



ALAN WILSON  
ATTORNEY GENERAL

August 26, 2013

The Honorable Peter McCoy  
Member, House of Representatives  
135 King Street  
Charleston, South Carolina 29401

Dear Representative McCoy:

Attorney General Alan Wilson has referred your letter of July 22, 2013 to the Opinions section for a response. The following is our understanding of your question presented and the opinion of this Office concerning the issue based on that understanding.

**Issue:** Can a concurrent resolution repeal a State law signed by the Governor?

**Short Answer:** This Office believes a court would likely find a concurrent resolution cannot legally repeal a State law.

**Law/Analysis:**

By way of background, you state in your letter:

*[A] particular neighborhood has a street that has a dead end and was closed by state law in the mid 1980's by a bill sponsored by Representative Woody Aydlette. That was a general bill that stated the end of the road was to remain closed indefinitely. The bill was passed by roll call vote in both chambers of the legislature and was signed into law by the Governor at that time. Last year a concurrent resolution was passed by the House and passed by the Senate stating that the road was to be re-opened. Since this time, the road has been re-opened. ... As you already know, resolutions are not voted on in the House and are simply read across the desk of the Speaker. This latest resolution was not signed by Governor Haley....*

This Office has consistently opined that concurrent resolutions do not have the authority or force of the law. See Ops. S.C. Atty. Gen., 1993 WL 841143 (October 18, 1993); 1987 WL 342683 (June 17, 1987); 1975 WL 29103 (August 27, 1975); 1973 WL 21049 (August 9, 1973); 1963 WL 11922 (August 30, 1963); 1963 WL 11162 (April 8, 1963). This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law. Ops. S.C. Atty. Gen., 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL 289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984). Moreover, "[t]he absence of any legislative amendment following the issuance of an opinion of the Attorney General strongly suggests that the views suppressed therein were consistent with the legislative

intent.” Op. S.C. Atty. Gen., 2005 WL 2250210 (September 8, 2005) (citing Scheff v. Township of Maple Shade, 149 N.J.Super. 448, 374 A.2d 43 (1977)).

In one such prior opinion concerning resolutions, this Office stated:

The South Carolina Supreme Court has held that the South Carolina General Assembly has full power to make any and all laws which it considers beneficial to the State and its people unless such laws run counter to some limitation or prohibition of the South Carolina Constitution. Caldwell v. McMillan, 224 S.C. 150, 77 S.E.2d 798 (1953). In addition, the South Carolina Supreme Court has held that the General Assembly may properly exercise nonlegislative functions only to the extent that their performance is reasonably incidental to the full and effective exercise of its legislative powers. Ashmore v. Greater Greenville Sewer Dist., 211 S.C. 77, 44 S.E.2d 88 (1947).

The South Carolina Constitution and various statutes refer to bills, acts, and joint resolutions of the South Carolina General Assembly; **however, no constitutional or statutory provision addresses concurrent resolutions.** See, e.g., S.C. Const. art. III, § 18; S.C.Code Ann. § 2-7-10 (1976). According to 73 Am.Jur.2d Statutes § 3,

[w]hile some constitutions provide to the contrary, **the general rule is that a joint or concurrent resolution adopted by the legislature is not a statute, does not have the force or effect of law, and cannot be used for any purpose for which an exercise of legislative power is necessary.**

Pursuant to the South Carolina Constitution, a joint resolution can have the force of law. See, e.g., S.C. Const. art. III, § 18.

One legal commentator has generally analyzed resolutions as follows:

Resolutions are less formal than bills and therefore are a less authoritative expression of legislative action. Generally, resolutions are employed for the following purposes: (1) to express sentiments or opinions, (2) to carry out the inner administration of the legislative body, (3) to make temporary laws, and (4) to establish procedures for constitutional amendments.

**Resolutions are of three kinds: simple, concurrent, or joint. It is frequently said that the distinction between bills and resolutions is that resolutions are not law.** As a generalization this is probably accurate, if by “law” one means those legislative actions which operate on all persons in society, and must be enforced by the executive department, and sustained by the judiciary. When it is specified, for example, that action must be taken “by law,” usually a resolution will not suffice. In a limited sense, however, resolutions have the effect of “law” in that the operation of regularly enacted statutes may be conditioned or terminated by the adoption of concurrent resolutions. In Congress and some of the states, joint resolutions enacted with all the formalities of bills operate as law.

Sutherland Stat. Const. § 29.01 (4th ed. 1984). According to this same commentator:

A simple resolution is a formalized motion passed by a majority of a single legislative house. It is commonly used to create special committees, to express recognition for meritorious service, to extend sympathy on the death of a member of the house, and to express opinions to another governmental body. A simple resolution is frequently used to establish house procedure and to determine intra-legislative matters. It has limited effect as law, although for some purposes it will be judicially recognized.

