1984 WL 249901 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
June 6, 1984

***1** Mr. Charles E. Lee
Director
South Carolina Department of Archives and History
Post Office Box 11,669
Capitol Station
Columbia, South Carolina 29211

Dear Mr. Lee:
You have asked our advice as to whether Section 46-3-150 of the Code of Laws of South Carolina (1976) has been superseded by Section 30-1-10 et seq. (Public Records Act). We believe a court would most probably conclude that Section 30-1-10 et seq. is controlling. However, as a matter of caution, we would suggest legislative clarification.

Section 46-3-50 relates to Department of Agriculture records. That section provides as follows:
The Commissioner [of Agriculture] shall keep and preserve all records in his office for a period of five years. At the end of the five year period the Commissioner may in his discretion destroy such records as in his judgment may be obsolete and of no value.

Section 46-3-150 was first enacted in 1941.

In 1973, the General Assembly enacted Act No. 291, or what is commonly known as the Public Records Act. Act No. 291, which is now codified at Section 30-1-10 et seq., was comprehensive in scope. For example, the title to the Act is:
An Act To Provide For the Administration, Retention, Preservation and Disposal of the Public Records of this State and Its Political Subdivisions . . ..

And in the Act's preamble, the General Assembly made the following findings:
Whereas, the public records of this State document the actions, affairs, history and life of the State . . . and

Whereas, the increasing age and volume of public records demand new attention to economical and efficient records keeping through innovative records management and means of recording; and

Whereas, additional steps are necessary to encourage the realization of the value of the priceless documentary heritage of this State and to make the public records of permanent value more accessible for public use; and

Whereas, the careful preservation and comprehensive management of public records is an essential of good government . . ..

Section 1. As the foregoing provisions suggest, Act No. 291 sought to encompass completely within its scope the records of ‘all public agencies'. [1] See, Section 30-1-10. A public ‘agency’ is defined therein as ‘any State department, agency or institution.’ Id.

More specifically, Act No. 291 provides for the comprehensive administration, retention, preservation, and disposal of all public records, and designates the South Carolina Department of Archives and History as the agency to implement and enforce the Act's purpose. For example, Section 30-1-80 provides:

A records management program for the application of efficient and economical management methods and the creation, utilization, maintenance, retention, preservation and disposal of public records shall be administered by the Archives. It shall be the duty of the Department to establish standard, procedures, techniques and schedules for effective management of public records, to make continuing surveys of paper work operation, and to recommend improvement in current management practices, including the use of space, equipment and supplies employed in creating, maintaining, and servicing records. The head of each agency, the governing body of each subdivision and every public records custodian shall operate with the archives in conducting surveys and to establish and maintain an active, continuing program for the economical and efficient management of the records of the agency or subdivision. (Emphasis added.)

***2** The foregoing provision appears to delegate to the Archives the authority, within its discretion, to determine how long records shall be preserved in accordance with the 'effective management of records . . .' [2] In addition, Section 30-1-90 authorizes the Archives

to prepare an inclusive inventory of records [in the custody of an agency] . . . and a schedule establishing a time period for the retention of each series of records. This schedule shall serve as authorization for the destruction of records retained for the stated time period or for the preservation of records through other means such as transfer to the Archives. These provisions of the public Records Act amply demonstrate the broad scope of that Act. See Op. Atty. Gen., Nov. 20, 1981. Yet, Section 46-3-150 requires that the records in question be maintained for five years and then be destroyed in the discretion of the Commissioner of Agriculture. In short, Section 46-3-150 appears to conflict with the public Records Act (Section 30-1-10 et seq.) which empowers the Archives to determine, within its discretion, for how long public records are to be maintained. Since Section 30-1-10 et seq. does not mention Section 46-3-150, nor does it expressly repeal that provision, we must now determine whether Section 30-1-10 et seq. has impliedly repealed Section 46-3-150.

Of course, implied repeals are always disfavored under the law. In Interest of Shaw, 274 S.C. 534, 265 S.E.2d 522 (1980). Where two statutes are in conflict, they must, if possible, be construed so that both will stand. Supra. Moreover, as a general rule, statutes of a specific nature are not to be considered as repealed by a later general statute unless there is a direct reference to the former statute or the intent of the legislature is implied. Strickland v. State, 276 S.C. 17, 274 S.E.2d 430 (1981). Such legislative intent must be very clear. State v. Brown, 154 S.C. 55, 151 S.E.2d 218 (1930). This is in accord with the general rule that statutes of a specific nature will usually prevail over general statutes. Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979). On the other hand, where two statutes are irreconcilably in conflict, the last expression of the legislative will is controlling. City of Spartanburg v. Blalock, 223 S.C. 252, 75 S.E.2d 360 (1953). As can be seen, these rules of construction generally militate against concluding that one statute impliedly repeals another, unless the legislative intent indicates that such is absolutely necessary. [3]

However, there is another rule of construction which, consistent with the rule that legislative intent is controlling, appears to govern in this situation. For, it is recognized that

[t]he intent to repeal all former laws upon a subject is 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. Legislation of this sort which operates to revise the entire subject to which it relates, by its very comprehensiveness gives strong implication of a legislative interest not only to repeal former statutory law upon the subject, but also to supersede the common law relating to the same subject. Therefore, the failure to set out former statutory provisions in a later comprehensive enactment will operate to repeal the omitted portions which are inconsistent, and also former provisions which are not repugnant to the later legislation.

