



ALAN WILSON
ATTORNEY GENERAL

July 11, 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 the recently enacted statutes, S.C. Code Ann. §§ 56-3-14010, 56-3-14110, authorizing NCAA national championship special license plates for Clemson University and Coastal Carolina University respectively, conflict with S.C. Code Ann. § 56-3-3710, authorizing license plates for colleges, universities, and independent institutions of higher learning, regarding the assessment and distribution of fees thereunder. Your letter states the Department of Motor Vehicle's (the "Department") interpretation is as follows:

The Department[] believes that even though the championship plates are "university" plates in the strictest sense, the General Assembly intended for the championship plates to be controlled by Sections 56-3-14010 and -14110. First, these enactments specifically undertake to set fees and set the distribution of the fees as part of the enactment. Section 56-3-3710 authorizes college or university plates, but only deals with plates that are generally associated with the schools and their logos or emblems, where Sections 56-3-14010 and -14110 deal with the commemoration of the specific occasions and athletic accomplishments.

It is the Department's belief that there is no conflict between these enactments. If any question arose, however, the Department believes the courts would be guided by the two statutory construction principles that: 1.) where there is one statute addressing an issue in general terms and another statute dealing with the incidental 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. Denman v. City of Columbia, 387 S.C. 131, 691 S.E.2d 485 (2010), and 2.) the more recent and specific legislation controls if there is a conflict between the two statutes. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000). The Department believes that this interpretation is correct, but if for any reason it is not, the Department would need guidance to avoid collecting and distributing funds incorrectly.

Law/Analysis

This Office agrees with the Department of Motor Vehicles' (the "Department") conclusion. It is our opinion that a court would likely find Sections 56-3-14010 and 56-3-14110 to be exceptions to

Section 56-3-3710 as the later more specific statutes. This Office's opinion 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 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 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.

Section 56-3-14010 was enacted by 2017 Act No. 1¹ and took effect on March 10, 2017. The statute reads as follows:

(A) The Department of Motor Vehicles shall issue "Clemson University 2016 Football National Champions" special license plates to owners of private passenger motor

¹ Please note that at the time this opinion was written, 2017 Act No. 65, § 1 subsequently added a second statute numbered as Section 56-3-14010. This Office has been informed that, at the direction of the Code Commissioner, the statute added by 2017 Act No. 65, § 1 was redesignated to accommodate the statute numbered as Section 56-3-14010 by 2017 Act No. 1, Section 1.

vehicles, as defined in Section 56-3-630, or motorcycles as defined in Section 56-3-20, registered in their names.

(B) Clemson University may submit to the department for its approval the emblem, seal, or other symbol it desires to be used for its respective special license plate.

(C) The requirements for production, collection, and distribution of fees for the plate are those set forth in Section 56-3-8100. The biennial fee for this plate is the regular registration fee set forth in Article 5, Chapter 3 of this title plus an additional fee of seventy dollars. Any portion of the additional seventy-dollar fee not set aside to defray costs of production and distribution must be distributed to the fund established for Clemson University pursuant to Section 56-3-3710(B) used for the purposes provided in that section.

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S.C. Code Ann. § 56-3-14010 (emphasis added).

Section 56-3-14110 was enacted by 2017 Act No. 5² and took effect on April 05, 2017. The statute reads as follows:

(A) The Department of Motor Vehicles shall issue “2016 Baseball National Champions” special license plates to owners of private passenger motor vehicles, as defined in Section 56-3-630, or motorcycles, as defined in Section 56-3-20, registered in their names.

(B) Coastal Carolina University may submit to the department for its approval the emblem, seal, or other symbol it desires to be used for its respective special license plate, provided that the phrase “2016 Baseball National Champions” must be utilized on the plate.

(C) The requirements for production, collection, and distribution of fees for the plate are those set forth in Section 56-3-8100. The biennial fee for this plate is the regular registration fee set forth in Article 5, Chapter 3 of this title plus an additional fee of seventy dollars. Any portion of the additional seventy-dollar fee not set aside to defray costs of production and distribution must be distributed to the fund established for Coastal Carolina University pursuant to Section 56-3-3710(B), used for the purposes provided in that section.

...

S.C. Code Ann. § 56-3-14110 (emphasis added).

Both Sections 56-3-14010 and 56-3-14110 make reference to Sections 56-3-3710 and 56-3-8100 regarding requirements for production, collection, and distribution of fees. Section 56-3-3710 was most

² Please note that at the time this opinion was written, 2017 Act No. 65, § 3 subsequently added a second statute numbered as Section 56-3-14110. This Office has been informed that, at the direction of the Code Commissioner, the statute added by 2017 Act No. 65, § 3 was redesignated to accommodate the statute numbered as Section 56-3-14110 by 2017 Act No. 5, Section 1.

recently amended by 2016 Act No. 275, § 38 and took effect on July 1, 2016. The statute reads as follows:

(A) The Department of Motor Vehicles may issue to owners of private passenger motor vehicles special motor vehicle license plates which may have imprinted on them an emblem, a seal, or other symbol the department considers appropriate of a public college or university or independent institution of higher learning, defined in Section 59-113-50, located in this State. A school may submit to the department for its approval the emblem, seal, or other symbol it desires to be used for its respective special license plate. A school also may request a change in the emblem, seal, or other symbol once the existing inventory of the license plate has been exhausted. The fee for this special license plate is seventy dollars every two years in addition to the regular motor vehicle registration fee set forth in Article 5, Chapter 3 of this title. This special license plate must be of the same size and general design of regular motor vehicle license plates. The special license plates must be issued or revalidated for a biennial period which expires twenty-four months from the month they are issued.

