1984 WL 249955 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
August 8, 1984

***1** Wade H. Logan, Esquire
Charleston County Attorney
Post Office Box 1090
Charleston, South Carolina 29402-1090

Dear Mr. Logan:
By your letter of July 16, 1984, you have asked whether Sections 7-13-350 and -351, Code of Laws of South Carolina (1976), as amended or added by Act No. 263 of 1984, repeal by implication Act No. 936 of 1970. You also enclosed a memorandum of law prepared by Deputy County Attorney Jim Bridges, as required by the policy of this Office. We would advise that while the answer to your question is not completely free from doubt, it is the opinion of this Office that Act No. 936 of 1970 should continue to be followed. Thus, petition candidates for Charleston County School District's constituent school boards and board of trustees should submit their petitions for nomination to the Charleston County Election Commission prior to September first, according to Act No. 936.

In construing acts of the General Assembly, the primary obligation of the courts, as well as this Office, is to ascertain and give effect to the legislative intent. Merchants Mutual Insurance Company v. South Carolina Second Injury Fund, 277 S.C. 604, 291 S.E.2d 667 (1982). To determine the legislative intent in enacting Act No. 263 of 1984, this Office has examined the history of the statutes amended therein at great length. Further, this Office examined in depth the acts of the General Assembly creating the School District's board of trustees and constituent boards and then applied the accepted principles of statutory construction to all of the acts to determine the legislature's intent. Following are the findings of this Office.

The first of the two acts dealing specifically with the School District, Act No. 340, 1967 Acts and Joint Resolutions, abolished the Charleston County Board of Education and consolidated the eight school districts in the county into the Charleston County School District. Section 1 of that Act created eight less than county-wide constituent school districts to perform the administrative functions formerly performed by the boards of trustees of the eight school districts, as specified in Section 7 of the Act. Section 2 of the Act established the governing body of the county-wide School District, to be known as the board of trustees, with powers and duties specified in Section 5 of the Act. Act No. 936 of 1970 amended Act No. 340 of 1967 by adding sections to provide for nonpartisan election of the trustees of both boards and for nomination of the candidates by petition. Section 1A, applicable to trustees of the less than county-wide constituent school districts provided in part:
Candidates for those of the constituent school district board of trustees whose members are required by law to be elected shall be nominated by petition only filed with the county election commission prior to September first of each election year signed by not less than two hundred fifty qualified resident electors of the constituent school district. . . .

***2** Similarly, the nomination and election of the board of trustees is provided for in Section 2A:
The election of the members of the board of trustees shall be nonpartisan and candidates for the board of trustees of the Charleston County School District shall be nominated by petition only filed with the county election commission prior to September first of each election year signed by not less than five hundred qualified resident electors of Charleston County, not less than two hundred fifty of whom shall also be residents of the area which the candidate nominated represents. . . .

It is the understanding of this Office that the filing date contained therein has been observed continually since 1970.

In addition to the specific acts governing the School District elections, we have also examined the general election law and amendments thereto. The original comprehensive election law in South Carolina, which was amended most recently by Act No. 263 and other acts in 1984, was contained in Act No. 858, 1950 Acts and Joint Resolutions. Subsection 5-F of that Act, presently codified as Section 7-13-340 of the Code, provides for the printing and distribution of ballots to be cast 'in general elections for national, state, county, municipal, district, and circuit officers in the towns, counties, districts, circuits, cities, and other political subdivisions.' Also in Subsection 5-F is a definition of the term 'municipal': 'The terms 'municipal' and 'municipalities' as used in this section shall be construed to include school districts, public service districts, and like political subdivisions.' (Emphasis added.) Applying the plain meaning of these words, which is required absent ambiguity, Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980), clearly the General Assembly regarded a school district as an entity separate from a county.

Subsection 5-G of Act No. 858 of 1950 provided the mechanism for placement of candidates on the ballot. Portions of the subsection pertain to nomination by primary and, after Act No. 263 of 1984, would be codified today as Section 7-13-350 of the Code. Another portion pertains to nomination by petition and, in part, would be codified today as Section 7-13-351. In part, Subsection 5-G provides:

The nominees in a party primary or party convention . . . for one or more of the offices, national, state, circuit, county, or municipal, . . . shall be placed upon the appropriate official ballot . . .. Other candidates for one or more of the said offices shall be placed upon the said ballot upon the filing with said officer, commissioners, or other authority, as the case may be, at least sixty days prior to the date of the holding of the election, of a petition or petitions nominating such candidates signed by registered electors as follows: for an office voted for by the registered electors residing in an area less than a county, one hundred or more registered electors residing in said area; . . .. [Emphasis added.]

