

The State of South Carolina



Office of the Attorney General

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October 12, 1989

The Honorable Robert N. McLellan
Member, House of Representatives
Post Office Box 796
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Dear Representative McLellan:

By your letter dated September 5, 1989, to Attorney General Medlock, you request an Opinion from this Office as to "whether a line item in the Appropriation Act for an agency head's salary can have the effect of raising a salary without regard to provisos in the Act establishing pay increases." As you know, Attorney General Medlock has referred your letter to me for response.

A response to your request requires statutory construction of various provisions of the 1989-90 appropriations act, 1989 S.C. Acts 189. Of course, statutory construction is, ultimately, the province of the courts. Johnson v. Pratt, 200 S.C. 315, 20 S.E.2d 865 (1942).

In interpreting a statute, the primary purpose is to ascertain the intent of the legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987); Multi-Cinema, Ltd. v. South Carolina Tax Comm'n, 292 S.C. 411, 357 S.E.2d 6 (1987). When interpreting a statute, the legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in the light of the intended purpose of the statutes. Gambrell v. Travelers Ins. Cos., 280 S.C. 69, 310 S.E.2d 814 (1983.)

Where a statute is clear and unambiguous, there is no room for construction and the terms of the statute must be given their literal meaning. Duke Power Co. v. South Carolina Tax Comm'n, 292 S.C. 64, 354 S.E.2d 902 (1987). In interpreting a statute,

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the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Multi-Cinema, Ltd. v. South Carolina Tax Comm'n, supra. In determining the meaning of a statute, it is the duty of the court to give force and effect to all parts of the statute. State ex rel. McLeod v. Nessler, 273 S.C. 371, 256 S.E.2d 419 (1979). In construing a statute, words must be given their plain and ordinary meaning, without resort to subtle or forced construction for the purpose of limiting or expanding its operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). The legislature is presumed to have fully understood the import of words used in a statute and intended to use them in their ordinary and common meaning, unless that meaning is vague and indefinite, or in their well-defined legal sense, if any. Powers v. Fidelity and Deposit Co. of Maryland, 180 S.C. 501, 186 S.E. 523 (1936).

In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction. Smalls v. Weed, 293 S.C. 364, 360 S.E.2d 531 (Ct. App. 1987). In construing statutes, a court will endeavor to reconcile, if it can, any apparently conflicting provisions of two sections of the same statute so that all parts thereof might be given, as far as possible, full force and effect. Purdy v. Strother, 184 S.C. 210, 192 S.E. 159 (1937). The rule that where conflicting provisions are found in the same statute the last in point of time prevails is purely an arbitrary rule of construction, and is to be resorted to only when there is clearly an irreconcilable conflict, and all other means of interpretation have been exhausted. Feldman v. South Carolina Tax Comm'n, 203 S.C. 49, 26 S.E.2d 22 (1943). Accord 73 Am. Jur. 2d Statutes §254-5; 82 C.J.S. Statutes §347. According to 73 Am. Jur. 2d. Statutes §255:

[W]here one section of a statute treats specially and solely of a matter, that section prevails in reference to that matter over other sections in which only incidental reference is made thereto, not because one section has more force as a legislative enactment than another, but because the legislative mind, having been in the one section directed to the particular matter, must be presumed to have there expressed its intention thereon rather than in other sections where its attention was turned to other things. [Footnotes omitted.]

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Several provisos contained within the 1989-90 appropriations act address compensation for agency heads. According to 1989 S.C. Acts 198, §14.35, "[s]tatewide elected officials, constitutional officers, temporary positions, whether full or part-time, and agency heads, shall not be eligible for any compensation increases as provided in this Act unless otherwise specified in this Act." In addition, the 1989-90 appropriations act provides:

