ALAN WILSON
ATTORNEY GENERAL

May 3, 2016

The Honorable Donna C. Hicks, Member
The Honorable Doug Brannon, Member
South Carolina House of Representatives
402-D Blatt Building
Columbia, SC 29201

Dear Representatives Hicks and Brannon:

Attorney General Alan Wilson has referred your letter dated March 3, 2016 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)**:** "[W]hether or not the Home Rule Act invalidates the laws in Chapter 11, Title 6 of the SC Code of Laws, relating to special purpose districts."

Law/Analysis:
By way of background, this Office has written over one hundred and ninety legal opinions that mention Title 6, Chapter 11, and numerous court opinions also reference it. After reviewing a majority of the prior opinions, we believe the answer to your question is no. Below is an overview of our findings that we hope will be helpful in showing you how we reached this conclusion.[1]

As a background regarding Home Rule, this Office has previously briefly described its history as follows:

> the Amendments to Article VIII of the South Carolina Constitution [known as the Home Rule Act amendments] passed pursuant to Act No. 63 of 1973 and became law on March 7, 1973. Our State Supreme Court issued the Knight v. Salisbury opinion in 1974, which struck down a law passed by the Legislature, concluding that the law in question was special legislation. Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875 (1974). Specifically the Court determined the Legislature lacked the authority to pass a local law specific to one county creating a recreation district commission and authorizing it to issue bonds. Id. While initially the Court allowed "transitional legislation" as an exception to the prohibition against specific laws for one county granted by the Home Rule Act (see Duncan v. York County, 267 S.C. 327. 228 S.E.2d 92 (1976)) that was limited to "one shot" legislation (see Van Fore v. Cooke, 273 S.C. 136, 255 S.E.2d 339 (1979)).

[1] While this Office has issued numerous opinions and has reviewed many other sources addressing these statutes, this opinion is intended to be an overview that highlights some of the applicable statutes, cases and opinions. There are numerous other sources we encourage you to review for further study.

Op. S.C. Att'y Gen., 2015 WL 8773706 (S.C.A.G. Nov. 24, 2015). The Supreme Court specified the amendments to Article VIII of the South Carolina Constitution were passed with the intent to return the power of county government to the local level. Op. S.C. Atty. Gen., 2011 WL 5304080 (S.C.A.G. October 11, 2011) (citing Terpin v. Darlington Co. Council, 286 S.C. 112, 332 S.E.2d 771 (1985)). Moreover, in a recent prior opinion, this Office commented on Home Rule and its effect on statutes already existing:

> [t]he 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.C.2d 872, 883 (2000) (citing Henderson v. Evans, 268 S.C. 127, 132, 232 S.E.2d 331 (1977)).

Op. S.C. Att'y Gen., 2015 WL 7046008 (S.C.A.G. Oct. 28, 2015) (emphasis added).

This Office has issued previous opinions regarding whether Home Rule implicitly repealed South Carolina Code § 6-11-10 et seq. and concluded that it did not. See Ops. S.C. Att'y Gen., 1977 WL 37428 (S.C.A.G. September 19, 1977); 1997 WL 783346 (S.C.A.G. October 6, 1997). The 1977 opinion reasoned in its answer that S.C. Code § 6-11-10 et seq. was promulgated in the 1976 Code of Laws and would not have been if it were nullified by the Home Rule Act. Id. This Office also opined that special purpose districts created pursuant to S.C. Code § 6-11-10 et seq. were not created by county council as special tax districts pursuant to the Home Rule Act. Op. S.C. Att'y Gen., 2015 WL 1870567 (S.C.A.G. April 9, 2015) (citing Op. S.C. Att'y Gen., 1977 WL 37428 (S.C.A.G. September 19, 1977).[2] A 2015 opinion also restated that county council could not create an "independent political subdivision of the State" based on the Home Rule Act. Id. (quoting Op. S.C. Att'y Gen., 1991 WL 633070 (S.C.A.G. November 4, 1991)). Moreover, Home Rule (§ 4-9-30(5)) authorizes a county to maintain fire protection, just as the Code does in § 4-19-10. This Office opined that we do not believe § 4-19-10 was implicitly repealed by S.C. Code § 4-9-30(5). Op. S.C. Att'y Gen., 1978 WL 35177 (S.C.A.G. October 20, 1978).