***3** 2A Sutherland, Statutory Construction, § 23.113. A similar rule of construction has been recognized by our Supreme Court:

As a general rule, the enactment of revisions and codes manifestly designed to embrace an entire subject of legislation, operates to repeal former acts dealing with the same subject, although there is no repealing clause to that effect. Under this rule, all parts and provisions of the former act or acts, that are omitted from the revised act, are repealed, even though the omission may have been the result of inadvertence. The application of the rule is not dependent on the the inconsistency or repugnancy of the new legislation and the old; for the old legislation will be impliedly repealed by the new even though there is no repugnancy between them.

Independence Ins. Co. v. Independent Life and Acc. Ins. Co., A Florida Corp., 218 S.C. 22, 31-32, 61 S.E.2d 399 (1950); see also, Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981) [Administrative Procedures Act impliedly repeals inconsistent portions of Workmen's Compensation Act.]. This rule, applied where a statute is 'manifestly designed to embrace an entire subject of legislation,' appears to be the exception to the general rule of construction, set forth above, which militates against implied repeals.

In our view, Section 30-1-10 et seq. is indeed 'manifestly designed to embrace an entire subject of legislation', thereby expressing a legislative intent to supersede Section 46-3-150 by the Public Records Act. As stated, the title to the Act and the legislative findings expressed therein, both of which can be used to show intent, see, Sutherland, supra, City of Spartanburg v. Leonard, 180 S.C. 491, 186 S.E. 395 (1936), clearly are reflective of the legislative design. These provide ample evidence of the Legislature's objective—to embrace entirely the subject of the custody, care and control of public records in this State. Moreover, the Act itself does not. recognize any exceptions thereto; and the Legislature's desire for comprehensiveness and uniformity in the treatment of public records is demonstrated by the Act's designation of the Archives, a State agency possessing expertise in the preservation, management and disposal of records, as the agency responsible for the coordination of all such records. As this Office has stated previously, 'Section 30-1-10 et seq. provides a comprehensive scheme for determining what public records should and must be preserved . . ..' Op. Atty. Gen., Dec. 7, 1978. Accordingly, we believe that a court would most probably conclude that Section 30-1-10 et seq. was intended to supersede Section 46-3-150.

However, we would add the following caveat to our conclusions expressed herein. Since Section 30-1-10 et seq. makes no express repeal of Section 46-3-150 or any other similar provision, [4] and because the destruction of records is an irreversible process, we recommend, as a matter of caution, that legislative clarification of this matter be sought. An express repeal provision contained in the Public Records Act would probably be advisable. In addition, if there is any doubt concerning the preservation of any of the records in question, that doubt [5] should probably be resolved in favor of maintaining the records in some form [6] for a period of five years in compliance with Section 46-3-150.

***4** If we can be of further assistance, please let us know. With kindest personal regards, I am
Very truly yours,

Robert D. Cook
Executive Assistant for Opinions

Footnotes

1 The Act defines 'public records' as
. . . the records of meetings of all public agencies and includes all other records which by law are required to be kept or maintained by any public agency, and includes all documents containing information relating to the conduct of the public's business prepared, owned, used or retained by any public agency, regardless of physical form or characteristics.

2 The word 'establish' ['establish standards, procedures, techniques and schedules'] is quite broad, meaning to settle, make, fix, found or create. It means to 'bring about or into existence.' Black's Law Dictionary, p. 490 (5th ed. 1979). Undoubtedly, its use here vests in the Archives considerable discretion.

3 Because of this general body of law, militating against implied repeals, our conclusions expressed herein are not free from doubt. Moreover, the fact that § 46-3-150 was codified in 1976, after the enactment of the Public Records Act and at the Legislature's direction, see Act No. 95 of 1977, might be deemed further support for the argument that § 46-3-150 remains valid.

4 We do not address the legislative intent with respect to any statutes enacted after the Public Records Act. See, e.g., Section 42-3-230. Such statutes would not, in our view, affect the comprehensiveness of Section 30-1-10 et seq. at the time enacted; and as a general matter, they would have to be reconciled, if possible, with the Public Records Act. See, Op. Atty. Gen., Dec. 7, 1978.

5 We note that Section 30-1-100 provides that

when any public records have been destroyed or otherwise disposed of in accordance with the procedure authorized in §§ 30-1-90 and 30-1-110, any liability that the custodian of such records might incur as a result of such official action shall cease.

6 Microfilming of the records in question might provide an adequate alternative.

1984 WL 249901 (S.C.A.G.)

End of Document