The Agency Head Salary Commission shall recommend to the Budget and Control Board salary increases for agency heads of 0% to 8%. No agency head shall be paid less than the minimum of the pay range nor receive an increase that would have the effect of raising the salary above the maximum of the pay range. Funding shall be provided for an amount equivalent to the base pay increase for all employees. Any remaining increases recommended by the Agency Head Salary Commission shall be funded from the individual agency budget. All increases shall be effective on or after October 1, 1989. For purposes of the salary increase effective on or after October 1, 1989, the directors of the Division of Local Government, Second Injury Fund, State Workers' Compensation Fund, and Legislative Information Systems will be covered by the Agency Head Salary Commission. Salary increase recommendations based on performance evaluations for the directors of the Divisions of Local Government and the Second Injury Fund will be submitted to the Commission by the Executive Director of the Budget and Control Board. The Governor will submit a salary increase recommendation based on a performance evaluation for the director of the State Workers' Compensation Fund to the Commission. The salary increase recommendation for the director of the Legislative Information Systems will be based on a performance evaluation submitted by the Legislative Information Systems Council.

1989 S.C. Acts 189, §14.36. See also 1989 S.C. Acts §14.34 (specifying the ratio that appropriated funds may be used for

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compensation increases for, inter alia, agency heads); §14.37 (specifying the annual increase for agency chief executive officers not reviewed by the Agency Head Salary Commission); §14.48 (specifying the maximum rate of salary for filling an agency head vacancy and procedure for a salary range for the agency head of a newly created agency).

Section 129.8 of the 1989-90 appropriations act provides, in relevant part:

The appropriated salaries for specified positions shall mean the maximum compensation for such position, except as specifically provided in other provisions of this act, and in any case where the head of any department can secure the services for a particular position or work at a lower rate than the salary specified in this Act, authority for so doing is hereby given.

1989 S.C. Acts 189, §129.8. Section 129.9 provides in relevant part: "Salaries of the heads of all agencies of the State Government shall be specifically fixed in this Act and no salary shall be paid any agency head whose salary is not so fixed." 1989 S.C. Acts 189, §129.9.

The Agency Head Salary Commission was created by the South Carolina General Assembly in 1985. 1985 S.C. Acts 201, Part II, §3A (codified at S.C. Code Ann. §8-11-160 (1976 & 1988 Cum. Supp.)).¹ Section 8-11-160 provides:

All boards and commissions are required to submit justification of an agency head's performance and salary recommendations to the Agency Head Salary Commission. This commission consists of four appointees of the chairman of the House Ways and Means Committee, four appointees of the chairman of the Senate Finance Committee, and three appointees of the Governor with experience in executive compensation.

¹ Although the 1985-86 appropriations act refers to the Executive Salary and Performance Evaluation Committee, 1985 S.C. Acts 201, Part II, §3A, the name was amended in 1987 to the Agency Head Salary Commission. 1987 S.C. Acts 20.

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Salary increases for agency heads must be based on recommendations by each agency board or commission to the Agency Head Salary Commission and their recommendations to the General Assembly.

The 1989-90 appropriations act added another permanent legislative act concerning the Agency Head Salary Commission.

It is the intent of the General Assembly that a salary and fringe benefit survey for agency heads must be conducted by the Human Resource Management Division of the Budget and Control Board every three years. The staff of the division shall serve as the support staff to the Agency Head Salary Commission.

No employee of agencies reviewed by the Agency Head Salary Commission may receive a salary in excess of ninety-five percent of the midpoint of the agency head salary range or the agency head actual salary, whichever is greater, except on approval of the Budget and Control Board.

The Agency Head Salary Commission may recommend to the Budget and Control Board that agency head salaries be adjusted to the minimum of their salary ranges and may recommend to the Board that agency head salaries be adjusted when necessary up to the midpoints of their respective salary ranges. These increases must be based on criteria developed and approved by the Agency Head Salary Commission.

All new members appointed to a governing board of an agency where the performance of the agency head is reviewed and ranked by the Agency Head Salary Commission shall attend the training in agency head performance appraisal provided by the Commission within the first year of their appointment unless specifically excused by the chairman of the Agency Head Salary Commission.

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1989 S.C. Acts 189, Part II §2. Since 1985, the annual appropriations acts have contained provisos similar to 1989 S.C. Acts 189, §14.36. 1985 S.C. Acts 201, §16; 1986 S.C. Acts 540, §16; 1987 S.C. Acts 170, §16.43; 1988 S.C. Acts 658, §16.41.

