

1976 S.C. Op. Atty. Gen. 22 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4238, 1976 WL 22858

Office of the Attorney General

State of South Carolina

Opinion No. 4238

January 28, 1976

**\*1 Absent the finding of an implied repeal of Act No. 116 of 1963, Saluda County would have both an Office of Civil Defense and a County Disaster Preparedness Agency, each charged with essentially the same responsibilities to plan for and implement emergency preparedness operations at the local level.**

Director

South Carolina Disaster Preparedness Agency

#### QUESTION PRESENTED

Where there exists with regard to civil defense matters in Saluda County both a special law passed by the General Assembly in 1963 and a local ordinance enacted by the County governing body in 1975, to what extent are each enforceable, and which would control in the event of a conflict in their terms?

Your agency has raised questions concerning the existence and resolution of possible conflict between special civil defense laws passed by the General Assembly for the various counties during the 1960's and more recent local enactments by the County governing bodies dealing with disaster preparedness and civil defense. Specific reference is made to Saluda County and legislation relating thereto as an example of this possible conflict.

In 1963 the General Assembly of South Carolina enacted Act 116 of 1963, entitled 'An Act To Create An Office For Civil Defense For Saluda County.' That Act became effective on April 11, 1963, and exists today without amendment. See § 44–981, Code of Laws of South Carolina, 1962, as amended. That special legislation created an Office for Civil Defense for Saluda County having 'the responsibility of establishing an emergency preparedness plan for natural disasters and national emergencies, of insuring preparedness of the county to adequately deal with such disasters, and the providing for the common defense and protection of public peace, health, safety of lives and property of the county.' Provision was also made for the selection of a County Civil Defense Director by the County Legislative Delegation, including Senator.

Although no specific reference thereto is contained in Act 116 of 1963, it is apparent that such, along with other special acts for other counties, was enacted pursuant to Act No. 888 of 1958, then known as the 'South Carolina Civil Defense Act' (formerly codified as Chapter 3 of Title 44, Code of Laws of South Carolina, 1962). Act No. 888 of 1958 established a State Civil Defense Agency as well as other organizations for civil defense within the State. Section 5 thereto provided:

The Legislative Delegation, including the Senator, from each county, and mayors of municipalities within such counties, shall select a County Chairman who shall organize and establish a county organization for Civil Defense in accordance with the State Civil Defense plan and program. Such County Chairman shall cooperate with adjacent counties in their defense plans and cooperate with the Director in coordinating that of his own county with the plan of other counties and the State. Any defense plan devised by a County Chairman shall have the approval of the Legislative Delegation, including the Senator, and mayors of municipalities within such counties, before being published, promulgated, or acted upon.

**\*2** Act 888 of 1958 was expressly repealed by Act No. 128 of 1973, entitled 'An Act To Provide For Civil Defense And Disaster Control In South Carolina.' Act No. 128 of 1973 did not, however, expressly repeal Act No. 116 of 1963 or any of

the other similar local or special acts which had been enacted pursuant to Act No. 888 of 1958. It is this failure of Act No. 128 of 1973 that serves as the source of potential conflict.

Section 7 of Act 128 of 1973 states in part:

(2) County and municipal governments shall be responsible for:

(a) Organizing, planning and otherwise preparing for prompt, effective employment of available resources of the county or municipality to support disaster operations of the municipalities of the county, or to conduct disaster operations in areas where no municipal capability exists.

(b) Coordinating support to municipal disaster operations from other sources including State and Federal assistance as well as support made available from other municipalities of the county.

Act No. 128 of 1973 as subsequently amended appears as §§ 44–311 through 44–318, Code of Laws of South Carolina, 1962, as amended.

Apparently in recognition of this responsibility, the Saluda County Board of Commissioners passed a Resolution ‘To Create The Saluda County Disaster Preparedness Agency And To Provide For Civil Defense And Disaster Preparedness in Saluda County.’ The effective date of this Resolution was June 13, 1975, and its purpose is to create the Saluda County Disaster Preparedness Agency and to establish procedures for the efficient utilization of the county's facilities in the event of enemy attack or natural disaster.

