

1980 WL 120806 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 4, 1980

*1 The Honorable Mildred R. Harmon
Clerk of Court
P.O. Box 278
Newberry, South Carolina 29108

Dear Mrs. Harmon:

You have recently asked for the opinion of this Office concerning the effect of [§§ 30-1-10 et seq.](#), Code of Laws of South Carolina (1976 as amended) upon Act No. 334 of the 1971 Acts and Joint Resolutions. Specifically, your question is whether the Clerk of Court may, pursuant to Act No. 334, destroy certain records, e.g. chattel mortgages.

The guide to statutory construction is not the phraseology of an isolated provision, but the language of the statute as a whole considered in light of this manifest purpose. [City of Columbia v. Niagara Fire Ins. Co.](#), 249 S.C. 388, 154 S.E.2d 674 (1976). Rules of construction have as their sole object the discovery of the legislative intent. *Supra*. Construing [§§ 30-1-10 et seq.](#), as a whole, it is clear that the General Assembly intended that political subdivisions of the State are required to adhere to the provisions of [§§ 30-1-10 et seq.](#) The term 'subdivision' is contained in virtually every section of this Act. While it is well settled that the law disfavors implied repeals, the most recent enactment of the General Assembly must control and has the effect of repealing all prior inconsistent enactments. [Garey v. City of Myrtle Beach](#), 263 S.C. 247, 209 S.E.2d 893.

With these basic rules of construction in mind, [§§ 30-1-10 et seq.](#) appears to repeal Act No. 334. [§§ 30-1-10 et seq.](#) charges the South Carolina Department of Archives and History with the duty to establish record disposition schedules for the management of public records (§ 30-1-80). Likewise, the statute bestows upon the Archives the express authority to establish time periods for the retention of each series of records (§ 30-1-90), and a duty to establish and maintain a program for preservation of essential public records (§ 30-1-100). § 30-1-90 specifically states:

When requested by the Archives, agencies and subdivisions shall assist the Archives to prepare and inclusive inventory of records in their custody and a schedule establishing a time period for the retention of each series of records. This schedule shall be approved by the governing body of the subdivision . . . the Director of the Archives, and in the case of state or regional agencies, the State Budget and Control Board. [emphasis added].

This provision is particularly difficult to reconcile with the earlier Act No. 334 which would delegate exclusive authority for the destruction of certain records to the Clerk of Court. Applying the aforementioned principles of statutory construction, it would appear that Act No. 334 has been implicitly repealed by [§§ 30-1-10 et seq.](#) Accordingly, pursuant to these provisions the Department of Archives and History must be directly involved in any decision to destroy the records in question.

The question is not completely free from doubt and can be finally resolved only by seeking a declaratory judgment in the courts. However, two additional problems militate against invoking Act No. 334 as authority to destroy these records. First, [Article III, § 34 of the South Carolina Constitution](#), which prohibits passage of a special law where a general law could be made applicable, might well invalidate Act No. 334, even if not implicitly repealed as stated. Matters of recording and the maintenance of records relating thereto appear to be areas of statewide concern, where general enactments would be required. Additionally, destruction of these records without some review by an agency such as the Archives, is such an irreversible act as to caution against destruction until the courts approve such action.

*2 I hope this adequately responds to your inquiry. If I may be of further assistance, please do not hesitate to contact me.
With best wishes, I remain
Very truly yours,

Robert D. Cook
Assistant Attorney General

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