[2] However, we mentioned in the 1977 opinion that our Court may still find that the functions of a special purpose district created pursuant to S.C. Code § 6-11-10 are "county functions" and thus should be supervised by the county pursuant to reasoning such as that used in Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875 (1974) and Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975). The opinion also noted that a special tax district created pursuant to Home Rule is a creature of a county council.

In 1982 this Office affirmed that special purpose districts created pursuant South Carolina Code § 6-11-10 are separate political subdivisions of the State. Op. S.C. Att'y Gen., 1982 WL 189154 (S.C.A.G. January 28, 1982). There are other examples of prior opinions where this Office has concluded that where statutes are not in direct conflict with the home rule legislation, other legislation is not implicitly repealed. See, e.g., Ops. S.C. Att'y Gen., 1980 WL 120721 (S.C.A.G. June 17, 1980); 1980 WL 120869 (S.C.A.G. September 12, 1980). We believe a court would use the same standard today that where statutes are not in direct conflict with the Home Rule legislation, other legislation is not implicitly repealed.

Nevertheless, at least two opinions by this Office written prior to 1986 reference a previous opinion that conclude special legislation has been implicitly repealed by home rule legislation. Ops. S.C. Att'y Gen., 1978 WL 35177 (S.C.A.G. October 20, 1978); 1982 WL 189149 (S.C.A.G. January 22, 1982). We believe those opinions reference a 1976 opinion discussing implicit repeal by Home Rule that was written before the Graham case. Op. S.C. Att'y Gen., 1976 WL 23142 (S.C.A.G. November 23, 1976). In 1986 our State's Supreme Court clarified in the Graham case that Home Rule does not repeal all special legislation prior to Home Rule. Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717 (1986). This Office opined that districts already created pursuant to S.C. Code § 6-11-10 et seq. were still lawful after Home Rule passed. See Op. S.C. Att'y Gen., 1982 WL 189154 (S.C.A.G. January 28, 1982). This Office has also opined that Home Rule does not give counties the authority to change acts of the General Assembly relating to a particular special purpose district. Op. S.C. Att'y Gen., 1980 WL 120754 (S.C.A.G. June 27, 1980). Contrastingly, a March 13, 1978 opinion by this Office concluded that Home Rule legislation did implicitly repeal § 14-250 et seq. of the 1962 Code in that Home Rule changed a county government to one without a supervisor. See Op. S.C. Att'y Gen., 1978 WL 34762 (S.C.A.G. March 13, 1978). The opinion made this conclusion on the bases that the language of § 14-250 et seq. of the 1962 Code regarding county supervisors conflicted with Home Rule legislation. Like our 1978 opinion, we continue to believe that a court will find only where there is a direct conflict would Home Rule legislation repeal other legislation. See also Ops. S.C. Att'y Gen., 1998 WL 746093 (S.C.A.G. July 8, 1998) (affirming previous opinions concluding that since civil service commissions were not specifically overruled by Home Rule legislation, they were valid pursuant to S.C. Code § 5-19-110 et seq.); 1975 WL 29306 (S.C.A.G. December 3, 1975) (opining that Home Rule does not overrule but expands county planning and zoning, etc.); 1984 WL 250011 (S.C.A.G. November 14, 1984) (opining counties not the General Assembly could provide services needed through special purpose districts and thus, by implication from the opinion, S.C. Code § 6-11-10 was not repealed by Home Rule); 1978 WL 34706 (S.C.A.G. February 15, 1978) (where a historical commission's powers conflict with the county council's powers pursuant to Home Rule, the commission's powers are likely implicitly repealed). This Office has advised fire districts created pursuant to Section 6-11-10 et seq. to follow the procedures in Section 6-11-80 et seq. to fill a vacancy. See, e.g., Op. S.C. Att'y Gen., 1994 WL 199779 (S.C.A.G. April 20, 1994). In a 2002 opinion, this Office concluded Section 6-11-130 (authorizing condemnation) applied to a special purpose district created by the General Assembly. See Op. S.C. Att'y Gen., 2002 WL 31728843 (S.C.A.G. October 31, 2002). Moreover, in regards to conflicting or inconsistent statutes, this Office has previously stated that:

> [a]nd 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).

Op. S.C. Atty. Gen., 1988 WL 485345 (S.C.A.G. December 1, 1988). Thus, we will attempt to construe other statues valid unless in direct conflict with Home Rule.

In a 1975 case, our South Carolina Supreme Court summarized the implementation of Home Rule when it stated:

> [t]he concluding sentence of [S.C. Constitution Article VIII,] Section 7 provides that "No laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selected alternative form of government." Read alone, this prohibition against the enactment of laws for a specific county could be given such a broad interpretation that it would prohibit the enactment of a law establishing a state park or a branch of a state college in a designated county. The prohibition against laws for a specific county cannot be given an interpretation which might result if the words were taken by themselves and out of context. The prohibition was not intended to create an area in which no laws can be enacted. Rather, the prohibition only means that no law may be passed relating to a specific county which relates to those powers, duties, functions and responsibilities, which under the mandated systems of government, are set aside for counties.

Kleckley v. Pulliam, 265 S.C. 177, 183, 217 S.E.2d 217, 220 (1975). In a 1982 case, the United States District Court explained that "in 1973 new Article VIII of the South Carolina Constitution became effective and in 1974 pursuant to the propositions of new Article VIII, The General Assembly enacted a general law, Section 6-11-420, S.C. Code of Laws, 1976, (originally Act 926 of 1974) to allow county governments to deal with the enlargement or diminution in size of existing special purpose districts." City of Conway v. Grand Strand Water & Sewer Authority, 535 F.Supp. 928 at 930 (Feb. 24, 1982). In 1983, our State Supreme Court found that a county did not follow the statutory procedure in Title 6, Chapter 11 in reducing the size of a special purpose district. Berry v. Weeks, 279 S.C. 543, 309 S.E.2d 744 (1983). The Berry case also held that special legislation is still valid unless the General Assembly overrides such legislation. Id. In 1998, the South Carolina General Assembly passed South Carolina Code § 6-11-271 to remove the taxing authority from appointed bodies pursuant to S.C. Const. Art X, § 5 prohibiting taxation without representation. Campbell v. Hilton Head No. 1 Public Service Dist., 354 S.C. 190, 580 S.E.2d 137 (2003). On May 7, 2001 the United States Court of Appeals for the Fourth Circuit issued an opinion interpreting § 6-11-250 to allow revenue bonds as an additional source of financing for political subdivisions. See James Island Public Service District v. City of Charleston, South Carolina, 249 F.3d 323 (2001). In that case the Court did not strike down the law but interpreted it as still good law. A 2013 federal case was based on an arrest made pursuant to South Carolina Code § 6-11-420 for obstructing a fire department's operations. See Lenard v. Scott, 2013 WL 66218 (2013). Moreover, South Carolina Code Section 6-11-1650 requires an annual financial audit for each special purpose district in South Carolina.

Conclusion:

After reviewing numerous cases and legal opinions, many of which are explained above, this Office believes a court will likely rule consistent with the rulings in Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717 (1986) and Berry v. Weeks, 279 S.C. 543, 309 S.E.2d 744 (1983), finding that where Home Rule legislation does not specifically overrule South Carolina Code § 6-11-10 et seq., it does not implicitly

repeal it. However, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. Until a court or the General Assembly 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