



ALAN WILSON  
ATTORNEY GENERAL

July 10, 2017

Mr. Kevin A. Shwedo  
Executive Director  
South Carolina Department of Motor Vehicles  
P.O. Box 1498  
Blythewood, South Carolina 29016

Dear Mr. Shwedo,

Attorney General Alan Wilson has referred your letter to the Opinions section regarding whether S.C. Code Ann. §§ 56-3-13910, 56-3-2250 remain effective in light of 2016 Act No. 275, § 8 which requires the South Carolina Department of Transportation to allocate specifically identified funds to the state-funded highway resurfacing program. Your letter reaches the conclusion that Sections 56-3-13910 and 56-3-2250 remain effective as follows:

Clearly the General Assembly intended the majority of the fee, fine and charge revenues of the Department to be transferred to the State Highway Fund. The Department believes, however, that since the special license plate provisions enacted by or amended by Sections 1 and 2 of Act 186 of 2016 do not correspond to any of the Code Sections set forth in Act 275 of 2016 for purposes of transferring fees, fines and charges of the State Highway Fund, the provisions of Code Section 56-3-13910(B) [in Section 1] and Code Section 56-3-2250(A) and (B)(2) [Section 2] of Act 186 of 2016 authorizing all or a portion of the license plate fees to be retained by the Department to defray expenses in producing the special license plates should be given effect when the Act becomes effective in May, 2017.

#### Law/Analysis

This Office agrees with the Department of Motor Vehicles' (the "Department") conclusion. It is this Office's opinion that Sections 56-3-13910 and 56-3-2250 were not repealed by 2016 Act No. 275. This Office's opinion of whether 2016 Act. No. 275 impliedly repealed either 56-3-13910 or 56-3-2250 is informed by the text of the relevant acts, statutes, and the rules of statutory interpretation. Statutory interpretation of the South Carolina Code of Laws requires a determination of the General Assembly's intent. Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

The Supreme Court of South Carolina has stated, however, that where the plain meaning of the words in a statute "would lead to a result so plainly absurd that it could not have been intended by the General Assembly... the Court will construe a statute to escape the absurdity and carry the [legislative] intention into effect." Duke Energy Corp. v. S. Carolina Dep't of Revenue, 415 S.C. 351, 355, 782 S.E.2d

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590, 592 (2016); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 845 (2002) (“[C]ourts are not confined to the literal meaning of a statute where the literal import of the words contradicts the real purpose and intent of the lawmakers.”). “A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers.” State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh’g denied* (Aug. 5, 2015).

When an act does not expressly repeal a statute, the Court has consistently stated that there must be a level incompatibility approaching “plain repugnancy” with the conflicted statute to find there has been an implied repeal.

In general, repeal by implication is disfavored, and is found only when two statutes are incapable of any reasonable reconciliation. See Capco of Summerville, Inc. v. J.H. Gayle Const. Co., Inc., 368 S.C. 137, 141, 628 S.E.2d 38, 41 (2006). “The repugnancy must be plain, and if the two provisions can be construed so that both can stand, a court shall so construe them.” Spectre, LLC v. South Carolina Dep’t of Health and Env’tl. Control, 386 S.C. 357, 372, 688 S.E.2d 844, 852 (2010).

Aakjer v. City of Myrtle Beach, 388 S.C. 129, 135, 694 S.E.2d 213, 216 (2010); E.M. Matthews Co. v. Atlantic Coast Line Ry. Co., 102 S.C. 494, 86 S.E. 1069 (1915) (“The presumption is always against repeal when express terms of repeal are not used.”). When two statutes are found incapable of being reasonably reconciled, the choice of which statute prevails is guided by the following principles:

[W]here two statutes are in conflict, the more recent and specific statute should prevail so as to repeal the earlier, general statute. Hodges v. Rainey, *id.* at 85, 533 S.E.2d at 581; Stone v. City of Orangeburg, 313 S.C. 533, 535, 443 S.E.2d 544, 545 (1994).

Furthermore, “[w]here there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.” Spectre, LLC v. S.C. Dept. of Health and Env’tl. Control, 386 S.C. 357, 688 S.E.2d 844, 851 (2010). Specific statutes are not to be considered repealed by a later general statute unless there is a direct reference to the earlier statute or the intent of the legislature to do so is explicitly implied.

Denman v. City of Columbia, 387 S.C. 131, 138, 691 S.E.2d 465, 468–69 (2010). With these principles in mind, we turn to the relevant statutes and legislative acts to determine whether there is a conflict and, if so, how our state courts would likely resolve such a conflict.

