ALAN WILSON
ATTORNEY GENERAL

October 28, 2015

The Honorable William M. "Bill" Chumley
House of Representatives, District No. 35
P.O. Box 11867
Columbia, SC 29201

Dear Representative Chumley:

Attorney General Alan Wilson has referred your letter dated September 13, 2015 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue (as quoted from your letter):

I am writing to you on behalf of the Board of Fire Control for the Reidville Area Fire District (the "Board"), the governing body of the Reidville Area Fire District (the "District").

The District was created pursuant to Act No. 769 of 1973 (the "Enabling Act"), a copy of which is enclosed herewith.[1] The provisions of the Enabling Act authorized the creation of the Board, provided certain powers and duties of the District, and established the District's ability to levy taxes. The Enabling Act was adopted on March 7, 1973.

On November 7, 1972, the voters of South Carolina authorized the implementation of certain amendments to Article VIII of the Constitution of South Carolina, 1895, which are generally referred to as the "Home Rule Amendments." Thereafter the South Carolina General Assembly ratified and approved the Home Rule Amendments pursuant to Act No. 63 of 1973, which was also adopted on March 7, 1973 ("Act No. 63"). A copy of Act No. 63 is also enclosed herewith.

According to the Journal of the House for Wednesday, March 7, 1973, excerpts of which are enclosed herewith, at noon of that day, the House attended the Senate Chamber whereupon it ratified both the Enabling Act and Act No. 63. The Enabling Act bears ratification number 105 (R. 105) and Act No. 63 bears ratification number 108 (R. 108). It is unequivocal that Act No. 63 authorizing the Home Rule Amendments was ratified after the Enabling Act (3 spots later).

Section 10 of the Enabling Act provides that the "act shall take effect upon approval by the Governor," which records indicate occurred on March 7, 1973, but no specific time can be confirmed; a copy the executed Enabling Act, as signed by Governor West, is also enclosed herewith. By its terms, Act No. 63 became effective immediately upon its ratification.

In Knight v. Salisbury, 262 S.C. 565 (1974), the South Carolina Supreme Court determined that the Lower Dorchester Recreation District ("Dorchester"), a new special purpose district created by Act No. 259 of 1973, and adopted on May 31, 1973, was unconstitutional under the Home Rule Amendments.

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[1] *According to the Spartanburg County Elections Director and as required by the Enabling Act, a successful referendum was held on May 10, 1973 with 149 voting in favor of the establishment of the District and 7 opposed. Prior to the Enabling Act, the legislature authorized the creation of the District pursuant to Act No. 727 of 1964. Act No. 727 also required a referendum on the establishment of the District. A referendum to establish the District was held on March 14, 1964, but such referendum failed with 152 voting in favor and 164 opposed.*

Specifically, the Court in Knight stated that "[t]he State Constitution, which until March 7, 1973 did not deny the plenary powers of the General Assembly in this area, has now been changed. Those plenary powers are now curtailed by the prohibition of special laws for a specific county." We believe that the heart of this issue is whether the Enabling Act was enacted before the Home Rule Amendments. Although the House and Senate Journals confirm that the Enabling Act received three readings, was assigned an act number, and was ratified before the Home Rule Amendments, it is ambiguous whether the Enabling Act became effective before the Home Rule Amendments. Because of this ambiguity, we believe that the rules of statutory construction and, in particular, the last legislative enactment rule, require a presumption that the Enabling Act is constitutional.

We believe that the creation of the District and the adoption of the Enabling Act is distinguishable from the creation of Dorchester. Whereas Dorchester was created two and half months after the Home Rule Amendments, the District was created on the same day as the Home Rule Amendments and ratified prior to the ratification of the Home Rule Amendments as noted above. The Court in Knight further states that "political subdivisions should continue to function as authorized on March 7, 1973, when Article VIII [the Home Rule Amendments] was ratified." Additionally, the Home Rule Amendments (see Article VIII, Section 1 of the Constitution) explicitly provide that "[t]he powers possessed by all . . . political subdivisions at the effective date of this Constitution shall continue until changed in a manner provided by law."

...

Applying these rules to the Enabling Act, it appears the courts would presume that the Home Rule Amendments were enacted after the Enabling Act because it is not clear which law was effective first, but the order of arrangement unambiguously shows the Enabling Act to be the earlier act. Additionally, the courts will make presumptions in favor of constitutionality and where there is a clear path to find an act constitutional and only an ambiguous argument for unconstitutionality, the courts are direct to rule in favor of constitutionality.

