1984 WL 249985 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
September 26, 1984

***1** Louis L. Rosen
Director
South Carolina Court Administration
Post Office Box 50447
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Dear Mr. Rosen:
You have asked our advice with regard to an interpretation of Section 46-1-90, Code of Laws of South Carolina (1976 as amended), as that provision pertains to the disposition of fines imposed for offenses committed at the annual State Fair.

Section 46-1-90, except for minor changes in wording, has remained substantially the same since its enactment in 1910. It reads as follows:
For the purpose of better providing for the preservation of the public peace during the annual fairs of the State Agricultural and Mechanical Society of South Carolina all fines imposed for offenses committed on the fairgrounds during the sessions of the annual fairs shall be turned over to the treasurer of the Society by the magistrate before whom such cases are tried if the arrests of the offenders were made by persons appointed or employed by the authorities of the Society.

However, Section 22-1-70 also relates to your question, because that provision currently is the general statute governing disposition of fines and penalties collected by magistrates in criminal cases. Section 22-1-70 has also remained substantially the same since its enactment in 1871, [1] and reads as follows:
All fines and penalties imposed and collected by magistrates in criminal cases must be forthwith turned over by them to the county treasurers of their respective counties for county purposes; provided, that when a magistrate presides over a municipal court under contract between the municipality and the county governing body as authorized by § 14-25-25, a portion of such fines and penalties imposed and collected shall be turned over to the treasurer of the municipality under the provisions of the contract between the municipality and the county governing body which shall specify the portion to be turned over to the treasurer of the municipality. But when, by law any person is entitled, as informer, to any portion of such fine or penalty, such portion shall be immediately paid over to him. If any magistrate shall neglect or refuse to pay over all fines and penalties collected by him in any criminal cause or proceeding he shall, on conviction thereof be subject to a fine of not less than one hundred nor more than one thousand dollars and imprisonment for not less than three nor more than six months and shall be dismissed from office.

II

The first issue is whether these statutes may be read consistently with one another. At first glance, it would appear that Section 46-1-90 is inconsistent with Section 22-1-70 because the latter statute appears to provide only one exception with respect to the mandated disposition of fines; there, in the single case of an informer only, the magistrate must turn over any monies due him as provided by law—otherwise, disposition must be in the manner prescribed by Section 22-1-70. Courts often read such express exemptions as exclusive, and being subject to no other. See, 2A Sands, Sutherland Statutory Construction, (doctrine of expressio unicus est exclusio alterius) § 47.23. On the other hand, statutes which deal with the same subject matter must be reconciled if possible so as to render both operative. Bell v. South Carolina Highway Dept., 204 S.C. 462, 30 S.E.2d 65 (1944). For the following reasons, we believe Section 46-1-90 is still an operative statute.

***2** First, it is well settled in South Carolina that where a specific statute and a general statute concerning the same subject matter are inconsistent with one another, the specific act will usually control. See, e.g., South Carolina Electric and Gas Co. v. Public Service Authority, 215 S.C. 193, 54 S.E.2d 777 (1949). The statute dealing with the specific disposition of fines and penalties imposed by magistrates as a result of offenses committed at the annual fair therefore should, pursuant to this rule of construction, be construed as an exception to the general statute, § 22-1-70.

Additionally, § 46-1-90 was enacted subsequent to § 22-1-70. This is further evidence of the legislative intent to create an exception to the general statute rather than that statute repealing § 46-1-90, since the Legislature is presumed to have knowledge of the prior legislation when the subsequent legislation is enacted. Bell v. S.C. Highway Dept., supra; see also, State v. Harrelson, 211 S.C. 11, 43 S.E.2d 593 (1947).

Finally, our Supreme Court has stated that the doctrine of construction, expressio unius est exclusio alterius as applied earlier, 'is not an inflexible one, and should not be applied to defeat legislative intention.' See e.g., Home Building and Loan Assn. v. City of Spartanburg, 185 S.C. 313, 194 S.E. 139 (1938).