(B) The fees collected pursuant to this section must be distributed to a separate fund for each of the respective colleges, universities, or independent institutions of higher learning. Each fund must be administered by the school and may be used only for academic scholarships. Funds collected for state colleges and universities must be deposited with the State Treasurer. Funds collected for independent institutions must be deposited in an account designated by the respective school. The distribution of the fee is forty dollars to the school for each special license plate sold for the respective school and thirty dollars placed by the Comptroller General into the State Highway Fund as established by Section 57-11-20, to be distributed as provided in Section 11-43-167.

...

S.C. Code Ann. § 56-3-3710 (emphasis added).

While both Sections 56-3-14010 and 56-3-14110 state that, after defraying costs, the funds from the additional seventy dollar fee “must be distributed to the fund established... pursuant to Section 56-3-3710(B),” the statutes do not mandate that the remaining funds are distributed according Section 56-3-3710(B). Rather, the plain language of Sections 56-3-14010(C) and 56-3-14110(C) clearly states the distribution of the additional seventy dollar fee, again after defraying costs, “must be to the fund” for the respective university established under Section 56-3-3710(B). This directive does not appear to conflict with the terms of Section 56-3-3710(B). The fee distribution described in Section 56-3-3710(B) specifically relates to “[t]he fees collected pursuant to this section.” There is no suggestion in the text of Section 56-3-3710 that the distribution scheme for its seventy dollar fee should be applied to a seventy dollar fee in a separate statute. Therefore, a court would likely find that the distribution of the additional seventy-dollar fee collected under Sections 56-3-14010 and 56-3-14110 does not conflict with Section 56-3-3710(B).

However, if a court were to find that the terms of the statutes are in conflict, the conflict would likely be resolved by finding that the distribution required by Sections 56-3-14010 and 56-3-14110, as the later more specific statutes, are exceptions to Section 56-3-3710. See Denman v. City of Columbia, 387 S.C. at 138, 691 S.E.2d at 468–69. Section 56-3-3710 authorizes the Department to issue special motor

vehicle license plates with emblems or seals appropriate for colleges, universities, or institutions of higher learning within the state. In contrast, Sections 56-3-14010 and 56-3-14110 are more narrowly tailored to authorize the Department to issue license plates recognizing the NCAA national championship seasons for Clemson University and Coastal Carolina University respectively. The plain language of Sections 56-3-14010 and 56-3-14110 only applies to the license plates for the specific university's accomplishments in the field of athletics for the championship season in the specific sport. Clearly, even if there is arguable overlap, Sections 56-3-14010 and 56-3-14110 apply to a more limited set of license plates than those addressed in Section 56-3-3710. Therefore, a court would likely find that, if a conflict exists between these statutes, Sections 56-3-14010 and 56-3-14110 are exceptions to Section 56-3-3710.

Similarly, a court would likely find that the distribution of the additional seventy-dollar fee collected under Sections 56-3-14010 and 56-3-14110 does not conflict with Section 56-3-8100. Section 56-3-8100 was most recently amended by 2016 Act No. 275, § 62 and took effect on July 1, 2016. In relevant part, the statute reads as follows:

(D) The fee for all special license plates created by the General Assembly after January 1, 2006, is the regular biennial 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 plate, as authorized by law. The initial fee amount requested can only be changed every five years from the first year the plate is issued. Each special license plate must be of the same size and general design of regular motor vehicle license plates. Each special license plate must be issued or revalidated for a biennial period which expires twenty-four months from the month the special license plate is issued.

(E) If the individual or organization seeking issuance of the plate does not request an additional fee above the regular registration fee, and no other additional fee is prescribed by law, the department may collect an additional fee of ten dollars.

(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.

(G) Any of the remaining additional fee collected pursuant to subsections (D) and (E) not placed in the restricted account must be distributed to an organization designated by the individual or organization seeking issuance of the license plate, or to the general fund, if no additional fee is requested by the organization.

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S.C. Code Ann. § 56-3-8100 (emphasis added). Section 56-3-8100(F) and (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. While subsection (D) broadly discusses “the fee for all special license plates,” as discussed above, Sections 56-3-14010 and 56-3-14110 apply to a more limited set of license plates. Therefore, a court would likely find that, if a conflict exists between these statutes, Sections 56-3-14010 and 56-3-14110 prevail as exceptions to Section 56-3-8100. See Denman v. City of Columbia, 387 S.C. at 138, 691 S.E.2d at 468–69.

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Conclusion

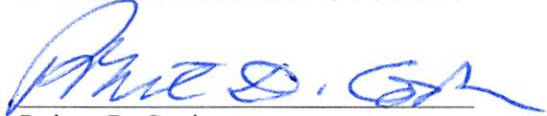
It is this Office's opinion that that a court would likely find Sections 56-3-14010 and 56-3-14110 do not conflict with Sections 56-3-3710 and 56-3-8100, but are exceptions thereto as the later more specific statutes. This Office is, however, only issuing a legal opinion based on the current law at this 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
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General