Sutherland Stat. Const. § 29.02 (4th ed. 1984). Describing a concurrent resolution as “merely a simple resolution which is passed by both houses of the legislature,” this commentator has stated:

Constitutional requirements for the enactment of bills do not apply to either simple or concurrent resolutions. Usually, however, concurrent resolutions are drafted in essentially the same manner as bills although they are more likely to contain preambles and are usually not submitted for three readings or to the usual committee hearings. Although a concurrent resolution speaks for the entire legislature, it has only limited legal effect and for most purposes is not law.

Sutherland Stat. Const. § 29.03 (4th ed. 1984). This commentator has described joint resolutions as closely resembling statutes. Sutherland Stat. Const. §§ 29.04 & 29.05 (4th ed. 1984). Distinguishing between joint and concurrent resolutions, this commentator has stated:

Although the terms “joint” and “concurrent” are frequently used synonymously such reference is inaccurate and leads to confusion. In those states which give the joint resolution the effect of law, it must be signed by the governor. This requirement is not imposed with respect to concurrent resolutions, although in some states they, too, must be submitted to the governor “for his approval.” Likewise, the greater procedural safeguards and the delays intended to insure more sober judgment in the enacting of joint resolutions do not apply to concurrent resolutions. “In the current practice, concurrent resolutions have been developed as a means of expressing fact, principles, opinions and purposes of the two houses. Joint committees, adjournments and recesses of the Congress are authorized by resolutions in this form.”

Sutherland Stat. Const. § 29.06 (4th ed. 1984). Accord, S.C. Atty. Gen. Op., Aug. 6, 1974 (“Although a concurrent resolution, unlike a joint resolution, does not have the force and effect of law, but is, instead, an expression of the sense of the two Houses concurrently, it does, nevertheless, carry great weight.”).

In a 1993 opinion this Office opined:

**It is clear that, legally speaking, a concurrent resolution does not have the force and effect of law.** As we stated in an opinion issued June 17, 1987,

Resolutions are of three kinds: simple, concurrent, or joint. It is frequently said that the distinction between bills and resolutions is that resolutions are not law.

We also commented that a concurrent resolution is “merely a simple resolution which is passed by both houses of the legislature.”

It is commonly used to create special committees, the express recognition for meritorious service, to extend sympathy, and to express opinions to another governmental body. [Emphasis added].

We also added that

In the current practice, concurrent resolutions have been developed as a means of expressing fact, principles, opinions and purposes of the two houses.

It was stated in 73 Am.Jur.2d, Statutes, §3

a joint or concurrent resolution is not a statute, does not have the force or effect of law and cannot be used for any purpose for which an exercise of legislative power is necessary.

**Even though legislative resolutions are entitled to deference and respect, they are not law. While a concurrent resolution may bind the members of the legislative body, they are not statutes and do not have the force and effect of law.** State ex. rel. Barker v. Manchin, (W.Va.), 279 S.E.2d 622 (1981). **Moreover, a concurrent resolution binds only the particular Legislature which enacts it and not future ones.** Dickinson v. Johnson, 176 S.E.2d 116 (Ark. 1915). Resolutions are but temporary measures and die when the subject matter is completed. 1992 S. C. Legislative Manual, page 252.

Op. S.C. Atty. Gen., 1993 WL 841143 (October 18, 1993) (emphasis added).

Additionally, South Carolina case law has held concurrent resolutions do not carry the force of law. See State ex rel. Lyon v. Columbia Water Power Co., 90 S.C. 568, 74 S.E. 26 (1912); Stolbrand v. Hoge, 5 S.C. 209, 1874 WL 5306 (1874). Moreover, as the 1987 opinion stated, “**no constitutional or statutory provision addresses concurrent resolutions.**” Op. S.C. Atty. Gen., 1987 WL 342683 (June 17, 1987). South Carolina Constitution Article III, Section 18 outlines requirements for a bill or joint resolution to become force of law but does not address a concurrent resolution. The implication would support the conclusion that concurrent resolutions do not have the force of law. That portion of the South Carolina Constitution reads:

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No Bill or Joint Resolution shall have the force of law until it shall have been read three times and on three several days in each house, has had the Great Seal of the State affixed to it, and has been signed by the President of the Senate and the Speaker of the House of Representatives: *Provided*, That either branch of the General Assembly may provide by rule for a first and third reading of any Bill or Joint Resolution by its title only.

S.C. Const. Art. III, § 18.

**Conclusion:** Therefore, this Office believes it is likely a court will find a concurrent resolution is only binding on that particular legislature (not future ones), that a concurrent resolution does not have the force of law and that a concurrent resolution could not be used to repeal a State law. However, this Office is only issuing a legal opinion. Until a court or the legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita Smith Fair  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General