Thus, a court would probably conclude that Section 46-1-90 is governing as it pertains to the disposition of fines imposed for offenses committed at the State Fair. It should be noted, however, that those statutory provisions which require the payment of additional assessments for such programs as the law enforcement training programs at the Criminal Justice Academy, the South Carolina Law Enforcement Hall of Fame, and the community corrections program would similarly be applicable to the fines imposed pursuant to Section 46-1-90. [See, Section 23-23-70 as amended by R409 of 1984; Section 24-23-210 of the 1976 Code as amended].

III

Separate and distinct from the above issue of implied repeal is that of the validity of § 46-1-90 pursuant to Article III, § 34 of the South Carolina Constitution. [2] The initial inquiry is whether the legislation in question is in fact special legislation. The test involves consideration of whether the legislation grants special benefits to a particular group and not the public at large, and whether or not the law operates uniformly. Ellison v. Cass, 241 S.C. 96, 127 S.E.2d 206 (1962); Timmons v. South Carolina Tricentennial Commission, 254 S.C. 378, 175 S.E.2d 805 (1970). Here, it would appear there exists a strong argument that the annual fair inures to the benefit of the public at large, since it is open to the public, and is a statewide event. Additionally, it could be argued that § 46-1-90 is as uniform as it can possibly be, since there is only one such fair.

However, even assuming arguendo that § 46-1-90 constitutes 'special' legislation, we must still inquire whether, in the particular circumstances present, a general law can be made applicable. Article III, § 34; Townshend v. Richland County, 190 S.C. 270, 2 S.E.2d 777 (1939). If a general law can be made applicable, the statute is usually held to contravene Article III, § 34; if not, courts conclude the statute is 'permissible special legislation. Townshend v. Richland County, supra.

***3** A line of Article III, § 34 cases enumerates several factors to be considered in applying this test. Among these are: whether the statute in question meets the exigencies of a particular case, Townshend v. Richland Co., supra; whether or not the legislation promotes the evil sought to be prevented by Article III, § 34, Timmons v. South Carolina Tricentennial Commission, 254 S.C. 378, 175 S.E.2d 805 (1970); whether peculiar conditions requiring special treatment exist, Shillito v. City of Spartanburg, 214 S.C. 11, 51 S.E.2d 95 (1948); and whether the classification is arbitrary or instead a reasonable one 'based upon differences which are either defined by the Constitution or are natural and intrinsic, and which suggest a reason that may rationally be held to justify the diversity in the legislation.' State ex rel. Riley v. Martin, 274 S.C. 106, 117, 262 S.C.2d 404 (1980). Finally, such legislation must be violative of the Constitution beyond a reasonable doubt before the Court will declare it unconstitutional. Townshend v. Richland County, supra; Doran v. Robertson, 203 S.C. 434, 27 S.E.2d 714 (1943); McElveen v. Stokes, 240 S.C. 1, 124 S.E.2d 592 (1962). This rule defers to the 'time honored and universal rule that a court will not declare an act of the

legislature . . . to be violative of the fundamental law unless there can be no reasonable doubt of the necessity of the conclusion.' Doran v. Robertson, 203 S.C. at 444.

The purpose of Article III, § 34's prohibition is to prevent 'legislation by delegation' or, put another way, 'to prevent the legislature from . . . penalizing particular counties.' The provision is designed to avoid '. . . special treatment . . . where there is in force a statute of statewide operation on the subject with which the special act seeks to deal.' State ex rel. Riely v. Martin, 274 S.C. at 117, citing Webster v. Williams, 183 S.C. 368, 191 S.E. 51 (1937). Two factors to be considered when deciding whether the above purposes have been contravened are: whether the statute lacks the 'settled consideration and consent of the lawmaking body' and whether the legislation 'evades statewide responsibility.' Timmons v. South Carolina Tricentennial Commission, 254 S.C. at 399. There is no apparent reason here to believe that § 46-1-90 promotes any of these evils sought to be prevented.' To the contrary, it would appear that the statute is expressly aimed at the promotion of a valid public purpose of preserving 'public peace during the annual fairs'; moreover, no evidence exists that the General Assembly, in enacting § 46-1-90 did not give the matter 'settled consideration.'