***3** In interpreting the language of the original act according to its plain and ordinary meaning, the definition accorded the term 'municipality' in Subsection 5-F should most probably applied to all subsections of Section 5, including 5-G, to make all parts of the Section, and thus the Act, harmonious, Raggio v. Woodmen of the World Life Insurance Society, 228 S.C. 340, 90 S.E.2d 212 (1955), and to avoid unjust or absurd results. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). Further, the legislature provided the petition procedure for offices held less than county-wide and apparently felt that a school district was to be treated separately from a county or municipality.

Present Code Section 7-13-340 has since 1950 been amended several times, [1] but the language cited from Subsection 5-F has remained unchanged, including the definition of the term 'municipality.' The portions of the 1950 act, Subsection 5-G, which may now be, for the most part, found in Sections 7-13-350 and -351 following Act No. 263 of 1984, have been amended several times, [2] with more substantial changes made by Act No. 644 of 1976. For the first time, in 1976, petition procedures specified that the provisions would apply to petitions for 'one or more of the offices, national, state, circuit, multicounty district or county.' Section 7-13-350. No mention was made of petition nominees for municipal offices or elections by Act No. 644 of 1976. The most recent amendment of Section 7-13-350 was by Act No. 263 of 1984, which separated the provisions for petition nominees from those relative to party primary or convention nominees. Section 7-13-351, added to the Code by Section 4 of that Act, now provides in part:

Any nominee by petition for one or more of the offices, national, state, circuit, multicounty district or county, . . . must be placed upon the appropriate ballot . . . if the petition is submitted . . . not later than twelve o'clock noon on August first . . ..

Section 4 of the Act, another portion of Section 7-13-351, also contains the following, in part:

The petition of any candidate in any special [3] or municipal election must be submitted . . . not later than noon, on the forty-fifth day prior to the date of the holding of the election . . ..

Following the foregoing background, we must now determine what effect the acts relating to Charleston County school district have upon the comprehensive election laws. In construing the provisions of the Charleston County School District acts as well as the comprehensive election law and its amendments, it would appear that the provisions of the various acts now conflict. If the acts specifically relating to the School District are deemed applicable, petitions must be submitted 'prior to September first.' Act No. 936, Section 1, 1970. If, however, Act No. 263 of 1984, amending the original comprehensive act, is applied, the deadline is noon on August first, assuming, without deciding, that the trustees of the various boards are county officers. If the definition of 'municipality,' which includes school districts, is applied, by Act No. 263, the deadline would be noon on September 22. In the event of an irreconcilable conflict, if no other reasonable construction can be found, a later act would be deemed to have impliedly repealed an older act with which it appears to be inconsistent. State ex rel. McLeod v. Ellisor, 259 S.C. 364, 192 S.E.2d 188 (1972). However, implied repeal of a statute or an act is disfavored and will be avoided if any reasonable construction of the apparently conflicting portions may be found. Id. Though our conclusion is not free from doubt, it is the opinion of this Office that Act No. 263 of 1984 has not repealed Act No. 936 of 1970 and that the latter may be reconciled with the 1984 act for several reasons.

***4** It must be presumed that when the General Assembly adopted Act No. 263 in 1984, the legislators were aware of the existence of all of the acts discussed earlier in this opinion. Bell v. South Carolina State Highway Department, 204 S.C. 462, 30 S.E.2d 65 (1944). Thus, the legislators in 1984 would be presumed to have known that the term 'municipality' had been defined by predecessor acts to include school districts and that those earlier acts had contained references to petition procedures for offices requiring signatures from electors residing in areas less than county-wide.

Moreover, it should be noted that an amendment to a statute or an act becomes a part of the original statute or act, as if it had always been contained therein. Windham v. Pace, 192 S.C. 271, 6 S.E.2d 270 (1940). Thus, the 1970 amendment to the 1967 act creating the county-wide school district board of trustees and the less than county-wide constituent boards of trustees would relate back to the 1967 act, as if to become a part of that act. Similarly, too, all of the amendatory acts relative to the original comprehensive election law act of 1950 would relate back to the 1950 act, as if to become a part of the 1950 act. This 'relating back' is particularly appropriate where, as here, the particular language in the election laws being construed has remained substantially unchanged for thirty-four years, since the inception of the comprehensive set of election laws.

