

1977 S.C. Op. Atty. Gen. 203 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-268, 1977 WL 24608

Office of the Attorney General

State of South Carolina

Opinion No. 77-268

August 24, 1977

*1 TO: Joseph H. Earle, Jr.
Greenville County Attorney

QUESTIONS

1. Is Code of Laws of South Carolina § 23–3–130 (1976) sufficient authority for the Fingerprint Card regulation promulgated and filed with the Secretary of State's Office by the State Law Enforcement Division on December 10, 1976?
2. If the answer to question number one is in the affirmative is the State Law Enforcement Division required to pay for the costs of the fingerprint program under Code of Laws of South Carolina § 23–3–40 (1976)?

STATUTES AND CASES

Code of Laws of South Carolina § 23–3–40 (1976);

Code of Laws of South Carolina § 23–3–120 (1976);

Code of Laws of South Carolina § 23–3–130 (1976);

[Criterion Ins. Co. v. Hoffman](#), 258 S.C. 282, 188 S.E.2d 459 (1972);

[Clayton Mutual Funeral Association v. Overby Mutual Funeral Association](#), 11 N.C.App. 723, 182 S.E.2d 275 (1971);

[Lee v. Michigan Miller Mutual Insurance Company](#), 250 S.C. 462, 158 S.E.2d 774 (1968);

[Heyward v. South Carolina Tax Commission](#), 240 S.C. 347, 126 S.E.2d 15 (1962);

[Banks v. Batesburg Hauling Company](#), 202 S.C. 273, 24 S.E.2d 496 (1943);

[Feldman v. South Carolina Tax Commission](#), 203 S.C. 49, 26 S.E.2d 22 (1943).

DISCUSSION

On December 10, 1976, Chief J. P. Strom of the State Law Enforcement Division filed with the Secretary of State the following regulations:

I. Fingerprint Cards—All state, county, and city law enforcement agencies in South Carolina must submit to the Records Section of SLED, on a standard criminal fingerprint card, an original recordation of fingerprints of every individual under lawful arrest. Not included will be juveniles and traffic offenses (with the exception of DUI's). All fingerprint cards submitted must have legible fingerprints and contain either the final or arrest disposition. Care should be taken to fill out the fingerprint

card accurately and with as much information as possible. This includes both sides of the card, as all requested is essential. The fingerprint cards must be submitted to SLED within 72 hours of arrest.

II. Final Disposition Reports—All state, county, and city law enforcement agencies and court agencies in South Carolina must complete a Final Disposition Report form: SLED form No. CJICS—8 for all felony and misdemeanor arrests. Upon determination of final disposition, the reports must be submitted to SLED within ten (10) days.

This regulation was promulgated pursuant to Code of Laws of South Carolina § 23–3–130 (1976). That statute provides: The State Law Enforcement Division is authorized to determine the specific information to be supplied by the law enforcement agencies and court officials pursuant to § 23–3–120, and the methods by which such information shall be compiled, evaluated and disseminated. The State Law Enforcement Division is further authorized to promulgate rules and regulations to carry out the provisions of this article.

*2 Code of Laws of South Carolina § 23–3–120 provides:

All law enforcement agencies and court officials shall report to the system all criminal data within their respective jurisdiction and such information related thereto at such times and in such form as the system through the State Law Enforcement Division may require.

On the surface these statutes appear to be ample authority for the promulgation of the above regulations. Generally administrative agencies in exercising their rulemaking powers may promulgate rules that are within the statutory limits granted to the agency. However, these agencies clearly cannot promulgate a rule which would amend, alter, enlarge or limit a statute. [Lee v. Michigan Millers Mutual Insurance Company](#), 250 S.C. 462, 158 S.E.2d 774 (1968); [Heyward v. South Carolina Tax Commission](#), 240 S.C. 347, 126 S.E.2d 15 (1962); [Banks v. Batesburg Hauling Company](#), 202 S.C. 273, 24 S.E.2d 496 (1943).

It is the opinion of this Office that the above regulations insofar as they require fingerprint information of every person who is under lawful arrest are invalid in that they amend and enlarge upon Code of Laws of South Carolina § 23–3–40 (1976). That section provides:

All sheriffs and police departments in South Carolina shall make available to the Criminal Justice Records of the State Law Enforcement Division for the purpose of recordation and classification all fingerprints taken in criminal investigations resulting in convictions. The State Law Enforcement Division shall pay for the costs of such program and prepare the necessary regulations and instructions for the implementation of this section.

It is a fundamental rule of statutory construction that general and specific statutes should be read together and harmonized if possible. However to the extent of any conflict between the two, the specific statute must prevail. [Criterion Insurance Company v. Hoffman](#), 258 S.C. 282, 188 S.E.2d 459 (1972). Section 23–3–40 is a specific statute requiring that certain fingerprints, those of individuals who have been convicted, be made available to the State Law Enforcement Division and that the Division prepare the necessary regulations and instructions necessary for the implementation of this law. Section 23–3–130 is a general statute authorizing the Division to determine what specific criminal information should be supplied to it and authorizing the Division to promulgate regulations to implement this provision. On the basis of the above cited rule, it is the opinion of this Office that any regulations which relate to the dissemination of fingerprint information should be promulgated under § 23–3–40. Since this statute requires the sheriff's and police departments to make available only those fingerprints taken in criminal investigations resulting in convictions, the Division cannot amend or enlarge upon that statute by requiring, by regulation, that those departments submit a record of fingerprints of every individual under lawful arrest. Furthermore, § 23–3–40 requires the Division to pay the costs of such program.

*3 An illustration of this rule is found in the North Carolina case of [Clayton Mutual Burial Association v. Overby Mutual Funeral Association](#), 11 N.C.App. 723, 182 S.E.2d 275 (1971). In that case the Burial Association Commission was authorized to promulgate regulations to provide for the orderly transfer of a member's benefits in merchandise and services from the official funeral director. The regulation actually adopted and under which the plaintiff instituted the action provided for the transfer of benefits but omitted the phrase 'in merchandise and services.' The Court found that the statute authorizing the regulation was not sufficient authority for the regulation actually promulgated since 'benefits' without the limiting phrase 'in merchandise and services' was construed to mean cost benefits.

This opinion is supported by the principle that the last expression of the legislative will is the law, where conflicting provisions are found in different statutes. [Feldman v. South Carolina Tax Commission](#), 203 S.C. 49, 26 S.E.2d 22 (1943). Section 23-3-40 was enacted in 1971 whereas § 23-3-130 was passed in 1970.

CONCLUSION

Code of Laws of South Carolina § 23-3-130 is not sufficient authority for the regulations promulgated by the State Law Enforcement Division on December 10, 1976, insofar as they require fingerprint information of every person under lawful arrest because this regulation amends and enlarges upon Code of Laws of South Carolina § 23-3-40.

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