

1972 WL 25223 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 28, 1972

*1 Roy McBee Smith, Esquire
County Attorney
312 Montgomery Building
P. O. Box 5306
Spartanburg, S. C. 29301

Dear Mr. Smith:

You have requested an opinion of this office concerning the interpretation to be given to two acts passed during the 1971 Session of the General Assembly.

1971 Act #179 which was signed into law on April 14, 1971 amended Section 27-319 of the S. C. Code by deleting a paragraph which set probate fees based on the value of the personal property in the estate. In making the deletion the legislature restated the remainder of 27-319 which provides a schedule of costs and fees for the Spartanburg County Probate Court. The final paragraph of 27-319 which was restated in 1971 Act #179 provides that:

The probate judge shall have the discretion and authority, using the above prescribed schedule as a guide, to make adjustments of fees and costs chargeable appropriate to the particular case or matter.

1971 Act #878 which was signed into law on October 28, 1971 amended 1968 Act #1035. The amended act now provides in part that the Board of County Commissioners of Spartanburg County is empowered:

To fix all costs and charges to be made by officers in Spartanburg County for the recording of any document, now required by law to be recorded for which a charge is set by law, . . . and further, to fix and regulate all costs now provided by law for service by officials of Spartanburg County . . .

The problem is that there is an apparent conflict between an act specifically dealing with probate judges in Spartanburg County and a general act dealing with all officers of the same county which was approved by the governor subsequent to the specific act but during the same legislative session.

Neither piece of legislation was debated in either the House or Senate so there is no legislative history with which to determine the intent of the legislature.

The applicable rule to be applied to resolve this conflict is probably the following:

Where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict the latter will prevail, regardless of whether it was passed prior to the general statute, unless it appears that the legislature intended to make the general statute controlling. Sutherland Statutory Construction, 3rd Ed. Sec. 5204.

The preceding general rule appears to be the law in South Carolina:

The general rule as to the construction of statutes adopted at the same session of the legislature, when they relate to the same subject matter, is set forth, we think, correctly, in 36 Cyc., 1151, as follows:

‘Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to or qualification of, the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication.’ [Smith v. South Carolina State Highway Commission](#) 138 S.C. 374, 136 SE 487 (1927) Also see, [State v. Liggett and Myers Tobacco Co.](#) 171 S.C. 499, 172 SE 857 (1933).

*2 In conclusion, it should be assumed that the legislature had Act #179 in mind when Act #877 was drafted. Since #179 was not repealed the authorities seem to indicate that both acts should be read together. Therefore the Board of Commissioners of Spartanburg County is empowered to set fees for services rendered by all county officers except the Probate Judge, who is authorized to set probate fees himself using 27–319 as a guide.

Please contact me if I can be of further assistance.

Sincerely,

Walter Bailey
Law Clerk

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