As described in your letter above, Sections 56-3-13910 and 56-3-2250 were added and amended respectively by 2016 Act. No. 186. Section 56-3-13910 authorizes the Department to issue special personalized motor vehicle license plates as follows:

(A) The department may issue special personalized motor vehicle license plates to owners of private passenger motor vehicles as defined in Section 56-3-630, and motorcycles as defined in Section 56-3-20, registered in their names for any special organizational plate authorized pursuant to Section 56-3-8000, Section 56-3-8100, or any other organizational plate authorized by law. In order for a specialized license plate to be

personalized, the sponsoring organization, if there is one, must agree to make the license plate available for personalization. The person requesting the special personalized license plate must meet all of the requirements to obtain the specialty license plate.

(B) The fee for all special personalized organizational license plates created pursuant to this section is the regular biennial registration fee set forth in Article 5, Chapter 3 of this title plus an additional biennial personalization fee of thirty dollars, in addition to any special fee associated with the selected plate design. The Comptroller General shall place twenty dollars of the special personalized organizational license plate fee in a special restricted account to be used by the department to defray the expenses of the department. The remaining ten dollars of the personalization fee must be distributed to the sponsoring organization. The department may not refund the fee once the personalized license plate has been manufactured.

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S.C. Code Ann. § 56-3-13910 (emphasis added).

Section 56-3-2250 authorizes the Department to issue sample motor vehicle license plates, souvenir license plates, and personalized special organizational souvenir license plates as follows:

(A) The Department of Motor Vehicles may provide, upon request, a sample motor vehicle license plate. The license plate shall be of the same size and general design of regular motor vehicle license plates. The fee for issuance of such license plate shall be ten dollars. The department may retain the ten dollar fee to recoup its cost for producing the license plate.

(B)(1) The department is authorized to produce, upon request, souvenir license plates for any special organizational license plate produced pursuant to Section 56-3-8000 or Section 56-3-8100 or any other special organizational license plate authorized by law. In order for a special organizational license plate to be available as a souvenir license plate, the sponsoring organization, if there is one, must agree to make the license plate available as a souvenir license plate.

(2) The fee for the special organizational souvenir license plate is twenty dollars. Ten dollars of this fee shall be retained by the department as specified in subsection (A), and the additional ten dollars shall be distributed to the sponsoring organization.

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(D)(1) An individual may apply for a personalized special organizational souvenir license plate with a license plate text to be selected by the applicant in a letter and numeral plate text format the department prescribes. The department, in its discretion, may refuse the issuance of letter or number combinations which may carry connotations offensive to good taste and decency.

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(3) The fee for the license plate contained in this subsection is thirty dollars. Twenty dollars of this fee shall be retained by the department to defray the expenses of the department. Ten dollars of this fee shall be distributed to the organization described in subsection (B).

S.C. Code Ann. § 56-3-2250 (emphasis added).

As described in your letter, 2016 Act. No. 275 was enacted subsequently on June 21, 2016. The Act is titled in relevant part as "AN ACT TO AMEND... SECTIONS 56-3-8000, AS AMENDED, 56-3-8100, AS AMENDED... ALL RELATING TO FEES OR FINES COLLECTED BY THE DEPARTMENT OF MOTOR VEHICLES, SO AS TO PROVIDE THAT ALL OR A PORTION OF THE FEES SHALL BE CREDITED TO THE STATE HIGHWAY FUND..." Your letter states that no section of 2016 Act. No. 275 expressly repeals or amends either Section 56-3-13910 or 56-3-2250. Your letter also emphasizes Section 8 of this act as demonstrative of this point. Section 8 reads as follows:

SECTION 8. Article 8, Chapter 43, Title 11 of the 1976 Code is amended by adding:

"Section 11-43-167. (A) The fees and fines collected pursuant to Sections 12-37-2740(D), 38-73-470, 56-1-140(B)(2), 56-1-143, 56-1-148(D), 56-1-170(B)(3), 56-1-200, 56-1-220(B), 56-1-286(K)(1), 56-1-390(2), 56-1-395(G), 56-1-400(A), 56-1-460(A)(1)(e)(iii), 56-1-550, 56-1-740(B)(3), 56-1-746(D)(3), 56-1-1320(B), 56-1-2080, 56-1-3350(B)(2), 56-3-210(B), 56-3-355, 56-3-1335, 56-3-1290, 56-3-1920(C), 56-3-2330(B), 56-3-2335(B)(2), 56-3-2340(C), 56-3-3500(B), 56-3-3600(B), 56-3-3710(B), 56-3-3950, 56-3-4100(B), 56-3-4200(C), 56-3-4410(B), 56-3-4510(C), 56-3-4600(B), 56-3-4800(B), 56-3-4910(B), 56-3-5200(B), 56-3-5400(B), 56-3-7200(B), 56-3-7300(B), 56-3-7310, 56-3-7320, 56-3-7330(B)(2), 56-3-7360, 56-3-7700(B), 56-3-7750(B), 56-3-7780(B), 56-3-7860, 56-3-7910(B), 56-3-7950(B), 56-3-8000(C), 56-3-8100(B), 56-3-8100(F), 56-3-8200(A), 56-3-8300(A), 56-3-8400(A), 56-3-8600(B), 56-3-8710(C), 56-3-9400(B), 56-3-9600(B), 56-3-9710(B), 56-3-10010(B), 56-3-13710(B), 56-5-750(G)(3), 56-5-2942(J), 56-5-2951(B)(1), 56-5-2951(H)(3), 56-9-330, 56-10-240(C), 56-10-245, 56-10-552, 56-10-260(B)(3), 56-19-265(D), 56-19-420(C), and 56-19-520(A)(4) must be credited to the State Highway Fund as established by Section 57-11-20, to be distributed as provided in this section.

(B)(1) The Department of Transportation shall allocate the funds credited to the State Highway Fund pursuant to subsection (A) to the state-funded resurfacing program. The Department of Transportation shall develop and implement a needs-based methodology to distribute revenue within the state-funded resurfacing program, which shall include consideration on a county-by-county basis, to ensure that each county in the State is guaranteed funding for resurfacing.

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2016 Act. No. 275, § 8 (emphasis added).

The statutes listed in Subsection (A) are the only statutes whose fees and fines are redirected to the State Highway Fund by 2016 Act. No. 275, § 8. Because Sections 56-3-13910 and 56-3-2250 are not

included within this list, the exclusion of the fees and fines collected under these statutes is implied. Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (“The canon of construction ‘*expressio unius est exclusio alterius*’ or ‘*inclusio unius est exclusio alterius*’ holds that ‘to express or include one thing implies the exclusion of another, or of the alternative.’”).

Please note that while Sections 56-3-13910 and 56-3-2250 were not amended or repealed by 2016 Act. No. 275, Sections 56-3-8000 and 56-3-8100 were amended. Sections 56-3-8000 and 56-3-8100 are both referenced in the text of Sections 56-3-13910 and 56-3-2250. This raises the additional question of whether the amendments to Sections 56-3-8000 and 56-3-8100 resulted in an implied repeal of either Section 56-3-13910 or 56-3-2250. To answer this question, we turn to the text of these amendments to assess whether there is plain repugnancy between the statutes.

Section 61 of 2016 Act. No. 275 amended Section 56-3-8000 as follows:

SECTION 61. Section 56-3-8000(C) of the 1976 Code, as last amended by Act 56 of 2013, is further amended to read:

"(C) The license plates must be issued or revalidated for a biennial period which expires twenty-four months from the month it is issued. The biennial fee for this special license plate is the regular registration fee set forth in Article 5, Chapter 3 of this title plus an additional fee to be requested by the individual or organization seeking issuance of the license plate. The initial fee amount requested may be changed only every five years from the first year the license plate is issued. Of the additional fee collected pursuant to this section, the Comptroller General shall place into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of producing and administering special license plates. Any of the remaining fee not placed in the restricted account must be distributed to an organization designated by the individual or organization seeking issuance of the license plate."

2016 Act. No. 275, § 61 (emphasis added).

Section 62 of 2016 Act. No. 275 amended Section 56-3-8100 as follows:

SECTION 62. A. Section 56-3-8100(B) of the 1976 Code, as last amended by Act 56 of 2013, is further amended to read:

"(B) The Comptroller General shall place the six thousand eight hundred dollar application fee pursuant to subsection (A)(1) into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167."

B. Section 56-3-8100(F) of the 1976 Code, as last amended by Act 56 of 2013, is further amended to read:

"(F) Of the additional fee collected pursuant to subsections (D) and (E), the Comptroller General shall place into the State Highway Fund as established by Section

57-11-20, to be distributed as provided in Section 11-43-167, an amount equal to the expenses of producing and administering special license plates."

