

1978 S.C. Op. Atty. Gen. 235 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-204, 1978 WL 22672

Office of the Attorney General

State of South Carolina

Opinion No. 78-204

December 7, 1978

**\*1 SUBJECT: Public Records**

Act No. 552, Acts and Joint Resolutions of South Carolina, 1978, does not supersede §§ 30–1–10—30–1–140, [Code of Laws of South Carolina](#), 1976, insofar as the latter statutes provides for retention, duplication, disposal, and destruction of records of public agencies of the State of South Carolina and political subdivisions thereof.

TO: Director

South Carolina Department of Archives and History

**QUESTION:**

Whether § 2 of Act No. 552, Acts and Joint Resolutions of South Carolina, 1978, means that an agency can destroy original paper records after filming without obtaining approval of the State Department of Archives and History as specified in § 30–1–30, [Code of Laws of South Carolina](#), 1976.

**STATUTES AND CASES:**

Act No. 552, Acts and Joint Resolutions of South Carolina, 1978; §§ 30–1–10, [et seq.](#), [Code of Laws of South Carolina](#), 1976; [Southern Railway Company v. South Carolina State Highway Department](#), 237 S.C. 75, 115 S.E.2d 685 (1960); [State ex rel McLeod v. Montgomery](#), 244 S.C. 308, 136 S.E.2d 778 (1964); and [Lewis v. Gaddy](#), 254 S.C. 66, 173 S.E.2d 376 (1970).

**DISCUSSION:**

[Sections 30–1–10](#), [et seq.](#), [Code of Laws of South Carolina](#), 1976, provide generally for the custody, retention, duplication, and destruction of public records, reports, and official documents of state agencies and political subdivisions. These Code Sections specify, ‘A records management program for the application of efficient and economical management methods in the creation, utilization, maintenance, retention, preservation, and disposal of public records shall be administered by the Archives.’ Section 30–1–80. Archives is defined as the South Carolina Department of Archives and History. Archives is given the express right to examine the condition of the records and give advice and assistance to public officials on creating, preserving, and making available public records. The Archives may require an inclusive inventory of public records and establish a time period for the retention of a series of records. Such schedule must be approved by the agency in question, the Archives, and the State Budget and Control Board in the case of state or regional agencies. Section 30–1–90. Section 30–1–130 provides that custodians of public records may microfilm or photocopy records, and for records of permanent value to an agency or subdivision, one master copy must be made subject to standards approved by the Archives and deposited there. This Section further provides for Archives certification that certain records may be destroyed. Archives is granted specific authority to promulgate rules and regulations to carry out the aforementioned Code Sections. Section 30–1–100.

By Act No. 552, Acts and Joint Resolutions of South Carolina, 1978, the General Assembly enacted the Uniform Photographic Copies of Business and Public Records as Evidence Act. This Act provides that accurate reproductions of memoranda, writings, entries, prints, representations, or combinations thereof kept in the regular course of business of an agency of government, upon satisfactory identification, are admissible in evidence as the original in a judicial or administrative proceeding. The pertinent language in § 2 of Act No. 552 is as follows:

**\*2** If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless held in a custodial or fiduciary capacity or unless its preservation is required by law. (Emphasis added.)

To the extent that Act No. 552 provides for the destruction of original records in the regular course of business of a government agency, there is an obvious conflict with §§ 30-1-10, *et seq.*; that both §§ 30-1-10, *et seq.*, and Act No. 552 authorize and prescribe destruction of public records. It is well settled in this State that in considering the meaning of one statute, it is proper to consider other statutory provisions relating to the same subject-matter. In construing statutes covering the same subject-matter, the statutes should be read together and considered *in pari materia*, even though the statutes to be considered contain no express reference to one another. [Southern Railway Company v. South Carolina State Highway Department](#), 237 S.C. 75, 115 S.E.2d 685 (1960). Further, our Supreme Court in [Lewis v. Gaddy](#), 254 S.C. 66, 173 S.E.2d 376 (1970), stated, 'Statutes *in pari materia*, such as Code Sections 4-95 and 4-29, have to be construed together and reconciled, if possible, so as to render both operative.' Therefore, Act No. 552 and §§ 30-1-10, *et seq.*, should be construed together and reconciled to give each as much effect as possible. Sections 30-1-10, *et seq.*, provide a comprehensive scheme for determining what public records should and must be preserved and constitute a specific exception to the general scheme of Act No. 552. To construe the statutes otherwise would render §§ 30-1-10, *et seq.*, superfluous, for the reason that a public agency could follow Act No. 552 and destroy any records within its possession after making copies as specified in the Act. Such a result would be contrary to usual statutory construction. [State ex rel McLeod v. Montgomery](#), 244 S.C. 308, 136 S.E.2d 778 (1964). Finally, to otherwise interpret Act No. 552 would require an interpretation of that Act to the effect that it repeals §§ 30-1-10, *et seq.*, by implication. In [Lewis v. Gaddy](#), *supra*, the Supreme Court stated:

The 1967 Act specifically repealed several Code Sections but made no mention of Code Section 4-95. It is, of course, well settled that repeal by implication is not favored, and a law should not be construed as impliedly repealing a prior law unless no other reasonable construction can be applied. See cases collected in West South Carolina Digest, Statutes, Key No. 157.

#### CONCLUSION:

**\*3** Act No. 552 and §§ 30-1-10, *et seq.*, must be read *in pari materia* and construed together. The result of such a construction is that §§ 30-1-10, *et seq.*, constitute preservation of public records required by law as contemplated in § 2 of Act No. 552.

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