

1982 WL 189385 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 28, 1982

\*1 George A. Markert  
Assistant Director  
South Carolina Court Administration  
South Carolina Supreme Court  
Post Office Box 50447  
Columbia, South Carolina 29250

Dear Mr. Markert:

In a letter to this office you questioned whether mayors' courts and recorders' courts may be considered to have been abolished by the enactment of Act No. 480 of 1980. You particularly questioned whether the provisions of Chapter 25 of Title 14 of the Code of Laws and §§ 5-7-90 and 5-7-230, [Code of Laws of South Carolina](#), 1976, which provide for such courts, may be considered to have been repealed.

In the opinion of this office, the statutory provisions which provide for the judicial authority of mayors and municipal courts presided over by recorders, namely, §§ 5-7-90, 5-7-230, and Chapter 25 of Title 14 of the Code of Laws, 1976, may be considered to have been repealed by the enactment of Act No. 480 of 1980. Such Act specifically provides in § 1 that ' . . . Chapter 25 of Title 14 of the 1976 Code is amended to read . . . ' Following such are provisions which provide for a uniform system of municipal courts in this State. Such Act specifically provides for the structure, powers and jurisdiction of such municipal courts and indicates that such courts ' . . . shall be a part of the unified judicial system of this State . . . '

Provisions previously included in Article 1 of Chapter 25 of Title 14 of the Code were statutes dealing with the judicial authority of mayors and the procedure for handling cases tried in a mayor's court. Included in former Article 13 of Chapter 25 were provisions dealing with the structure and authority of recorders' courts. Such courts were authorized to be established in municipalities with a population of one thousand or more. Other provisions in former Chapter 25 concerned the procedure for jury trials and authorization for the office of ministerial recorder. A review of the subject matter included in Act No. 480 of 1980 indicates that the provisions of such Act generally cover those matters previously included in Chapter 25 of Title 14.

It is generally held that:

'(a)n amending act may operate as a repeal of the statute amended. Thus, where an amendment is made which changes the old law in its substantial provisions, it must, by a necessary implication, repeal the old law in so far as they are in conflict; and where a new law, in the form of an amendment, covers the whole subject matter of the former, is inconsistent with it, and is evidently intended to supersede and take the place of it, it repeals the old law by implication.'

82 C.J.S., [Statutes](#), § 294, p. 503.

It has been further determined that:

'(a)s in the case of a subsequent independent enactment, those provisions of an earlier act or section which are in irreconcilable conflict with the provisions of an amendatory act are impliedly repealed.'

1A Sutherland, [Statutory Construction](#) § 23.12, p. 236.

\*2 In [Windham v. Pace, et al.](#), 192 S.C. 271 at 284, 6 S.E.2d 270 (1939), the South Carolina Supreme Court similarly determined that:

‘. . . unless the contrary intent is clearly indicated, the amended statute is to be construed as if the original statute had been repealed, and a new and independent Act in the amended form adopted.’

It is also a rule of statutory construction that:

‘(t)he last act of the Legislature is the law, and has the effect of repealing all prior inconsistent laws.’

[Ward, et al. v. Cobb, et al.](#), 204 S.C. 275 at 280-281, 28 S.E.2d 850 (1944).

Therefore, in the opinion of this office, in amending Chapter 25 of Title 14, the Legislature intended for the provisions included in Act No. 480 of 1980 to substitute for previous provisions included in such Chapter. Such can be clearly seen as to the situation involving recorders' courts inasmuch as the subject matter is obviously the same. As to the matter of mayors' courts, the statement in the Title to Act No. 480 of 1980 clearly indicates that the provisions of such Act were intended to provide for a uniform system of municipal courts in this State. Obviously, if the previous system of mayors' courts was allowed to continue, the concept of uniformity would be abandoned.

As to any consideration that mayors' courts should be construed as continuing to exist pursuant to the provisions of §§ 5-7-90 and 5-7-230, supra, it has been stated that:

‘(a)n amendatory statute impliedly repeals statutes other than the one which it amends where it is irreconcilably inconsistent with such statutes; . . .’

82 C.J.S., [Statutes](#), § 294, p. 503.

Therefore, in order for a uniform municipal court system to exist, it must be determined that any other statutory provisions which would authorize a nonuniform court system, such as the referenced code sections, must be considered to have also been repealed by Act 480 of 1980.

Another argument in support of the determination that the referenced statutory provisions may be considered as having been repealed may be found in an examination of the provisions of Article V of the State Constitution. Act No. 480 of 1980 was enacted in keeping with the mandate of Article V for a unified judicial system. The Title to the Act specifically provides that it is an Act ‘. . . to provide for a uniform system of municipal courts . . .’ Pursuant to § 22 of Article V, the system of municipal courts and mayors' courts in existence upon the ratification of Article V was authorized to continue to exist as established until legislation bringing such courts into the unified judicial system could be enacted. See: [State ex rel. McLeod v. Civil and Criminal Court of Horry County](#), 265 S.C. 114 at 116, 217 S.E.2d 23 (1975).

However, while such courts were permitted to temporarily continue as authorized, it was also mandated that any legislation subsequently enacted affecting such courts must conform with the mandate of Article V. Therefore, another argument in support of the determination that Act No. 480 of 1980 must be interpreted as having repealed former provisions concerning mayors' courts and recorders' courts may be found in the declaration of the State Supreme Court in the previously referenced [Horry County](#) decision. There the Court held:

\*3 ‘Article V, Section 1, directs that a unified and uniform judicial system be created; and any alteration or extension of the present system, other than as so mandated, is unconstitutional.’  
265 S.C. at 116.

The Court further stated in [State ex rel. McLeod v. Knight](#), 264 S.C. 532, 216 S.E.2d 190 (1967) that:

‘a unified judicial system in the present constitutional sense, means a statewide system. The piecemeal alteration of the Court structure, with the establishment of a statewide unified system indefinitely postponed, . . . , fails to meet the requirements of [Article V, § 1.](#)’  
[264 S.C. at 534.](#)

Therefore, in order for such a statewide unified system to be established, any former provisions not in keeping with such system must be considered as having been repealed. Any alteration in the judicial system other than in keeping with the mandate of [Article V](#) would be unconstitutional. Therefore, it must be concluded that Act No. 480 of 1980 repealed previously enacted provisions concerning mayors' courts and recorders' courts.

If there are any questions concerning the above, please contact me.  
Sincerely,

Charles H. Richardson  
Assistant Attorney General

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