1979 WL 43483 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
July 25, 1979

***1 RE: South Carolina Code Section 34-1-110**

Edward W. Miller, Esquire
Southern Bank and Trust Company
Post Office Box 1329
Greenville, South Carolina 29602

Dear Mr. Miller:
In your letter of June 22, 1979, you requested clarification on the status and scope of Section 34-1-110 of the South Carolina Code of Laws, 1976, as amended by Act No. 59 of 1979. Specifically, yuo ask the following two questions:
I. May State-chartered commercial banks begin to charge at this time an interest rate not to exceed a rate of one percent in excess of the local Federal Reserve Bank ninety-day commercial paper discount rate?

Precisely, the issue is whether the Act is self-implementing and directly permits State-chartered commercial banks to charge this interest rate; or, whether the Act authorizes the Board of Financial Institutions to permit, by regulation, the State-chartered commercial banks to charge this interest rate.

Upon reading the Act, a valid argument can be made for either side of the issue, and it is readily apparent that the terms of the Act are susceptible to more than one interpretation. In construing an act, all rules of statutory construction are subservient to the one which requires that the intent of the legislature prevail. State v. Harris, 268 S.C. 117, 232 S.E.2d 231 (1977); Helfrich v. Brasington Sand and Gravel Company, 268 S.C. 236, 233 S.E.2d 291 (1977).
The events occurring immediately prior to the time when an act becomes law comprise a most instructive source for information indicative of what the legislature intended it to mean. Therefore, the history of events transpiring during the process of enacting it, from its introduction in the legislature to its final validation, has generally been the first extrinsic aid to which the courts have turned in attempting to construe an ambiguous act. 2A C. Sands, Sutherland Statutory Construction, § 48.04 (4th ed. 1973).

The legislative history of Act No. 59 of 1979 reveals that the original bill was amended three times. The second amendment, adopted by the Senate on April 5, 1979, provided that the Bill be amended by striking the period at the end of Section 34-1-110, as contained in Section 1, and inserting'; except that the Board may, by regulation, authorize such institutions to contract for an interest rate not to exceed one (1) percent in excess of the discount rate on ninety-day commercial paper rate.' 51 Senate Journal 18 (1979).

The third and final amendment was adopted by the Senate on April 17, 1979. It provided that the Bill be amended by striking ‘the Board may, by regulation. authorize such institutions to’ and inserting ‘State-chartered commercial banks may’. 57 Senate Journal 7 (1979).

By researching the legislative history it is unmistakably evident that the intent of the legislature was to directly permit State-chartered commercial banks to charge this new interest rate without requiring consent, authorization, or implementation by the Board.

***2** II. Does this law, because of its non-exclusionary language, define the maximum allowable interest rates which may be charged on agricultural loans?

On April 12, 1979, the Governor signed into law the Agricultural Loan Act (R67, S263), which permits the parties to a loan for commercial agricultural purposes, not exceeding fifty thousand dollars, to contract for any rate of interest, not to exceed nine and one-half percent, until June 30, 1981. This Act took effect upon the Governor's approval. Two weeks after the passage of this temporary Act, Act No. 59 of 1979 became law. As previously discussed, Act No. 59 permits State-chartered commercial banks to contract for or receive a finance charge or interest rate not to exceed a rate of one percent in excess of the discount rate on ninety-day commercial paper in effect at the local Federal Reserve Bank. There arises a question as to whether Act No. 59, being the final word of the legislature, in any way limited the operation of the Agricultural Loan Act.

[I]t 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 these prior statutes, and they all should be construed together.

Statutes in pari materia [pertaining to the same subject matter], although in apparent conflict, are so far as reasonably possible construed to be in harmony with each other. 2A C. Sands, Sutherland Statutory Construction, supra at § 51.02.

Act No. 59 contains no general or specific repealing clause. In fact, it makes no reference to the Agricultural Loan Act. If any portion of the Agricultural Loan Act was repealed, it must be by implication. Repeals by implication are not favored, nor should an act 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). Furthermore, the courts will not presume that the legislature intended a repeal by implication. The fact that the two acts were passed at about the same time, at the same session of the legislature, is strong evidence that they were intended to stand together. 73 Am.Jur.2d Statutes, § 403 (1974). See, Smith v. South Carolina State Highway Commission, 138 S.C. 374, 136 S.E. 487 (1927). If both acts 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).

Act No. 59 deals with interest rates in general terms while the Agricultural Loan Act deals specifically with the interest rates on loans made for commercial agricultural pruposes. 'General and specific statutes should be read together and harmonized if possible. But to the extent of any conflict between the two, the special statute must prevail.' Criterian Insurance Company v. Hoffman, 258 S.C. 282, 188 S.E.2d 459 (1972); accord, Culbreth v. Prudence Life Insurance Company, 241 S.C. 46, 127 S.E.2d 132 (1962); Smith v. South Carolina State Highway Commission, supra at 379.

***3** The policy against implied repeals has peculiar and special force when the conflicting provisions which are thought to work a repeal are contained in a special or specific act was intended to remain in force as an exception to the general on or broad act, and there is a tendency to hold that where a general statute, if standing alone, would include the same matter as a special act and thus conflict with it, the special act will be considered an exception to the general statute. Hence, it is a canon of statutory construction that a later statute general in its terms and not expressly repealing a prior special or specific statute will be considered as not intended to affect the special or specific provisions of the earlier statute, unless the intention to effect the repeal is clearly manifested or unavoidable implied by the irreconcilability of the continued operation of both. 73 Am.Jur.2d, supra at § 417.

In conclusion, it should be assumed that the legislature had the Agricultural Loan Act in mind when Act No. 59 was drafted. Since the Agricultural Loan Act was not expressly repealed, the two acts should be read together. Therefore, it is my opinion that the Agricultural Loan Act remains in force as an exception to Act No: 59 and exclusively governs the area of commercial agricultural loans to which it applies.

If I can be of further assistance to you in this matter, please do not hesitate to contact me.

With cordial best wishes, I am
Very truly yours,

Richard B. Kale, Jr.
Senior Assistant Attorney General

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