With this information in mind. I would respectfully request your opinion as to whether your office believes that the Enabling Act is constitutional under the Home Rule Amendments?

Short Answer:
After reviewing your question, this Office agrees with your presumption that a court will likely conclude the Board of Fire Control for the Reidville Area Fire District and the Reidville Area Fire District's enabling legislation is constitutional and thus sufficient.[2]

Law/Analysis:
Let us begin by examining the intent of the Legislature. As you are likely aware, the cardinal rule of statutory construction is to ascertain the intent of the Legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the Legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the purpose, plan and reasoning behind its making. Id. at 816. Statutes are to be interpreted with a "sensible construction," and a "literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose." U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). Like a court, this Office

[2] We are basing this conclusion on the information you provided to us.

looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006). The dominant factor concerning statutory construction is the intent of the Legislature, not the language used. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)).

Looking at the enabling act for Act No. 769, it states:

> **An Act To Provide For A Referendum As To The Creation Of The Reidville Area Fire District In Spartanburg County And To Provide For Its Creation In The Event Of A Favorable Vote; To Provide For A Board Of Fire Control For The District; To Prescribe The Powers, Duties And Membership Of The Board; To Provide For Tax Levies; And To Provide Penalties For Certain Violations.**
> ...
> **SECTION 1. Referendum concerning fire districts.** —The Spartanburg County Commissioners of Election shall conduct a referendum on the second Tuesday in May. 1973. to ascertain the wishes of the qualified electors residing within the proposed Reidville Area Fire District on the question of whether or not they favor the establishment of a rural fire district and favor the necessary tax levy.
> ...
> **SECTION 3. District created if election favorable.**—If a majority of those voting in the election vote in favor of the creation of the fire district, there is hereby established the Reidville Area Fire District in Spartanburg County ..."
> **SECTION 4. Board of Fire Control.** —After the creation of the Reidville Area Fire District, there is established a board of fire control for the district, to be composed of three members..."

Act No. 769, 1973 S.C. Acts 1520. The Act clearly states that its purpose includes providing for the creation of the Reidville Area Fire District and Board if there is a favorable vote. The Act includes the date for the referendum, which is approximately two months after the ratification date of this Act and Home Rule. Id. While the referendum is a contingency to the establishment of the district, the authority to establish the district was granted pursuant to Act No. 769.

It appears the issue is the timing of the approval of the Governor on the effective date of Act No. 769. As you note in your letter, whereas the act creating the Reidville Fire District and Board is effective upon approval by the Governor, the Constitutional amendment [known as the Home Rule Act] was to be effective immediately on March 7, 1973. As given in the information with your letter, Act No. 769 was signed by the Governor on March 7, 1973. It is our understanding the ambiguity is whether Act 769 was signed before or after the Home Rule amendments, as both were effective on March 7, 1973. Section 7 of Act No. 63 states that "[n]o laws for a specific county shall be enacted and no county shall be exempted from the general laws or law applicable to the selected alternative form of government." Act No. 63, 1973 S.C. Acts 69 § 7. However, reading the language of the amendment, it prohibited the enactment of specific laws for a county. Black's Law Dictionary defines enact as "1. To make into law by authoritative act; to pass... 2. (Of a statute) to provide ...." Black's Law Dictionary 567 (8th ed. 2004). While customarily one may think of approval by the Governor as an authoritative act, there is an argument to be

made that Act No. 769 had already passed. Even if Act No. 769 had approval by the Governor, one could argue the District was still not effective until after the referendum, which was two more months away. The beginning of the Article VIII amendment reads:

> Section 1. The powers possessed by all counties, cities, towns, and other political subdivisions at the effective date of this Constitution shall continue until changed in a manner provided by law.

