1979 WL 42903 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
April 3, 1979

***1** R. Markley Dennis, Esquire
Dennis, Dennis & Watson
Post Office Drawer 1174
Moncks Corner, South Carolina 29461

Dear Mr. Dennis:
In response to your request for an opinion from this Office as to whether or not the provisions of Act No. 564 of 1978 [60 STAT. 1656 (1978)] supersede or repeal legislation such as Act No. 583 of 1967 [55 STAT. 1114 (1967)] as of July 1, 1979, my opinion is that the 1978 legislation was intended to provide for a mandatory county library system to be uniform throughout the State. The findings of the General Assembly incorporated in Section 1 of Act No. 564 declare in part that the legislation seeks:
. . . to clarify the statutes of county public libraries under the 'home rule' legislation, to define the relationship between county government and county library systems, and to insure the continued operation and support of such libraries on a uniform basis.

Section 2 of the Act (codified as Sections 4-9-35 through 4-9-39 of the 1976 Code of Laws of South Carolina) begins with mandatory language, to wit:
(A) Each county council shall prior to July 1, 1979, by ordinance establish within the county a county public library system, which ordinance shall be consistent with the provisions of this section; . . .. [Emphasis added.]

Nevertheless, immediately following the above-quoted provision appears the following permissive language:
. . . provided, however, notwithstanding any other provision of this chapter, the governing body of any county may by ordinance provide for the composition, function, duties, responsibilities, and operation of the county library system. [Emphasis added.]

Ordinarily, the rules of statutory construction dictate that, in the event of conflicting language, including conflicting language within the same piece of legislation, the last stated expression of the legislature controls. See, e.g., Jolly v. Atlantic Geryhound Corporation, 207 S.C. 1, 35 S.E.2d 42 (1945); Feldman v. South Carolina Tax Commission, 203 S.C. 49, 26 S.E.2d 22 (1943). Here, however, the intent of the General Assembly to provide for a mandatory county library system is so clearly evinced both from its stated findings and from the over-all provisions of the Act which, in detail, provide for the functioning of the new county library system [1] that my opinion is that the permissive language which appears last in Section 2 of the Act might very well have been a legislative inadvertence and, for that reason, might be disregarded.

This opinion is not free from doubt, however, inasmuch as the option does appear in the legislation and, until and unless a court of competent jurisdiction declares such permissive language to be an error, a county could argue that its pre-existing county library system provided for by special legislation or otherwise continues irrespective of the provisions of Act No. 564 of 1978.
With kind regards,

***2** Karen LeCraft Henderson
Senior Assistant Attorney General

Footnotes

1 Section 3 of the Act provides that members of county library boards serving unexpired terms when a new board is created by county ordinance shall continue to serve out their respective terms or until July 1, 1982, whichever date is earlier. This language obviously contemplates that the new county library system is intended to replace the pre-existing ones.

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