Further, we would note that in considering whether a particular statute is violative of Article III, § 34, a legislative declaration of purpose, although not conclusive, is to be given 'great weight' in considering whether the classification is a rational one. Doran v. Robertson, 203 S.C. at 44. In this instance, the Legislature determined that the preservation of the public peace at the annual fair justified this special legislation. In light of this express legislative finding, it is at least doubtful that a court would conclude that § 46-1-90 makes an arbitrary or unreasonable classification. See, Mullis v. Celanese Corp. of America, 234 S.C. 380, 108 S.E.2d 547 (1959). Thus, there exists substantial doubt that a court would declare § 46-1-90 invalid. While it is true that such an argument can be made, when posed with a similar problem in the Townshend case, our Supreme Court stated:

***4** The most that we can say is, that it is doubtful if a general law . . . would be adequate and suitable to accomplish the purpose which the legislature had in view, and we must therefore, resolve the doubt in favor of the validity of the Act.

190 S.C. at 279. Here, since the annual fair serves the entire State, not just the particular county in which it is held (thus the name 'State Fair'), we must defer to the Legislature's judgment the fines committed on the fairgrounds during the fair should be turned over to the Society, rather than the county where the offense occurs.

IV

As to any question as to whether there is a valid public purpose contained in Section 46-1-90 by providing that the fines imposed for offenses committed on the fairgrounds during the sessions of the fairs be turned over to the Society, we would advise that there probably is not. Of course, all legislative action must serve a public rather than a private purpose. State ex rel. McLeod v. Riley, 276 S.C. 323, 278 S.E.2d 612 (1981). The benefit to the public must not be indirect and speculative, but substantial. Id. Our Supreme Court has stated previously that

In general, a public purpose has for its objective the promotion of the public health, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division . . .. (Emphasis added).

Bauer v. S.C. State Housing Authority, 271 S.C. 219, 227, 246 S.E.2d 869 (1978), quoting Caldwell v. McMillan, 224 S.C. 150, 77 S.E.2d 798, 801 (1953). Moreover, the Court has noted that while legislative findings in this area 'have no magical equality to make valid that which is invalid . . . they are entitled to weight . . .' and should not be overturned unless 'clearly wrong.' 271 S.C. at 229-230.

Although Article X, § 11 of the South Carolina Constitution (1895 as amended) prohibits the State or any of its political subdivisions from pledging or loaning their credit for the benefit of any individual association or corporation, this Office has also stated in a number of recent opinions that

Public funds may be appropriated to a private nonprofit, nonsectarian organization if the funds are to be expended in the promotion of a valid public purpose.

Op. Atty. Gen., December 18, 1979 at 1. It was determined in that same opinion that the South Carolina Supreme Court case of Bolt v. Cobb, 225 S.C. 408, 82 S.E.2d 789 (1954) was controlling in such a situation. Attorney General McLeod wrote in that regard:

In brief, this case recognizes the validity of appropriation of public funds for the performance of a public function through the agency of a nonprofit, nonsectarian entity, such as organizations which provide health services, welfare services, and other public purposes for which appropriations are made.

Id.

In more recent opinions, this Office has adhered to the 1979 opinion. For example, again in the context of public aid to nonprofit corporations, we recently noted that:

***5** courts in other states with similar constitutional provisions [to Article X, § 11] have permitted appropriations to private entities which use those public funds to perform a proper 'function for the State.' . . . [citations omitted] The appropriation of public funds to these private entities is in effect, an exchange of value which results in the performance by those entities of a public function for the State.

Op. Atty. Gen., November 16, 1983. And just recently, the same conclusion was reached with respect to aid to a corporation providing public transportation. Op. Atty. Gen., July 12, 1984.

