1976 S.C. Op. Atty. Gen. 347 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4489, 1976 WL 23106

Office of the Attorney General

State of South Carolina
Opinion No. 4489
October 13, 1976

***1 Section 4–29.5 of the Code of Laws of South Carolina, 1962, as amended, (§ 1, subsection 10.5 of Act #1063 of 1972), applies only to licenses issued pursuant to § 4–29.3.**

Director
South Carolina Alcoholic Beverage Control Commission

§ 4–29.5, Code of Laws of South Carolina, 1962, as amended, pertains to the revocation, suspension, or refusal to issue a license by the South Carolina Alcoholic Beverage Control Commission. The last sentence of said section unequivocally states:
[N]o person who has been convicted of a felony shall be granted a license within ten years of such conviction.

§ 4–32 of the Code of Laws of South Carolina, 1962, pertains to the eligibility requisites for licensure under the provisions of Title 4, Chapter 1 of the South Carolina Code. The final sentence of said section places within the discretion of the Commission the issue as to whether or not an individual applying for a license shall be prohibited from obtaining such license as a result of the individual's failure to comply with the requisite elements set forth in said section.
No person shall be eligible for a license under the provisions of this chapter . . . unless the Tax Commission (ABC Commission) in its discretion shall otherwise order.

§ 4–29.5 was promulgated in 1972, whereas § 4–32 was promulgated in 1945.

A review of Act #1063 of 1972 (the minibottle act) and of its predecessor, Act #358 of 1967 (brownbagging act) portends no express repeal of the last sentence of § 4–32; but the query arises regarding whether the last sentence of said section is repealed by implication. It is well settled that if two legislative acts are repugnant or in conflict with each other, the provision last enacted will govern and will repeal by implication so much of the earlier act as in direct conflict with it, even though the latter act contains no repealing clause. *Wade v. Cobb*, 204 S. C. 275, 28 S. E. 2d 859; *Home Building & Loan Association v. City of Spartanburg*, 185 S. C. 353, 194 S. E. 143; 82 C.J.S. *Statutes* § 290. However, it is presumed that the legislature was familiar with prior legislation, and that if it intended to repeal existing laws it would have expressly done so; hence if by any fair or liberal construction two acts may be made to harmonize, no Court is justified in deciding that the last repealed the first. *State v. Hood*, 181 S. C. 488, 188 S. E. 134; Cf. *State ex rel McLeod v. Ellisor*, 259 S. C. 364, 192 S. E. 2d 188.

A situation analogous to the question at hand occurred in the case of *Lewis v. Gaddy*, 254 S. C. 66, 173 S. E. 2d 376. Therein the Court reviewed the question in regard to whether the provisions of Act 358 of 1967 repealed by implication § 4–95 of the Code or restricted the application of said section. The Court summarized the rules of statutory construction relative to repeal by implication stating, *inter alia*, that statutes in *pari materia* have to be construed together and reconciled, if possible, so as to render both operative. The Court reiterated the long standing rule that all rules of statutory construction are subservient to the one that legislative intent must prevail. The Court concluded that § 4–95 remained in full force and effect as to business not within the purview of Act 358 of 1967.

***2** A perusal of § 4–29.5 of the amended Code reveals that the legislature intended for its terms to be applicable only to licenses issued pursuant to § 4–29.3, that is, sale and consumption licenses. (See § 4–29.5(1)). As such, it must be said that the proscription found in the last sentence of § 4–29.5 does not repeal by implication the discretionary aspect of § 4–32. The two segments of the statutes are not in conflict, but can reasonably be construed together and reconciled. § 4–32 of the Code remains in full force and effect as to licenses not within the purview of § 4–29.3.

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