

1977 S.C. Op. Atty. Gen. 134 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-166, 1977 WL 24508

Office of the Attorney General

State of South Carolina

Opinion No. 77-166

June 1, 1977

*1 To: Leonard E. Wrigley
Director
S. C. Board of Certification of
Environmental Systems Operators

QUESTION

May the Board of Certification of Environmental Systems Operators charge fees in excess amounts of those set by Sections 56–1544, 56–1544.7 and 56.1544.12, S. C. Code of Laws, 1962, as amended, on the authority of a proviso in the Appropriations Act (Act 709 of the 1976 Acts and Joint Resolutions)?

STATUTES AND CASES

S. C. Code Sections 56–1544, 56–1544.7, and 56–1544.12, as amended; Section 94, Act No. 709 of 1976; [State ex rel McLeod v. Mills](#), 256 S.C. 21, 180 S.E.2d 641 (1971); [Feldman v. S. C. Tax Commission](#), 203 S.C. 49, 26 S.E.2d 22 (1943); 1960–61 Op. Atty. Gen. 258 (1961); [U. S. v. Mitchell](#), 109 U.S. 146, 3 S.Ct. 151, 27 L.Ed. 887 (1883); [State ex rel Buchanan v. State Treasurer](#), 68 S.C. 411, 415, 47 S.E. 683 (1904).

DISCUSSION

The question presented arises out of a conflict in S. C. Code Sections 56–1544.7 and 56.1544.12 and the Appropriations Act of 1976, specifically Act No. 709 of 1976, Section 94.

S. C. Code Section 56–1544.7 provides in part as follows:

Any person desiring to be registered as a water or wastewater treatment plant operator may make application, on a form prescribed and furnished by the Board, accompanied by such fee as specified by the Board, such fee not to exceed ten dollars. The annual renewal fee shall not exceed five dollars.

Any person desiring to be registered as an operator performing percolation tests may make application on a form prescribed and furnished by the Board, accompanied by a fee of twenty-five dollars. The annual renewal fee shall not exceed twenty-five dollars.

S. C. Code Section 56–1544.12 provides as follows:

Any person of good moral character licensed by another state or territory as an operator whose requirements are commensurate with the requirements of this state may, upon the payment of a fee not to exceed twenty-five dollars, be granted a certificate of registration by the Board.

In conflict with these sections is Section 94 of Act No. 709 of 1976 which sets forth the appropriations for the Board of Certification of Environmental Systems Operators and includes within its final provisions the following:

Provided, that notwithstanding the provisions of 1962 Code of Laws of South Carolina, as amended, Section 56–1544 through Section 56–1544.12, . . . all assessments, fees and/or licenses shall be levied in an amount sufficient to at least equal the amount appropriated in this section.

The total amount appropriated by the General Assembly for the Board of Certification of Environmental Systems Operators was thirty-six thousand and six hundred and forty-one dollars (\$36,641.00).

In view of the express limitations concerning registration and renewal fees contained in the above-quoted code sections compared with the proviso contained in Section 94 of Act No. 709 of 1976, this office has been requested to render an opinion as to whether the proviso authorizes the Board to increase its application, renewal and transfer fees for operators (defined in S. C. Code Section 56–1544, as amended) to amounts in excess of the limitations prescribed in those code sections. We are of the opinion that the proviso does permit the Board to increase these fees notwithstanding the limitations contained in S. C. Code Sections 56–1544.7 and 56–1544.12, as amended, so long as a determination is made that present licensee fee rates are insufficient to obtain the current budget amount appropriated by the Legislature in Act No. 709 of 1976.

*2 This office recognizes the general rule of construction that where conflicting provisions are found in the same statute, or in different statutes, the last in point of time or order of arrangement prevails if they cannot be reconciled. [Feldman v. South Carolina Tax Commission](#), 203 S.C. 49, 26 S.E.2d 22 (1943); 1960–61 Op. Atty. Gen. 258 (1961). Since Act 790 of 1976 is the last in point of time as compared to S. C. Code Sections 56–1544.7 and 56–1544.12, enacted in 1966 and amended in 1972, this alternative rule of construction gives a basis for our position that the Legislature's intention, as evidenced by the subject proviso in Section 94 of Act 709 of 1976, is to permit the Board to require the payment of fees in excess of the limitations prescribed in the subject code sections.

In addition, this position is further justified upon consideration of other cases. Primarily, the Supreme Court of this State has held that the first consideration in such matters should be whether the Legislature intended to temporarily suspend the prior statute. [State ex rel McLeod v. Mills](#), 256 S.C. 21, 180 S.E.2d 641 (1970). There the Court held that where there exists a conflict between them, the Appropriations Act temporarily suspends the prior law for the duration of the Act. Here, the intent is not as clearly expressed as in that case but the effect of the proviso seems to be the same. The reasoning behind this is that Section 94, supra, of the Act states specifically that higher charges are to be made if needed to meet the budget amount.

Further, the Court said in the case of [Brooks v. Jones](#), 80 S.C. 443, 61 S.E. 946 (1912) and cited in [State ex rel McLeod](#), supra, that:

An appropriation act, though generally in duration temporary, has equal force and effect as a permanent statute for the time being. If approved subsequently to such permanent act, and there is irreconcilable conflict, the latter is suspended during the time the appropriation act is of force. [U. S. v. Mitchell](#), 109 U.S. 146, 3 S.Ct. 151, 27 L.Ed. 887; [State ex rel. Buchanan v. State Treasurer](#), 68 S.C. 411, 415, 47 S.E. 683.

Therefore, it is our opinion, considering the authority of the above-cited cases, that it was the intention of the Legislature to temporarily suspend the provisions of Section 56–1544.7 and 56–1544.12 cited herein if it is determined that the present license charges will not be sufficient to meet the budget requirement.

CONCLUSION

The subject provision of Section 94 of Act 709 of 1976 temporarily permits the Board of Certification of Environmental Systems Operators to increase fees notwithstanding the limitations contained in S. C. Code Sections 56–1544.7 and 56–1544.12, as

amended, upon a determination that present rates will not produce a sufficient income to meet the amount appropriated by the Legislature in Act No. 709 of 1976.

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