Our Supreme Court has recognized that fairs, such as the State Fair, serve a valid public purpose. In Powell v. Thomas, 214 S.C. 376, 52 S.E.2d 782 (1949), the Court upheld the issuance of bonds by a county 'for the construction and erection of the Chester County Cattle Barn and Show Ring' against an alleged violation of the predecessor of Article X, § 11. While in Powell, the principal question was whether such a bond issuance served a valid county purpose, it cannot be overlooked that the court reviewed the Act in question as to its constitutionality under Article X, § 6, [now Article X, § 11] which of course, also prohibited a political subdivision from pledging or loaning its credit to a private corporation or association. Clearly, the issuance of bonds by the county would invoke this provision, yet the Court upheld the bond issuance in question, stating:

We think it may be reasonably inferred that the proposed undertaking is of an educational nature designed to disseminate among farmers, for scientific knowledge for the improvement of the cattle and milk business.

214 S.C. at 386. In so doing, the Court quoted with approval the North Carolina Supreme Court's decision in Briggs v. City of Raleigh, 195 S.C. 223, 141 S.E. 597, 599 where the Court had sustained the expenditure of public funds by the City of Raleigh, for a state fair:

The purpose and design of a state fair is to promote the general welfare of the people, advance their education in matters pertaining to agriculture and industry, increase their appreciation for the arts and sciences, and bring them in closer touch with many things which otherwise might remain in reserve . . ..

214 S.C. at 386. See also, Mims v. McNair, 252 S.C. 64, 165 S.E.2d 355 (1969). Thus, a court could uphold Section 46-1-90 on the basis that it is merely incidental to the support of the State Fair which itself represents a valid public purpose. [3]

In addition, the General Assembly has found that the purpose of Section 46-1-90 is to preserve 'the public peace during the annual fairs;' it is evident that the statute has sought to insure that there be ample public funds available to preserve the public peace and order during the Fair's operation. Since the Fair is open to all members of the public and attracts hundreds of thousands of visitors annually, this Office certainly cannot say that the Legislature's findings are 'clearly wrong.' Any doubt must be resolved in favor of the statute's constitutionality in this regard and we must therefore conclude that the statute's purpose of

preservation of public order at the Fair is a valid public purpose. Bauer, supra; Powell, supra. Moreover, it would appear that a provision that fines collected at the Fair, in turn, be used to assist in maintaining security at the Fair is rationally related to the implementation of that purpose. As the Court stated in Bauer,

***6** We cannot say that the Act will not promote the health, safety and welfare of the citizens of the State.

271 S.C. at 230. [4] In summary then, we would advise that a court would conclude that Section 46-1-90 does not violate Article III, § 34 or Article X, § 11 of the South Carolina Constitution.

V

In your remaining question you asked what are the criteria for determining if a person is 'appointed or employed by the authorities of the Society' as provided in Section 46-1-90. In a conversation with Mr. W. L. Abernathy with the State Fair Association, we were informed that in the past all fine money generated pursuant to the referenced statute has resulted from arrests made by off-duty Richland County sheriff's deputies who are paid by the Fair Association. He indicated that the Fair Association does not employ security guards in addition to the deputies. Therefore, any further response to your question appears to be unnecessary.

If we can be of further assistance, please let us know.
Sincerely,

Robert D. Cook
Executive Assistant for Opinions

Footnotes

1 Changes in phraseology or omission or addition of words do not necessarily require change in construction of the original act, and the general rule favors the same construction as the original statute, since the different language is the result of rephrasing, condensing, simplifying or improving the laws. South Carolina Elec. and Gas. Co. v. Public Serv. Comm., 272 S.C. 316, 251 S.E.2d 753 (1979).

2 Article III, § 34(IX) provides that '[i]n all other cases, where a general law can be made applicable, no special law shall be enacted . . ..'

3 See also, McKinney v. City of Greenville, 262 S.C. 227, 203 S.E.2d 680 (1974) [a public body, in donating property, may properly consider indirect benefits resulting to the public as consideration.].

4 We must caution, however, that our conclusion is not free from doubt with respect to Article X, § 11. This Office must continue to advise that 'these are decisions of our Supreme Court which clearly indicate that Article X, § 11 does not permit any pledge or loan of the State's credit on behalf of a corporation.' For further amplification of this, I would refer you to the July 12, 1984 opinion of this Office at n. 4. (copy enclosed). See also, 116 A.L.R. at 888.

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