1976 WL 30816 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
October 4, 1976

***1 Re: Interpretation of Acts R892 and R893 of 1976 General Assembly, as amending Section 37-309 of the 1962 Code**

Mr. Kelley Jones
Legal Counsel
S. C. Department of Insurance
P. O. Box 4067
Columbia, South Carolina 29240

Dear Mr. Jones:
You have requested an opinion as to the appropriate statutory interpretation of Acts R892 and R893, which were enacted on the same date by the 1976 General Assembly (July 22, 1976) and approved by the Governor on the same date (July 28, 1976).

Each of these Acts purports to amend Section 37-309 of the 1962 Code. Section 37-309 of the Code consists of an introductory statement followed by three subsections, numbers (1), (2), and (3), respectively.

R893 (Section 5) amends Section 37-309 by re-enacting the introductory statement and subsection (1) in a form substantially similar in import to that found in Section 37-309. R893 then amends Section 37-309 by striking subsection (2) and re-enacting subsection (3) verbatim and renumbering it as subsection (2). Thus, Section 37-309, as amended by R893, contains only these two subsections plus the introductory statement.

R892 amends only subsection (2) of Section 37-309 by altering the maximum amount of insurance that may be extended to an employee's spouse and children.

Since Acts R892 and R893 deal with the same subject, they may be referred to as statutes in pari materia, Bell v. South Carolina Highway Dept., 30 S.E.2d 65, 204 S.C. 462 (1944) and as such, they should be construed together.
[A]pplication of the rule that statutes in pari materia should be construed together has the greatest probative force, in the case of statutes relating to the same subject matter that were passed at the same session of the Legislature, especially if they were passed or approved or take effect on the same day, . . . In these situations the probability that acts relating to the same subject matter were actuated by the same policy is very high, for in the . . . three situations mentioned they were enacted by the same men . . . Vol. 2A Sutherland Statutory Construction § 51.03.

Although any apparent conflict could have been avoided if the Legislature had employed one act instead of two, it is the choice of the Legislature to determine whether two provisions enacted at the same time and relating to the same subject should be embodied in one act or two. Vol. 2A Sutherland Statutory Construction, § 51.01.

Neither can the point be raised that one of these acts by necessity had to precede the other:
When two acts are approved on the same day, they take effect at the same time if there is no evidence to prove chronological precedence of one over the other. The presumption is that they were approved in numerical order. . .

Because the courts do not favor implied repeals, two acts on the same subject taking effect on the same day will be harmonized and construed as one act if at all possible. Vol. 2 Sutherland Statutory Construction § 33.11.

***2** Thus, R892 and R893 should be treated, if possible, as one act.

The principal problem with the present situation is that it now appears that we have two sub-sections #2 to Section 37-309. Sutherland states that in some courts the rule is that:
[A]mendments to the same act passed at the same session of the Legislature are in pari materia and are to be construed together, and that therefore only those provisions of the earlier amendment [in our situation, R892 since it is numerically earlier] which cannot be reconciled with the later amendment are repealed, regardless of whether the later amendment purports to set out the original act or section as amended and omits the earlier amendment. Vol. 1A Sutherland Statutory Construction § 22.32 (footnote omitted).

The numbering of the two acts conflict, however, and we have found no rule of statutory construction that is of any help in resolving this problem. The case of Taylor v. Marsh, 43 S.E.2d 606, 211 S.C. 36 (1947) indicates that the court will look beyond such an academic inconsistency in construing the purpose and intent of the Legislature.

The intent of the Legislature in enacting R893 was to limit insurance for spouse or child to the maximum amount of $2,500.00. We can find no conflict with this maximum limitation set forth in R893 and the substantive provisions of Act R892. Thus, the substantive provisions of Acts R892 and R893 may be easily read together, since it is apparent that these two Acts, when read together, do little more than reenact Section 37-309 of the Code, with minor changes in the terminology of Section 37-309(1) and maximum limitation on coverage ($2,500.00).

Act R893 would reasonably seem to supplement Act R892 by restoring limitations on maximum coverage which were omitted in the latter Act. Thus, the amendments accomplished by the two Acts would leave an amended subsection 2 for Section 37-309, which embodies substantive amendments for old subsection 2 as to coverage limitations (Act R893), old subsection 1 as to premium payment responsibility (Act R892), and old subsection 3 as to procedures upon termination (Act R892). The two Acts can therefore be harmoniously construed, in our opinion.
Yours very truly,

Victor S. Evans
Deputy Attorney General

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