent provisions rather than in that section reserved for local and temporary enactments.

A brief review of legislative acts relative to withdrawal or diversion of waters from lakes or rivers reveals that some of such acts have been classified as general and permanent, while others have been placed in the local or temporary classification by the Code Commissioner. In addition to the two acts under consideration, Act No. 71 of 1955 (relative to the International Paper Company and Great Pee Dee River) and Act No. 19 of 1971 (relative to the City of Greenwood and waters of the Saluda River and Lake Greenwood) were placed in the general and permanent classification by the Code Commissioner.

On the other hand, several more acts relative to withdrawal or diversion of water were placed in the local or temporary classification, as noted; examples include Act No. 950 of 1956 (Beaufort County Water Authority, Combahee River); Act No. 1024 of 1958 (Beaufort County Water Authority, Savannah River in Jasper County); Act No. 1086 of 1958 (Ebenezer Community Watershed Conservation District, Middle Swamp); Act No. 1083 of 1958 (Polk Swamp Watershed Conservation District, Black Creek); Act No. 1088 of 1958 (Polk Swamp Watershed Conservation District, Black Creek); and Act No. 602 of 1980 (Dorchester County Water Authority, Edisto River in Dorchester County). One enactment in this classification is particularly worthy of mention: Act No. 537 of 1955, relative to the City of Newberry and the Saluda River. The same year in which this act was categorized as local or temporary, the Code Commissioner placed Act No. 71 (International Paper Company and Great Pee Dee River) in the general and permanent classification.

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The General Assembly has delegated the determination of whether a law is general and permanent, or local or temporary, to the Code Commissioner, who has made the determinations as described above, in keeping with his duties prescribed by Section 2-13-60 of the Code. As has been stated by the Supreme Court, "[t]he construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should not be overruled without cogent reasons." Faile v. S. C. Employment Security Commission, 267 S.C. 536, 540, 230 S.E.2d 219 (1976). Furthermore, it is the policy of this Office not to review administrative decisions made by the official authorized or required by statute to make such decisions. Cf., Griggs v. Hodge, 229 S.C. 245, 92 S.E.2d 654 (1956); Op. Atty. Gen. dated February 6, 1984. Thus, Act No. 84 of 1963 and Act No. 835 of 1956 should be characterized as general, permanent acts, since the Code Commissioner's interpretation as required under Section 2-13-60 of the Code is entitled to "respectful consideration" and is not to be overruled "without cogent reasons."

Because the two acts have been designated as general, permanent acts by the Code Commissioner, it is the opinion of this Office that the General Assembly did not intend to repeal the two acts by the terms of Act No. 90 of 1985.

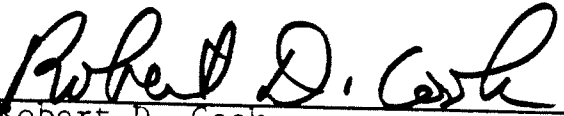
With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:


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