1979 WL 43077 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
June 22, 1979

***1** C. P. Callison
County Attorney
Callison and Dorn
Post Office Box 1115
Greenwood, South Carolina 29646

Dear Mr. Callison:
Mr. Mcleod has referred your letter of May 7, 1979, to me for response. In your letter you inquire as to what kind of investments may be made with the Greenwood County Electric Capital Fund which arose as a result of the sale of the Greenwood County electrical production facilities to Duke Power Company in 1966. As you know, Act No. 749 of 1967 authorized the investment of this fund in notes, bonds or obligations secured by first mortgages under certain conditions. This Act was passed as local legislation. Section 3 of the Home Rule Act (Act No. 283 of 1975) specifically provides that: All operations, agencies and offices of county government, appropriations and laws related thereto in effect on the date the change in form becomes effective shall remain in full force and effect until otherwise implemented by ordinance of the council pursuant to this act. Provided, however, that county councils shall not enact ordinances in conflict with existing law relating to their respective counties and all such laws shall remain in full force and effect until repealed by the General Assembly, or until January 1, 1980, whichever time is sooner.

Act No. 749 of 1967, unless repealed by the General Assembly, is, therefore, still effective.

One month after the passage of Act 749 of 1967, Act 402 of 1967 became law. It also concerned the investment of the capital electric fund dealing with the principal and the income derived from investment of the funds separately. There is a question as to whether Act 402, being the final word of the legislature, in any way limited the operation of Act 749. Section 1 of Act 402 provides that the principal shall be invested only in 'securities permitted by law . . .. No portion of the principal amount of the fund shall be used for any other purpose.' Section 2 of the Act provides for expenditure of the income derived from the investments. The issue is whether use of the term 'securities' in Act 402 impliedly repealed any of the investments authorized by Act 749. It is the opinion of this office that the term 'securities' as used in Act 402 is a generic term meant to indicate 'investments.' Several rules of statutory construction support this conclusion. First, repeal by implication is not favored. An act should not be construed to impliedly repeal a principal act unless no other reasonable construction is possible. State ex rel. McLeod v. Ellisor, 259 S.C. 364, 192 S.E.2d 188 (1972). If both statutes can be construed so that they both stand, the court will so construe them. City of Spartanburg v. Blalock, 223 S.C. 252, 75 S.E.2d 361 (1953). In the instant case, Act 402 does not refer to Act 749. Therefore, any repeal of the investment permitted by Act 749 would be by implication. However, the two statutes are not in irreconcilable conflict and may reasonably be construed so that both stand. The term 'securities' is employed generally for the purpose of describing commercial assets in a single word and means investment or investments. In a broad sense, the terms security and securities are construed to include:

***2** [A]ll evidence of debt, and are not necessarily limited to secured debts, and, in general, any form of instrument used for the purpose of financing and promoting enterprises, and which is designed for investment, is a security according to the modern meaning of that term, and the words 'security' and 'securities' are now generally used to refer to instruments for the purpose of payment of money, or evidencing title or equity, with or without some collateral obligation, and which are commonly dealt in for the purpose of financing and investment.

  

The courts have frequently said that the words 'security' and 'securities' have no 'exactly defined' legal definition. They are general terms, flexible in meaning, and of broad import and significance, and are defined as meaning evidence of debt, of indebtedness, or of property, as a bond, stock certificate, and the like.
79 C.J.S. Security; Securities, pp. 944 and 945.

Although there is authority to the contrary, mortgages have generally been held to be securities. See, 79 C.J.S. Security; Securities, p. 949, note 90.

Of course, the real issue is how the legislature intended the term to be understood in this particular act. A second rule of construction requires that acts which deal with the same subject be construed together. The South Carolina Supreme Court has endorsed the rule that where several acts deal with the same subject, they should be read as one act. Southern Railway Company v. S.C. State Highway Department, 237 S.C. 75, 115 S.E.2d 685 (1960). Reading the two acts under consideration as a single enactment supports the view that the second act was merely intended to further refine the guidelines for handling the electric fund and not restrict the authority already granted in the first act as to permissible investments. The first act deals specifically with investment of the fund principal while the second act, although referring to the principal, deals for the most part with expenditure of the income derived from investment of the fund. Reading the two acts together leads to the conclusion that the second act was merely referring to the investments authorized by the first act. It was passed for the purpose of dealing with the investment income which was not mentioned in the first act.

There is also a question as to whether Act 749 was impliedly repealed by adoption of the 1976 Code. The adopting act, Act No. 95 of 1977, had a savings clause which specifically provided that local laws carried in the 1962 Code would not be repealed upon adoption of the 1976 Code. Although Act 402 was included in the 1962 Code and is, therefore, within the terms of the savings clause, Act 749 was not. The question is whether Act 749 has been repealed by implication by adoption of a new Code. The general rule in South Carolina is that omission of a general statute upon adoption of the Code repeals the statute. However, in City of Florence v. Turbeville, 239 S.C. 126, 121 S.E.2d 437 (1961), the Supreme Court noted that the State Code of Laws can contain only the general statute laws of the State. Purely local laws are not part of the Code and their omission from the Code does not, therefore, repeal them.

***3** Since Act 749 of 1967 has not been repealed by the legislature, it still, by the terms of Section 3 of the Home Rule Act, controls the investment of the principal of the Greenwood County Electric Capital Fund. Furthermore, after January 1, 1980, unless the General Assembly acts before that time, the County Council will be authorized to provide for the disposition of the Fund by County ordinance.

If you have any questions in regard to this opinion or if I can be of any further assistance to you, please do not hesitate to contact me.
Very truly yours,

Richard B. Kale, Jr.
Senior Assistant Attorney General

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