



HENRY MCMASTER  
ATTORNEY GENERAL

September 28, 2010

John J. Fantry, Jr., Esquire  
Fantry Law  
175 Lanford Road  
Blythewood, South Carolina 29016

Dear Mr. Fantry:

We understand you represent the Town of Elgin (the "Town") and would like to request an opinion of this Office on the Town's behalf concerning the holding of a referendum by the Town. According to your letter:

The Council for Elgin has drafted, and plans to introduce, an Ordinance pursuant to § 61-6-2010(C)(4) calling for a Referendum that would allow the Department of Revenue to issue temporary permits for the on-site sale for on-premise consumption of alcoholic liquors by the drink and the on-site sale of beer and wine for off-premise consumption. It is anticipated that the Ordinance can be adopted by September 28, 2010, and the signed Ordinance and Referendum question can be delivered to the Town's Election Commission by September 30, 2010. § 61-6-2010(C)(4) of the Code provides "Upon receipt of a copy of the ordinance filed with the county or municipal election commission at least sixty days before the date of the next general election, the commission shall conduct the referendum in the manner provided in this section at that general election." As planned, the Ordinance will be received 123 days prior to the next general election.

However, your letter indicates that you are concerned with the impact section 7-13-355 of the South Carolina Code may have on the deadline for filing a copy of the ordinance with the election commission.

### **Law/Analysis**

Section 61-6-2010 of the South Carolina Code (2009) governs the Department of Revenue's ability to issue temporary permits for the sale of alcoholic beverages. Subsection (C) of this provision contains a referendum requirement before a permit may be issued. This provision states: "A permit authorized by this section may be issued only in those counties or municipalities where a majority of the qualified electors voting in a referendum vote in favor of the issuance of the permit." S.C. Code Ann. § 61-6-2010(C)(1). Section 61-6-2010(C) provides two mechanisms by which a referendum can be initiated, by petition or by ordinance of the governing body. We understand that the Town is initiating the referendum by ordinance. Section 61-6-2010(C)(4) states, with regard to referendums initiated by ordinance that "[u]pon receipt of a copy of the ordinance filed with the county or municipal election commission at least sixty days before the date of the next general election, the commission shall conduct the referendum in the manner provided in this section at that general election." S.C. Code Ann. § 61-6-2010(C)(4).

In your letter, you informed us that the Town's next general election will be held on February 1, 2011. Thus, in accordance with section 61-6-2010(C)(4), we initially presume the Town must submit a copy of the ordinance to its election commission at least sixty days prior to February 1, 2011. However, you are concerned with how South Carolina's general election laws may impact the timing of when the ordinance must be submitted to the Town's election commission. In particular, we understand you are concerned with what impact section 7-13-355 of the South Carolina Code may have on the timing of the town's submission.

Section 7-13-355 of the South Carolina Code (Supp. 2009), contained in South Carolina's general election laws, governs the timing of the submission of referendum questions to the appropriate election commission. This provision states:

No question may be submitted to the qualified electors in a referendum held at the time of a general election unless the question is submitted to the appropriate election commission to be placed on the ballot no later than 12:00 noon on August fifteenth or, if August fifteenth falls on Saturday or Sunday, not later than 12:00 noon on the following business day.

S.C. Code Ann. § 7-13-355. Accordingly, this provision indicates that referendum questions generally must be submitted to the election commission on the August fifteenth prior to the general election. Therefore, you question whether or not the Town should have submitted the referendum question to the Town election commission on August 15, 2010, despite the fact that its general election is not until February 1, 2011.

In your letter, you argue that you do not believe that the Town is required to submit the ordinance to the Town election commission by August fifteenth. First, you believe that section 7-13-355 is only applicable to those bodies holding general elections in November. You state that reading section 7-13-355 to apply to a Town with a general election scheduled outside of November would place “an unreasonable and arbitrary burden upon municipalities holding general elections on other dates, since those holding elections in November are only required to file 76 days in advance of the November election, while Elgin is required to file 169 days prior to the election.” Second, you argue that sections 7-13-355 and 61-6-2010(C)(4) conflict with one another and that section 61-6-2010(C)(4) controls because it is the more specific of the two statutes.