Act No. 63, 1973 S.C. Acts 68. Therefore, this leaves us with one of two conclusions. One is that the Legislature ratified a bill before they ratified another bill, on that same day that made the first bill ineffective. See Ratification Nos. 105, 108, as referenced in your letter. The other conclusion is that their intent was to ratify Act No. 769 before the Home Rule Act amendment, and did not intend for the effective date and time as signed by the Governor to make their action void. As stated in a previous opinion, "we will apply the principle that the Legislature did not intend to do a futile thing...." Op. S.C. Att'y Gen., 2015 WL 6406146 (October 19, 2015) (citing Op. S.C. Att'y Gen., 1984 WL 159859 (May 9, 1984); St. ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778(1964)). Moreover, we will presume our Legislature did not intent to pass a bill that is impossible to execute. See, e.g., In the Matter of Equitable Res., Inc., Dominion Res., Inc., Consol. Natural Gas Co., & the Peoples Natural Gas Co., Respondents., 9322, 2007 WL 2173594, at *113 (MSNET Apr. 11, 2007). Furthermore, we agree with your assertion that a court will likely find that Knight v. Salisbury would not apply to the enabling legislation of Act No. 769 because it was passed and ratified before The Home Rule Act amendment was ratified.

However, as you mention in your letter, one could make the argument that where two statutes conflict, statutory interpretation often holds the latter in time trumps. See, e.g., Feldman v. S.C. Tax Commission, 203 S.C. 49, 26 S.E.2d 22 (1943). We agree that a court will likely find this does not apply in this situation but instead would apply the principle that a former statute is "not to be considered repealed by a later general statute unless there is a direct reference to the former statute or the intent of the legislature to repeal the earlier statute is implicit." Op. S.C. Att'y Gen., 2002 WL 31728845 (October 21, 2002) (quoting Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979)). Moreover, these statutes were ratified on the same day by the same Legislature, which would imply they did not intend for the statutes to conflict. As this Office has previously stated:

> The language of a statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Multi-Cinema, Ltd. v. S.C. Tax Commission, 292 S.C. 411, 357 S.E.2d 6 (1987). And where two statutes are in apparent conflict, they should be construed, if reasonably possible, to give force and effect to each. Stone & Clamp, General Contractors v. Holmes, 217 S.C. 203, 60 S.E.2d 231 (1950). This rule applies with peculiar force to statutes passed during the same legislative session, and as to such statutes, they must not be construed as inconsistent if they can reasonably be construed otherwise. State ex rel. S.C. Tax Commission v. Brown, 154 S.C. 55, 151 S.E. 218 (1930).

Op. S.C. Atty. Gen., 1988 WL 485345 (December 1, 1988). As our Court has previously stated, "[t]he well known maxim applicable to statutes, '*quanda lex aliquid concedit, concedere videtur et Id, per quod devenitur ad illud*'" or, as rendered by Chancellor Kent, 'whenever a power is given by a statute

everything necessary to the making of it effectual or requisite to attain the end is implied,' is sufficient authority for this" would apply here. Glenn v. Cnty. Comm'rs of York, 6 S.C. 412, 428-29 (1873).

The Home Rule Act did not retroactively abolish the legislation already passed concerning local laws. As our Court has stated, "[t]he Home Rule Act, while preventing the General Assembly from enacting 'special legislation' and voiding any 'special legislation' which contradicts the general law, does not operate retroactively to abolish all 'special legislation' which was in effect in South Carolina prior to the enactment of the Home Rule Act." Graham v. Creel, 289 S.C. 165, 168, 345 S.E.2d 717, 719 (1986). Furthermore, this Office has previously opined that "[our State] Supreme Court held that '[s]tatutes of a specific nature are not to be considered repealed by a later general statute [grievance] unless there is a direct reference to the former statute or the intent of the legislature to repeal the earlier statute is implicit." Op. S.C. Att'y Gen., 1986 WL 289871 (July 3, 1986) (citing Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979)). Furthermore, as you note, the South Carolina Supreme Court has consistently chosen to prefer a constitutional interpretation over an unconstitutional one. In State v. 192 Coin-Operated Video Game Machines, the Court said "[a] possible constitutional construction must prevail over an unconstitutional interpretation." State v. 192 Coin-Operated Video Game Machines, 338 S.C. 176, 196, 525 S.E.2d 872, 883 (2000) (citing Henderson v. Evans, 268 S.C. 127, 132, 232 S.E.2d 331 (1977)).

Conclusion:
It is for all of the above reasons we are in agreement with the conclusions you reached in your letter and believe a court will likely uphold the legislation creating the Reidville Area Fire District and Board as opposed to finding the legislation is futile. However, this Office is only issuing a legal opinion based on the current law at this time. Until a court or the Legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,

Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General