

1983 S.C. Op. Atty. Gen. 161 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-95, 1983 WL 142764

Office of the Attorney General

State of South Carolina

Opinion No. 83-95

December 8, 1983

*1 The Honorable Frank Powell
Sheriff of Richland County
Post Office Box 143
Columbia, South Carolina 29202

Dear Sheriff Powell:

Your letter of May 18, 1983 to Attorney General Medlock was recently reassigned to me for response. In your letter, you requested an opinion as to which statute would apply to the seizure of property in a distraint case: [Section 27–39–230, Code of Laws of South Carolina \(1976\)](#), specifying property exempt from distraint, or Section 15–41–200 (1982 Cum. Supp.), concerning property exempt from attachment, levy and sale. Further, you inquired as to procedures to follow in the appraisal of property if Section 15–41–200 should be applied. Based upon the following discussion, this Office advises that [Section 27–39–230](#) would be the appropriate statute to determine property exempt from distraint.

Collection of rent in arrears by the process of distraint was a remedy well known at common law. 49 Am.Jur.2d, [Landlord and Tenant](#) § 726. The remedy was recognized in South Carolina and was first codified within the agricultural lien laws. [Sullivan v. Ellison](#), 20 S.C. 481 (1884); [Parrott v. Malpass](#), 49 S.C. 4, 26 S.E. 884 (1897). The present distraint statutes were first codified in 1946 and have been amended subsequently. See, Act No. 53 of 1946 Acts and Joint Resolutions; Act No. 318 of 1973 Acts and Joint Resolutions. Section 33 of Act No. 53 of 1946 has been codified as [Section 27–39–230 of the 1976 Code](#), as follows: ‘The following property shall be exempt from distress for rent, to wit: Personal clothing and food within the dwelling, bedsteads and bedding and cooking utensils.’ The language remains unchanged from the initial enactment.

By Act No. 53, 1981 Acts and Joint Resolutions, the General Assembly provided for certain property to be exempt from attachment, levy and sale; for certain property to be non-exempt from bankruptcy proceedings; and for certain property not to be subject to exemptions. Section 2 of that Act, codified as Section 15–41–200, reads in pertinent part:

The following real and personal property of a debtor domiciled in this State shall be exempt from attachment, levy and sale under any mesne or final process issued by any court or bankruptcy proceeding:

(3) The debtor's interest, not to exceed two thousand five hundred dollars in aggregate value in household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments, that are held primarily for the personal, family or household use of the debtor or a dependent of the debtor.

A comparison of [Sections 27–39–230](#) and [15–41–200](#) shows that the items listed in the former statute are basically covered in the latter statute; however, [Section 15–41–200](#) places a limit of \$2,500.00 on the exemptions to be claimed thereunder.

While titles and headings are not formal parts of an act, they may be examined to determine the legislature's intent in enacting a law. 2A [Sutherland Statutory Construction](#), §§ 47.03, 47.14. The title of Act No. 53 of 1981, in pertinent part, states: ‘An

Act to Amend the Code of Laws of South Carolina, 1976, . . . By Adding [Section 15-41-200](#) So As To Prescribe The Property of Persons Domiciled In The State Which Is Exempt From Court Process[.] * * * The heading preceding Section 2 of the Act states: 'Property exempt from attachment, levy and sale.' Attachment is a remedy codified in Chapter 19 of Title 15, Code of Laws of South Carolina, and is to be strictly construed. [Glenn v. One 1946 Tudor Ford](#), 222 S.C. 13, 71 S.E. 2d 507 (1952). Distrain as a remedy is codified in Chapter 39 of Title 27; nowhere within the statutes pertaining to distraint does the process of 'attachment, levy and sale' appear. It thus appears to be the intent of the legislature to apply the exemptions of [Section 15-41-200](#) to only attachment, levy and sale, and not to distraint.¹

*2 A comparison of [Sections 27-39-230](#) and [15-41-200](#) shows that [Section 27-39-230](#) is very specific in that it relates solely to property exempt from distraint, whereas [Section 15-41-200](#) is very general and may be applied in a variety of circumstances. See [Section 15-19-10, Code](#). It is a general rule of law that general and specific statutes must be read together and harmonized where possible; if a conflict appears to exist, then the specific statute will prevail over the general statute and will remain an exception to the general statute. [Criterion Insurance Company v. Hoffmann](#), 258 S.C. 282, 188 S.E. 2d 459 (1972); [Culbreth v. Prudence Life Insurance Company](#), 241 S.C. 46, 127 S.E. 2d 132 (1962); 2A [Sutherland Statutory Construction](#) § 51.05. Thus, for the purpose of determining property to be exempt from distraint, [Section 27-39-230](#) would be applicable.

Because [Section 27-39-230](#) is deemed to be the appropriate statute for determining exemptions, it is not necessary to address your inquiry as to the procedure to follow in appraising property.

I trust that this response will satisfactorily answer your inquiry. If you desire further clarification, please contact me at 758-3970.
Sincerely,

Patricia D. Petway
Staff Attorney

Footnotes

¹ In comparing and distinguishing the remedies of attachment and distraint or 'distress,' the following has been noted: Attachment, which is dependent entirely on statute and may involve the seizure of either realty or personalty as security for payment of a judgment which may be obtained, and may be issued solely on order of court, is distinguishable from 'distress' at common law which involved the seizure by an owner of land of personal property on his land to secure the payment of certain claims of debt, without statutory authority and without any action at law.

7 C.J.S. [Attachment](#) § 2(b). See also 52 C.J.S. [Landlord and Tenant](#) §§ 572-574.

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