

1976 S.C. Op. Atty. Gen. 194 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4361, 1976 WL 22980

Office of the Attorney General

State of South Carolina

Opinion No. 4361

May 31, 1976

***1 ACT 482 OF 1976 OPERATES ON SECTION 47–38 OF THE SOUTH CAROLINA CODE TO PROHIBIT A MUNICIPAL JUDGE FROM REQUIRING A DEFENDANT TO PLEAD IN A TRAFFIC CASE UNTIL THE ELAPSE OF A TEN DAY PERIOD DATE OF ARREST. DATE OF ARREST.**

TO: O. Palmour Hollis

City Judge

North Augusta

QUESTION:

What is the effect of Act 482 of 1976 on the speedy trial requirement of Section 47–38 of the South Carolina Code?

AUTHORITIES:

Act 482 of 1976 ____ Statutes at Large p. ____.

Section 47–38, Code of Laws of South Carolina, 1962, as amended.

Vol. 2A, Sutherland Statutory Construction, 4th Ed., Section 51.02.

DISCUSSION:

Act 283 of 1975, the ‘Home Rule’ Act, amended § 47–38 of the South Carolina Code to provide that all cases tried by a mayor, municipal judge or judges of a municipality for a violation of a municipal ordinance or State law must be heard within seven days after the date of the arrest. The relevant portion of the section reads as follows:

The mayor or municipal judge or judges of any municipality shall speedily try all persons charged with violation of the ordinances of the municipality or the laws of the State within their jurisdiction in a summary manner without a jury unless jury trial is demanded by the accused.

Trial shall be held within seven days after such arrest or at such time as may be agreed upon, in which case the trial shall be deferred.

In March of this year, the Governor signed into law House Bill H–3094, which alters the time requirement for the trying of all cases involving traffic law violations. H–3094, now Act 482 of 1976, states that in all such cases a defendant cannot be required to plead prior to the elapse of ten days following the date of arrest.

Act 482 of 1976 does not expressly repeal or amend Section 47–38, but to the extent that the two provisions stand in irreconcilable conflict, the most recent expression of the Legislature will operate so as to amend the earlier provision by implication.

In terms of legislative intent, it is assumed that whenever the legislature enacts a provision it has in mind previous statutes relating to the same subject matter, wherefore it is held that in the absence of any express repeal or amendment therein, the new provision was enacted in accord with the legislative policy embodied in those prior statutes, and they all should be construed together. Statutes in pari materia, although in apparent conflict, are so far as reasonably possible construed to be in harmony with each other. But if there is an irreconcilable conflict between the new provision and the prior statutes relating to the same subject matter, the new provision will control as it is the later expression of the legislature. Vol. 2A, Sutherland Statutory Construction, § 51.02. (Footnotes omitted).

Act 482 of 1976 operates to the exclusion of all other laws (the first sentence of the act declares: 'Notwithstanding any other provision of law') and prohibits a court from requiring a defendant to plead prior to the elapse of a ten-day period in any traffic case. Reading this prohibition into the provisions of Section 47–38, a mayor, municipal judge or judges of any municipality must speedily try all cases within their jurisdiction within seven days after the time of the arrest, except for cases involving a violation of the traffic laws, in which instance the court cannot require the defendant to plead until ten days after the arrest.

CONCLUSION:

*2 Therefore, the opinion of this Office is that Act 482 of 1976 operates on Section 47–38 to prohibit a municipal judge from requiring a defendant to plead in a traffic case until the elapse of a ten-day period following the date of arrest.

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