1975 S.C. Op. Atty. Gen. 38 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 3969, 1975 WL 22267

Office of the Attorney General

State of South Carolina
Opinion No. 3969
February 13, 1975

***1 Re: No. 47–County**

Honorable Ferdinan B. Stevenson
Member
House of Representatives
P. O. Box 487
Charleston, South Carolina

Dear Ms. Stevenson:
On January 14, 1975, we advised you as to our tentative conclusion that the Charleston County Council is without authority to designate holidays in addition to those designated by Section 14–1151 of the South Carolina Code of Laws, as amended. See, Letter from C. Tolbert Goolsby, Jr., to Ferdinan B. Stevenson, January 14, 1975. In his letter dated January 23, 1975, the County Attorney, Ben Scott Whaley, Esquire, advised us that he was 'inclined' to agree with our tentative conclusion [see, Letter from Ben Scott Whaley to C. Tolbert Goolsby, Jr., January 23, 1951]; however, he enclosed a letter addressed to him from the County Manager, Honorable Richard L. Black, in which the latter maintained that County Council possesses the authority to designate additional holidays. See, Letter from Richard L. Black to Ben Scott Whaley, January 22, 1975.

Section 14–1151, as amended, which applies only to Charleston County, provides in part:

* * *

The official legal holidays for county employees . . . shall be as follows: New Year's Day, the Fourth of July, Labor Day, Veterans' Day, Thanksgiving Day and Christmas Day.

County Council, however, has designated the following as official holidays: January 1, New Year's Day; January 19, Robert E. Lee's Birthday; Good Friday; July 4, Independence Day; First Monday in September, Labor Day; Fourth Monday in October, Veterans' Day; Thanksgiving Day; December 25, Christmas Day; and December 26. See, Attachment, Letter from Richard L. Black to Ben Scott Whaley, January 22, 1975. Its action in designating holidays in addition to those listed in Section 14–1151, as amended, was, presuming the constitutionality of Section 14–1151, as amended, improper, in our opinion.

It is fundamental that municipal ordinances are inferior in status and subordinate to the laws of the State. 5 McQUILLIN, MUNICIPAL CORPORATIONS § 15.20 at 81. Ordinances which regulate subjects, matters, and things upon which there is a state law must be in harmony with that state law; and in any conflict between an ordinance and a state statute, the latter must prevail. Id. An ordinance cannot permit that which the public policy of the state, as found in its constitution and statutes, forbids. Id. § 15.21 at 87–88.
[I]f the state has expressed through legislation a public policy with reference to a subject, a municipality cannot ordain an effect contrary to or in qualification of the public policy so established, unless there is a specific, positive, lawful grant of power by the state to the municipality to so ordain. Id. at 88.

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Here, obviously, there is a conflict between the action taken by County Council regarding holidays that are to be enjoyed by employees of Charleston County and the state statute, Section 14–1151, as amended, which prescribes in unambiguous language the days which shall constitute legal holidays for Charleston County employees. The General Assembly has quite clearly expressed through Section 14–1151, as amended, a public policy with reference to a particular subject, namely, which days are to constitute legal holidays for county employees in Charleston County. Inasmuch as the General Assembly has expressed through legislation a public policy with respect to the subject of official legal holidays in Charleston County for county employees, County Council, in our view, cannot ordain that legal holidays for such employees shall include any other days. Cf., 73 AM.JUR.2d Sundays and Holidays § 8 at 789–790. Moreover, there is no specific, positive lawful grant of power by the state to County Council, which we can find, that would authorize County Council to prescribe either additional holidays or holidays different from those designated in Section 14–1151, as amended.

***2** In his letter, Mr. Black suggests recent amendments to Section 64–151 of the South Carolina Code of Laws repealed Section 14–1151, as amended. Neither of the more recent amendments to Section 64–151 [see, 56 STAT. Act No. 860 (1970) and 58 STAT. Act No. 290 (1973)] purports to repeal Section 14–1151, as amended, expressly; therefore, any repeal of Section 14–1151, as amended, by the enactment of the 1970 and 1973 amendments to Section 64–151 would have to be by implication. Repeal by implication, however, is not favored; State v. Hood, 181 S.C. 488, 188 S.E. 134; and where the intention to repeal is not expressed, there is a presumption against such an intention. E. M. Matthews & Co. v. Atlantic Coast Line R. Co., 102 S.C. 494, 86 S.E. 1069. Before a later statute can be held to have repealed by implication an earlier one, the later must be plainly repugnant to the earlier; and it must embrace the entire subject matter of the earlier act. Pearson v. Mills Mfg. Co., 82 S.C. 506, 64 S.E. 407; 82 C.J.S. Statutes § 292 at 498–499. We do not think the 1970 and 1973 amendments to Section 64–151 impliedly repealed Section 14–1151, as amended. Those statutes do not embrace the entire subject matter of Section 14–1151, as amended, and are not plainly repugnant thereto.

At any rate, whether Section 14–1151, as amended, has been repealed by the recent amendments to Section 64–151 is of little assistance to those who would argue that County Council can lawfully designate additional holidays for county employees. The holidays designated by County Council are not identical to those prescribed by Section 64–151, as amended. For example, County Council lists Good Friday as a holiday but Section 64–151, as amended, does not.

Mr. Black also contends that County Council possesses the authority to designate additional holidays for county employees by virtue of the powers granted to it in subsections (12), (13) and (16) of Section 14–1169, as amended. The latter subsection provides in part:
(16) To establish policies affecting the . . . compensation . . . of the administrative employees of the county government.

Mr. Black states that there was no legislation prior to 1969 regulating county holidays in Charleston County. He suggests that County Council, therefore, prescribed holidays for county employees pursuant to subsection (16) of Section 14–1169 in order to confer additional compensation upon county employees. While County Council, arguably, may have possessed the power to designate holidays for county employees prior to the enactment of Act No. 187 of 1969, which amends Section 14–1151, it does not have that power now. That enactment took away that power, and, as we observed above, County Council cannot ordain an effect contrary to or in qualification of the public policy which that statute establishes.

Finally, Mr. Black appears to condemn the 1969 amendment to 14–1151 as special legislation. See, S.C.CONST. art 3 § 34(IX). Whether or not a court in an action for a declaratory judgment brought by County Council or some other party would invalidate that statute we, of course, do not know. Until, however, the statute is declared invalid, its constitutionality must be presumed. Thompson v. Hofmann, —— S.C. ——, —— S.E.2d —— (filed December 4, 1974).

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Best wishes,

***3** C. Tolbert Goolsby, Jr.

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