2016 Act. No. 275, § 62 (emphasis added).

The amendments to Sections 56-3-8000 and 56-3-8100 clearly demonstrate an intent to direct the fees collected under these statutes to the State Highway Fund. If these amendments result in the fees collected under Sections 56-3-13910 and 56-3-2250 for special personalized motor vehicle license plates, sample motor vehicle license plates, souvenir license plates, and personalized special organizational souvenir license plates being distributed to the State Highway Fund, the express terms of these statutes which allow the Department to retain a designated amount from such fees would be in conflict. However, a plain reading of Sections 56-3-13910 and 56-3-2250 shows that the fees collected under those statutes are separate from the fees collected under Sections 56-3-8000 and 56-3-8100. Section 56-3-8000(C) directs "the additional fee collected pursuant to this section" to be placed in the State Highway Fund. Similarly, Section 56-3-8100(F), (G) directs "the additional fee collected pursuant to subsections (D) and (E)" to be placed in the State Highway Fund. Clearly, the additional fees referenced are limited to those collected under the respective subsections.

Section 56-3-13910(B) directs that "the fee for all special personalized organizational license plates created pursuant to this section" includes the regular registration fee in Article 5, Chapter 3 "plus an additional biennial personalization fee of thirty dollars, in addition to any special fee associated with the selected plate design." This "personalization fee" is distributed as follows: twenty dollars to "a special restricted account to be used by the department to defray the expenses of the department" and ten dollars to the sponsoring organization. That special personalized plates are issued for "any special organizational plate authorized pursuant to Section 56-3-8000, Section 56-3-8100, or any other organizational plate authorized by law" does not require the "personalization fee" to be directed to the State Highway Fund as though such a fee was collected under Sections 56-3-8000 or 56-3-8100. Indeed, the personalization fee is a distinct fee associated with the "special personalized motor vehicle license plates" authorized under Section 56-3-13910. Therefore, it is this Office's opinion that a court would likely find Section 56-3-13910 is not in conflict with Sections 56-3-8000 and 56-3-8100, and therefore it was not repealed by implication.

Section 56-3-2250(A) directs "the fee for issuance of [a sample] license plate shall be ten dollars," and it shall be retained by the Department. There is no reference in this subsection to either Section 56-3-8000 or 56-3-8100 to create a conflict. Section 56-3-2250(B) directs that, of the twenty dollars fee for a "souvenir license plate," ten dollars is retained by the Department and ten dollars is distributed to the sponsoring organization. Subsection (B) references that souvenir license plates are authorized "for any special organizational license plate produced pursuant to Section 56-3-8000 or Section 56-3-8100 or any other special organizational license plate authorized by law." Yet, similar to the personalization fee in Section 56-3-13910, the fee for a souvenir license plate is a separate fee from those collected under Sections 56-3-8000 or 56-3-8100. Finally, Section 56-3-2250(D) states that the fee for a "personalized special organizational souvenir license plate" is thirty dollars. The Department retains twenty dollars of this fee. Again, this subsection contains no reference to either Section 56-3-8000 or 56-3-8100 to create a conflict. Therefore, it is this Office's opinion that a court would likely find Section 56-3-2250 is not in conflict with Sections 56-3-8000 and 56-3-8100, and therefore it was not repealed by implication.

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Even if Sections 56-3-13910 and 56-3-2250 are found to contain overlapping subject matter controlled by Sections 56-3-8000 and 56-3-8100, Sections 56-3-13910 and 56-3-2250 relate to a more specific subset of license plates than those in Sections 56-3-8000 and 56-3-8100. Sections 56-3-8000 and 56-3-8100 relate to special motor vehicle license plates production and distribution guidelines. Section 56-3-13910 more specifically relates to special personalized motor vehicle license plate. Section 56-3-2250 is also more specific in that it relates to issue sample motor vehicle license plates, souvenir license plates, and personalized special organizational souvenir license plates. Therefore, as Sections 56-3-13910 and 56-3-2250 are the more specific statutes, it is this Office's opinion that a court would likely find they are exceptions to the more general subject matter addressed in Sections 56-3-8000 and 56-3-8100. Denman v. City of Columbia, 387 S.C. at 138, 691 S.E.2d at 468-69.

### Conclusion

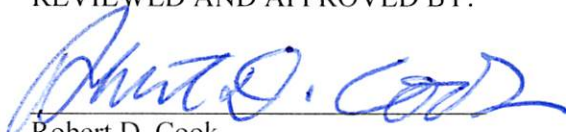
It is this Office's opinion that Sections 56-3-13910 and 56-3-2250 were not been repealed by 2016 Act No. 275. The Act does not expressly amend or repeal either Section 56-3-13910 or 56-3-2250. Further, as discussed above, we have not identified a repugnancy which would overcome the presumption against an implied repeal. Aakjer v. City of Myrtle Beach, 388 S.C. 129, 694 S.E.2d 213 (2010). This Office is, however, only issuing a legal opinion based on the current law at this time and the information as provided to us. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20 (1976 Code, as amended). If it is later determined otherwise, or if you have any further questions or issues, please let us know.

Sincerely,



Matthew Houck  
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REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General