With those principles of statutory construction in mind, it is probable that Act No. 936 of 1970, providing the specific procedure for the Charleston County School Board, should be followed. [4] First, where one statute deals with a subject in general terms (here elections) and another statute deals with the same subject in more detailed terms (here, election of the trustees of the boards relative to the Charleston County School District), the two statutes must be harmonized where possible; and if the statutes may not be harmonized, the specific statute will prevail. 2A Sutherland Statutory Construction, § 51.05; Culbreth v. Prudence Life Insurance Company, 241 S.C. 46, 127 S.E.2d 132 (1962); Criterion Insurance Company v. Hoffmann, 258 S.C. 282, 188 S.E.2d 459 (1972); Op. Atty. Gen. dated November 30, 1983. In addition, the acts pertaining to the school district are in reality the more recent expression of the legislative will in the matter under consideration and thus would be deemed controlling. Jolly v. Atlantic Greyhound Corporation, 207 S.C. 1, 35 S.E.2d 42 (1945); Feldman v. South Carolina Tax Commission, 203 S.C. 49, 26 S.E.2d 22 (1943); 73 Am.Jur.2d, Statutes, §§ 255, 256; 82 C.J.S., Statutes, § 347; Op. Atty. Gen. dated July 9, 1984. A final argument could be made that the acts relating to the school district impliedly repeal those portions of the 1950 act and amendments inconsistent with the school district acts, though as has been mentioned, such implied repeal is disfavored and is to be avoided where statutes may be reconciled. State ex rel. McLeod v. Ellisor, supra. Therefore, while it is not free from doubt, the specific acts on the Charleston County School District would appear to be viewed simply as an exception to the general election laws and would be controlling. [5]

***5** It has been argued that the Charleston school trustees, particularly the county-wide board of trustees, are included within the term 'county' offices as used in the general election laws, most recently in Act No. 263 of 1984. School trustees have, the argument goes, always been included within that term in the general election laws; thus, since Act No. 263 of 1984 continues to use that term with respect to the particular date for the submission of petitions (August 1), whatever validity Act No. 263 may have had previously has been nullified by the passage of Act No. 263. Therefore, it is argued, the relevant date is August

1, pursuant to Act No. 263 of 1984. It is further urged that such is especially the case with respect to the county-wide board of trustees because jurisdiction of this board appears to be county-wide.

That argument should be rejected for a number of reasons. First, as stated earlier, implied repeals are particularly disfavored. Secondly, as mentioned, legislators have apparently felt since 1950, that counties and school districts are to be dealt with separately. Furthermore, consistent with this legislative intent, school district trustees are not usually thought of as county officers (which generally may be county council members, treasurer, auditor, assessor, clerk of court, sheriff, coroner, and so forth). See Op. Atty. Gen., dated September 27, 1983; March 30, 1983; March 8, 1978. Following this reasoning, trustees of the county-wide board would not be considered county officers and thus that portion of Section 7-13-351 would not even apply to them. Therefore, there would be no implied repeal of Act No. 963 of 1970 with respect to district trustees and the latter act would be applicable in the absence of any more appropriate portion of the election laws. [6] Moreover, because the constituent school boards have less than county-wide jurisdiction, those trustees, under the authority above-cited in prior opinions, likewise would not be considered county officers.

If indeed any of the general election law provisions discussed above are governing, that portion of Section 7-13-351 pertaining to municipalities is the most logical choice, given the fact that since 1950, the General Assembly has specifically defined 'municipalities' to include school districts for purposes of one or more of those provisions. However, if the school boards under consideration were treated as 'municipalities' or portions thereof, the filing deadline would then be, pursuant to Section 7-13-351, forty-five days prior to the election or in this instance, September 22. Given the burden on the Charleston County election officials to verify the names on the petitions and to prepare the ballots in a timely fashion (see footnote 5, supra) this solution might be unmanageable. Because however we have concluded that the various Charleston trustees are not 'county' officers for purposes of Section 7-13-351, we need not address the applicability of the definition 'municipality' here, especially where the General Assembly enacted Act No. 936 of 1970 subsequent to its first use of that definition to include school districts in 1950. That being the case, and since the 1970 act more specifically addresses the filing of petitions for school district candidates in Charleston County, we deem Act No. 963 to be still controlling.

***6** A prior opinion of this Office dated August 15, 1978, appears somewhat in conflict with our conclusion herein. That opinion, construing Act No. 1235 of 1974 (Code Section 7-13-350) stated that:

[t]he language of these statutes [sections 7-11-70 and 7-13-350 [7]] and in the title of Act 1235 clearly show that the General Assembly intended these statutes to govern and cover the nomination and election of all petition candidates. Therefore, there is no reasonable construction other than that the General Assembly intended to repeal by implication any prior special or general acts in this area or any provisions or acts thereon. This repeal would include the relevant provisions of § 6 of Act 1503.