Saluda County would thus appear to have both an Office of Civil Defense responsible to the County Legislative Delegation and charged with preparing a plan for emergency preparedness (pursuant to Act No. 116 of 1963) and the Saluda County Disaster Preparedness Agency (pursuant to the 1975 Resolution of the County governing body) through which the Saluda County Board of Commissioners can act to implement a plan for disaster preparedness. Contrary to your suggestion, no conflict exists in regard to the manner of selection of the civil defense head inasmuch as the legislation would apparently give rise to two separate, lawfully constituted agencies, both being charged with essentially the same task and each having a separate head determined by varying methods of selection; the Office for Civil Defense headed by the Civil Defense Director who is appointed by and responsible to the County Legislative Delegation, and the County Disaster Preparedness Agency headed by the Disaster Preparedness coordinator who is appointed by and responsible to the Board of Commissioners.

Though the legislation contains no irreconcilable conflict on its face, there is a likelihood of conflict between the authority of these agencies and their disaster plans. Accordingly, a determination should be made as to whether both agencies should continue and what was the intention of the State Legislature with regard to the organization and control of disaster preparedness at the local level.

**\*3** Inasmuch as the General Assembly established the Saluda County Office for Civil Defense in 1963, only it could abolish the same. It is obvious that there has been no express repeal of Act No. 116 of 1963 as above mentioned. Although the General Assembly in passing Act No. 128 of 1973 expressly repealed all of Chapter 3 of Title 44 of the 1962 Code, it failed to expressly repeal the many special county civil defense laws, like Act No. 116 of 1963, not contained in Chapter 3 of Title 44 of the 1962 Code.

Nevertheless, there exists the judicial doctrine of implied repeals. It is acknowledged that,

Legislatures cannot be credited with the compendious knowledge of detail contained in the great mass of statute law in effect in a state, nor have they the time to carry out the extensive research into the accretions of myriads of statutory provisions, in order to always be able to specify what previous statute should be repealed. Because in the course of enacting legislation in accord with the demands of society it is only natural that subsequent enactments should be declaratory of the intent to repeal preexisting laws without mention or reference to such prior laws, a repeal may arise by necessary implication from the enactment of a subsequent act. *Sutherland Statutory Construction* 4th Ed. Vol. 1A § 23.09.

A Legislature is presumed to intend to achieve a consistent body of law and for this reason subsequent legislation is not presumed to effectuate a repeal of the existing law in the absence of that expressed intent. Rather, there is a well recognized and judicially formulated presumption *against* all implied repeal. It is noted in *Sutherland Statutory Construction* § 23.10,

The bent of the rules of interpretation and construction is to give harmonious operation and effect to all of the acts upon a subject, where such a construction is reasonably possible, even to the extent of superimposing a construction of consistency upon the apparent legislative intent to repeal, where two acts can, in fact, stand together and both be given consonant operation. Where the repealing effect of a statute is doubtful, the statute is strictly construed to effectuate its *consistent* operation with previous legislation.

...

The presumption against implied repeals is overcome, however, by a showing that the two acts are irreconcilable, clearly repugnant as to vital matters to which they relate, and so inconsistent that the two cannot have concurrent operation.

It is obvious that the intent of the General Assembly in passing Act No. 128 of 1973 was to provide for the creation and control of local civil defense *by local governing bodies*, and it may be strongly argued that the express repeal of all of Chapter 3 of Title 44 of the 1962 Code, Act No. 888 of 1958 (which had placed the planning and control of county civil defense matters in the hands of the Legislative Delegation) also impliedly repealed all special acts relating to county civil defense, including Act No. 116 of 1963, which had been enacted pursuant thereto and which perpetuated the authority of the various county Legislative Delegations in such matters. In the absence of an express repeal by the General Assembly, the only authoritative resolution of the potential conflict would be in the courts of this State. Accordingly, it is the recommendation of this office that Act No. 128 of 1973 (contained in §§ 44–311 through 44–318, Code of Laws of South Carolina, 1–62, as amended), be further amended so as to specifically repeal those prior special acts creating offices of civil defense within the various counties.

**\*4** In summary, it is the opinion of this office that while a strong argument can be made that the Saluda County Office of Civil Defense has been abolished by the implied repeal of Act No. 116 of 1963, the matter is not free from doubt. Only further action by the General Assembly or an authoritative interpretation by the Courts can resolve that doubt.

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