In our research, we did not find any court cases interpreting section 7-13-355 with regard to a municipality that does not conduct its general election in November. However, as you mentioned in your letter, in a 1987 opinion, this Office considered whether section 7-13-355 controlled with regard to a referendum for a change in the form of a municipality’s government. Op. S.C. Atty. Gen., November 3, 1987. In that opinion, we determined that section 7-13-355 conflicted with section 5-5-20 of the South Carolina Code governing referendums for changes in forms of municipal government. Id. We noted that section 5-5-20 provided that the governing body could conduct a special election no later than ninety days and no earlier than thirty days after the receipt of the petition or the city council’s ordinance. Id. In regard to the relationship between section 7-13-355 and section 5-5-20, we stated:

In the context of the factual situation that you have presented, these two statutes would conflict on their face. However, it clearly appears that it could not have been the legislative intent to require municipalities, who often hold their regularly scheduled elections in months other than November, to only be able to hold a referendum if the question is presented by September first.

Id. We cited several treatises stating that if a conflict arises between two statutes, one dealing generally with a subject and the other dealing specifically with it, the specific statute controls. Id. (citing 73 Am.Jur.2d, Statutes § 257 & 369). We concluded that section 5-5-20, which we found to be the special law governing home rule referendums, controls over the general law established under section 7-13-355. Id. However, we included a footnote stating as follows: “Section 7–13–355 would apply to a January election in that a ‘general election’ is defined by statute to be the regularly scheduled election for officers. See South Carolina Code of Laws, 1976, Section 7–1–20(1).” Id.

In keeping with our comments in our 1987 opinion, we do not believe that a general election occurring at a time other than November would cause section 7-13-355 to be inapplicable. As we noted in that opinion, section 7-1-20(1) of the South Carolina Code (1976) defines “general election” to mean “the election provided herein to be held for the election of officers to the regular terms of office provided by law, whether State, United States, county, municipal or of any other political

subdivision of the State, and for voting on constitutional amendments proposed by the General Assembly . . . .” In this provision, the Legislature specifically contemplated that the term general election as used in title 7 includes municipal elections. Moreover, we believe the Legislature was aware that many municipalities hold their general elections outside of the month of November when it enacted section 7-13-355. Therefore, we believe the Legislature intended for section 7-13-355 to be applicable to municipalities despite the timing of their general elections.

However, we agree with your assessment that sections 61-6-2010(C)(4) and 7-13-355 conflict with one another. Section 61-6-2010(C)(4) simply requires the ordinance be sent to the election commission sixty days prior to the general election. Whereas, section 7-13-355, as you point out, could require submission much sooner than sixty days prior to the general election. Our courts instruct as follows with regard to resolving conflicts in legislation.

The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers. State v. Baker, 310 S.C. 510, 427 S.E.2d 670 (1993). Statutes in apparent conflict should, if reasonably possible, be construed to allow both to stand and to give effect to each. Chris J. Yahnis Coastal, Inc. v. Stroh Brewery Co., 295 S.C. 243, 368 S.E.2d 64 (1988). Generally, specific laws prevail over general laws, and later legislation takes precedence over earlier legislation. Lloyd v. Lloyd, 295 S.C. 55, 367 S.E.2d 153 (1988).

P’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 412-13, 526 S.E.2d 716, 719 (2000). Thus, it is our opinion that because section 61-6-2010(C)(4) provides for a specific time line for the submission of an ordinance to the Town’s election commission in the context of the issuance of a temporary permit, this statute prevails over the conflicting deadline contained in the general law established by section 7-13-355.

### **Conclusion**

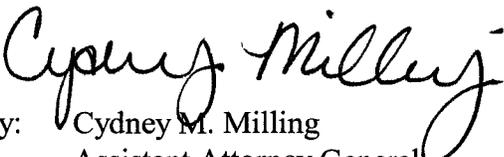
We believe that section 7-13-355 generally applies to municipalities conducting referendums despite the fact that municipalities may hold their general elections at a time other than in November. However, when a municipality is conducting a referendum in conjunction with section 61-6-2010, we believe that the Legislature intended for the specific language in this provision to control over the general law in section 7-13-355. Therefore, it is our opinion that in accordance with section 61-6-2010(C)(4), the Town’s ordinance calling for a referendum on the issuance of a temporary permit for the possession, sale, and consumption of alcoholic beverages must be submitted to its election

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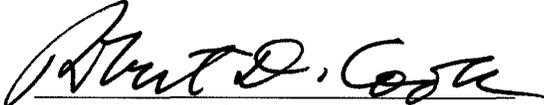
commission at least sixty days prior to the Town's general election.

Very truly yours,

Henry McMaster  
Attorney General

  
By: Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:

  
Robert D. Cook  
Deputy Attorney General