

1981 WL 157768 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 2, 1981

*1 Honorable Thomas M. Marchant, III
S.C. House of Representatives
The State House
Columbia, South Carolina 29201

Dear Mr. Marchant:

You have asked the opinion of this Office as to interpretation of House Bill No. 2040, which received second reading on January 28, 1981, and is now on the calendar for third reading. Representatives John Bradley and Larry Koon have asked us the same questions contained in your letter of January 30, 1981, and we are forwarding copies of this letter to them also.

The question is whether Section 3 of the printed Bill (Printer's No. 27-H) ^a would allow a school district to make payroll deductions from employees' salaries or wages for payments to "professional organizations" if such payments are to be made to or "for the benefit of" a labor organization as prohibited by Section 1A. The two sections read:

SECTION 1A. Notwithstanding any other provision of this act, including definitions of organizations eligible for payroll deductions, such provisions shall not be construed to include any organization recognized or classified as a labor organization under [Section 501\(c\)\(5\) of Title 26 of the United States Code Annotated](#), by the United States Department of Labor, or by any court of competent jurisdiction nor shall any such deduction be made if any of the proceeds of the deduction would be for the benefit of any such organization.

SECTION 3. The governing body of any school district may provide for the withholding from the compensation of any employee such sums as may be authorized by the employee for payment to tax exempt charitable organizations registered in State of South Carolina, and providing direct services to the citizens of this State, professional associations, credit unions, savings and loan associations and banks.

The opinion of this Office is that under the rules of statutory construction the prohibition of Section 1A applies to all parts of the proposed Act and that, therefore, payments to "professional organizations" may not be deducted from salaries and wages of school district employees if such payments are to or "for the benefit of" an organization which is a labor organization as defined in Section 1A.

As noted in your letter, the ordinary rule of statutory construction is that when there are inconsistent provisions within an Act, the last expression of the Legislature contained therein is controlling. 59 C.J.S., Statutes, § 596, [Feldman v. S.C. Tax Commission](#), 203 S.C. 49, 26 S.E.2d 22 (1943); [State v. Brown](#), 154 S.C. 55, 151 S.E. 218 (1930). But this rule applies only when there is an inconcilable conflict between sections, which is not the case in H. 2040.

In absence of ambiguity, which does not appear here, legislative history is not relevant, [Palmetto Lumber Company v. Southern Ry.](#), 154 S.C. 129, 151 S.E. 279 (1929). The order in which various amendments to a bill are adopted in the House or Senate is not controlling, as ultimately all must be construed together as finally enacted. [Creech v. Public Service Authority](#), 200 S.C. 127, 20 S.E.2d 645 (1942); [Timmons v. Tricentennial Commission](#), 254 S.C. 378, 175 S.E.2d 805 (1970).

*2 The conclusion you have drawn from your research on the question is correct: The phrase “notwithstanding any other provision of this Act” as contained in Section 1A controls all other provisions of the Act, whether contained therein prior to or after that section. As you note the word “notwithstanding” means “in spite of”, and must be given its plain and ordinary meaning, [Hughes v. Edwards](#), 265 S.C. 529, 220 S.E.2d 231 (1975). [Hartford Ins. Company v. Lindsay](#), 273 S.C. 79, 254 S.E.2d 301 (1979). This section controls all other parts of the Act in which such provision appears. 28A, Words and Phrases, Supp. 101; [Board of Education v. Maple Heights](#), 41 Ohio Misc. 27, 322 N.E.2d 154 (1973).

From the information which you have provided, to the effect that the National Education Association is classified as a labor organization under [Section 501\(c\)\(5\) of the Internal Revenue Code](#), and if the South Carolina Education Association does in fact forward a portion of its member contributions to the NEA, then deductions for such payments by school districts to the SCEA would be prohibited by the provisions of Section 1A of the Bill.

Cordially yours,

Daniel R. McLeod
Attorney General

Footnotes

- [a](#) The copied version which you attached to your letter shows this section as Section 2, while the printed version in the Office of the Clerk of the House shows it as Section 3; but this opinion is not affected by the order of these sections in the Bill.

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