

1978 S.C. Op. Atty. Gen. 222 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-198, 1978 WL 22666

Office of the Attorney General

State of South Carolina

Opinion No. 78-198

November 21, 1978

***1 SUBJECT: Dentist & Dentistry, Appropriations, Fees**

Permanent Dental Board Statutes and Regulations in irreconcilable conflict with temporary provisions within Part I of the 1978 General Appropriations are suspended for the duration of the Act.

TO: Honorable W. T. Putnam
Executive Director
State Budget and Control Board

QUESTION:

What effect does the proviso within § 95, Part I, Act 644 of the 1978 Acts and Joint Resolutions have on the fee setting provisions of §§ 40-15& 140, [40-15-250](#) and [40-15-270 of the South Carolina Code](#), 1976, and the fee setting provisions of Dental Board [Regulations 39-1, 39-2, 39-3 and 39-4](#)?

STATUTES AND CASES: [§§ 40-15-140, 40-15-250 and 40-15-270 Code of Laws of South Carolina](#), 1976, as amended; R. 39-1, 39-2, 39-3 and 39-4, Rules and Regulations, State Board of Dentistry, Code of Laws of South Carolina, 1976 as amended; [Lewis v. Gaddy](#), 254 S.C. 66, 173 S.E.2d 376 (1970); [Heyward v. S.C. Tax Commission](#), 240 S.C. 347, 126 S.E.2d 15 (1962); [Brooks v. Jones](#), 80 S.C. 443, 61 S.E. 946 (1908); [Plowden v. Beattie, Comptroller General](#), 185 S.C. 229, 193 S.E. 651 (1937); [State ex rel. Mills v. McLeod](#), 256 S.C. 21, 180 S.E. 24 638 (1971); Act 144, 1978 Acts and Joint Resolutions.

DISCUSSION:

Pursuant to § 95, Part I, Act 644 of 1978 Acts and Joint Resolutions (Appropriations Act) the State Board of Dentistry is appropriated \$66,800 for the fiscal year 1978-79. Said section further mandates, *inter alia*, that. . . '[A]ll assessments, fees and/or licenses shall be levied in an amount sufficient to at least equal the amount appropriated in this section.' Thus, it is statutorily required that during the fiscal year 1978-79 the Dental Board levy assessments, fees and licenses to generate at least \$66,800 in income.

You have questioned the effect of the above quoted provision on [§§ 40-15-140, 40-15-250 and 40-15-270, Code of Laws of South Carolina \(1976\)](#), and Dental Board Regulations R39-1, R39-2, R39-3 and R39-4, insofar as they set particular fees for examinations and registrations. Act 644 of 1978, *inter alia*, provides:
All Acts or parts of Acts inconsistent with any of the provisions of Part I of this Act are hereby suspended for the fiscal year 1978-79.

Thus, if pertinent portions of [§§ 40-15-140, 40-15-250 and 40-15-270](#) are inconsistent with § 95, Part I, Act 644, their operation will be suspended for the fiscal year 1978-79. Cf. [State ex rel. Mills v. McLeod](#), 256 S.C. 21, 180 S.E. 2d 638; [Plowden v. Beattie, Comptroller General](#), 185 S.C. 229, 193 S.E. 651; [Brooks v. Jones](#), 80 S.C. 443, 61 S.E. 946. In like

manner a regulation in conflict with a state statute must yield, [Heyward v. S.C. Tax Commission](#), 40 S.C. 347, 126 S.E. 2d 15, thus, if the fee setting aspects of [Regulations 39-1](#), [39-2](#), [39-2](#) and [39-4](#) conflict with § 95, Part I, Act 644, they must yield for the period of time the appropriations act is in effect.

*2 There must be an irreconcilable conflict between the prior permanent acts and regulations and the appropriations provision before it can be said that the permanent provisions are suspended. [Plowden v. Beattie, Comptroller General](#), *supra*. The issue becomes, is there an irreconcilable conflict? More particularly, are the fees as set by the statutes and regulations insufficient to satisfy the mandatory proviso of § 95, Part I, Act 644? If this be the case then the fees for licensure and registration may be raised beyond limits previously set by regulation or statute. Provided such situation exists, the conflicting provisions of regulations and statutes would be suspended without any formal process required.

CONCLUSION:

If there exists an irreconcilable conflict between the maximum fees specified within §§ [40-15-140](#), [40-15-250](#) and [40-15-270 of the South Carolina Code](#), 1976, the fees specified in Dental Board Regulations R39-1, R39-2, R39-3 and R39-4 and the mandatory proviso of § 95, Part I, of the General Appropriations Act for fiscal year 1978-79, then the prior permanent provisions are suspended for the time the Appropriations Act is in effect.

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