That opinion however did not explicitly address Act No. 963 of 1970. Moreover, it did not deal with filing deadlines, nor did it have to consider the questions of whether school trustees constitute 'county' officers. Nevertheless, to the extent that the earlier opinion is inconsistent with this one, today's opinion should be deemed controlling as to Charleston County School District board of trustees and constituent school boards of trustees. Furthermore, this opinion today is limited strictly to those offices.

In conclusion, while the answer is not completely free from doubt because of the intricate and overlapping statutes involved, it appears probable that Act No. 263 of 1984 has not repealed by implication Act No. 936 of 1970; thus, the latter act should continue to be followed, particularly since an implied repeal is disfavored and in view of the fact that Act No. 936 was enacted subsequent to use of the relevant language carried forward to Act No. 263. In view of the complexities of these statutes, legislative clarification would nevertheless be advisable. The language in certain of the election statutes dates back to 1950 and may well not reflect more recent developments and changes in governmental and political subdivision structures.

Sincerely,

Patricia D. Petway
Assistant Attorney General

Footnotes

1 See, Act No. 971 of 1966; Act No. 955 of 1968; and Act No. 991 of 1974.

2 See, Act No. 868 of 1958; Act No. 144 of 1959; Act No. 971 of 1966; Act No. 955 of 1968; Act No. 991 of 1974; Act No. 644 of 1976; and most recently, Act No. 263 of 1984.

3 A 'special election' is defined by Section 7-1-20(2) to be 'any other election [other than a general election] including any referendum provided by law to be held under the provisions of law applicable to general elections.' It is to be distinguished from a general election and a primary as those terms are defined by Sections 7-1-20(1) and (3), respectively.

4 While it could be argued that the acts pertaining to the Charleston County School District are unconstitutional, as violative of Article III, Section 34 of the state Constitution, it is likely that a court would find the acts to be constitutional by following the reasoning stated in Moye v. Caughman, 265 S.C. 140, 217 S.E.2d 36 (1975). There the Court stated:

The appellant in his brief did not raise the question of whether the act violates Article III, Section 34; therefore, the applicability of Section 34 is not before us. At oral argument the appellant suggested that the act is violative of Section 34. Without deciding the issue, the Court calls to the attention of the appellant the following cases. State v. Huntley, 167 S.C. 476, 166 S.E. 637 (1932); McElveen v. Stokes, 240 S.C. 1, 124 S.E. (2d) 592, 596 (1962); Thorne v. Seabrook, S.C., 216 S.E. (2d) 177 (1975). They indicate that Section 34 does not deal with matters specifically covered by Article XI.

265 S.C. at 144. Article XI of the state Constitution relates to public education. And of course, this Office must presume that Act No. 936 of 1970 is constitutional. University of South Carolina v. Mehlman, 245 S.C. 180, 139 S.E.2d 771 (1964).

5 While legislative intent in 1970 would be difficult to ascertain in 1984, given the fact that this State does not preserve official legislative history on its acts, Tallevast v. Kaminski, 146 S.C. 225, 143 S.E. 796 (1928), the legislative intent may be speculated. By 1970, petition nominees following Section 23-400.15 of the 1962 Code had to submit their petitions very close to the date of holding the election. By Act No. 955 of 1968, the petition nominee would submit his petition 'not later than the date and time fixed for the closing of primary entries.' By the same section, the deadline for national, State, and circuit primary certification was set at 35 days prior to the date of the holding of the election; for county primary certification, 20 days; and for municipal, 15 days.

Unquestionably, even in 1970, Charleston was one of the larger counties in the State. With several candidates running for each trustee position on the eight, less than county-wide constituent school boards and still other candidates running for each position on the county-wide board of trustees, many names on the nominating petitions would have to be verified. With such a limited amount of time available under the election laws at that time (15 days, probably, since 'municipality' included school districts), it would be probable that the legislature recognized the great burden on the Charleston County election officials to verify so many names in a short period of time and thus enlarged the time between the dates of filing and holding the elections.

6 If the county-wide board members were considered 'county' officers because of their exercise of county-wide jurisdiction, such would produce an anomalous result. Still, under our prior opinions, members of the constituent school board could not reasonably be deemed to fall within the meaning of 'county' officers for purposes of Section 7-13-351. One filing deadline would thus exist for the constituent board and another for the county-wide board. It would appear absurd to treat the two boards so disparately, especially in view of the General Assembly's consistent similar treatment of them, particularly in Act No. 936 of 1970. See also, Act No. 858 of 1950 and amendments thereto. Such an absurdity should be avoided where possible. State ex rel. McLeod v. Montgomery, supra. To apply the 1970 act specifically enacted for Charleston County would avoid such absurd results.

7 Section 7-11-70 contains the substantive requirements for petitions. Section 7-13-350, and now also 7-13-351, would be procedural requirements.

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