Acknowledging creation of the State Personnel Division (now known as the Division of Human Resource Management) by S.C. Code Ann. §8-11-210 through -300 (1976), this Office has previously opined: "Since approximately 1975, the General Assembly seems to have attempted through its legislation to provide a comprehensive and uniform system of personnel administration in South Carolina." S.C. Att'y Gen. Op. (Jul. 31, 1987). The creation of the Agency Head Salary Commission in 1985 appears to be a further reflection of that trend. Pursuant to sections 8-11-160 and 8-11-165 along with the relevant provisos of the 1989-90 appropriations act, the Agency Head Salary Commission has the authority to recommend to the South Carolina State Budget and Control Board salary increases for agency heads reviewed by the Agency Head Salary Commission to be effective October 1, 1989. I understand that these salary increases, almost in every case and for at least a major portion of the fiscal year, will vary with (by usually being greater than) the line² item amount appropriated for an agency head for that fiscal year.²

Your letter indicates that "[t]his question has been raised by the fact that the line item for the salary appropriation of the director of the Ethics Commission was increased from \$46,124 to \$51,024, or 10.6%, in the 1989-1990 Appropriations Act." The 1989-90 appropriations act contains a line item appropriation of \$51,024.00 for the Executive Director of the State Ethics Commission. 1989 S.C. Acts 189, §84. The 1988-89 appropriations act contained a line item appropriation of \$41,667.00 for the Executive Director of the State Ethics Commission. 1988 S.C. Acts 658, §88. As a result of my communication with the staff of the Division of Human Resource Management, I understand that the figure quoted in your letter, \$46,124.00, reflects the salary for the Executive Director of the State Ethics Commission effective October 1, 1988, as a result of the increase recommended by the Agency Head Salary Commission pursuant to 1988 S.C. Acts 658, §16.41. Therefore, during the period from October 1, 1988, through June 30, 1989, the salary of the Executive Director of the State Ethics Commission was \$46,124.00, which exceeded the line item appropriation of \$41,661.00 for that position pursuant to the 1988-89 appropriations act, 1988 S.C. Acts 658, §88.

² An example of such a variance involving the salary of the Executive Director of the State Ethics Commission for the period from October 1, 1988, through June 30, 1989, is discussed in the text infra. If the line item appropriation were controlling, an inappropriate overpayment would have been made to that agency head for that period of time.

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Although the individual provisos of the 1989-90 appropriations act cited above may be subject to differing interpretations one of which might support an argument that the line item appropriations control,³ the best construction appears to be one which harmonizes the provisos and gives all parts, as far as possible, full force and effect. See Purdy v. Strother, supra. In your letter, you state:

Agency head salary increases for agencies covered by the Agency Head Salary Commission have been determined by the Commission with the concurrence of the Budget and Control Board since 1985. Prior to the creation of the Commission, agency head salaries were determined by the General Assembly and identified by a line item in the respective agency section of the Appropriations Act. Since the creation of the agency head salary program, exceptions to the determination of salary increases by the Commission have only occurred through specific provisos in the Appropriations Act⁴. It would be noted that line items in the Appropriations Act for agency head salaries are no longer constant throughout the fiscal year due to the fact that agency head salaries are increased on October 1, under the current process.

³ For example, an argument could be made that 1989 S.C. Acts 189, §88 prevails over 1989 S.C. Acts 189, §14.36 because it is last in order of position or arrangement. Such an argument is not, however, favored in South Carolina. See Feldman v. South Carolina Tax Comm'n, 203 S.C. 49, 26 S.E.2d 22 (1943) (quoted in the text supra). Furthermore, such an argument would produce the absurd result where the line item appropriation for the agency head of the State Election Commission, found at 1989 S.C. Acts 189, §13 would not prevail over 1989 S.C. Acts 189, §14.36, simply because of the order of that line item appropriation. Such an absurd result should not occur. See Stephens v. Hendricks, 226 S.C. 79, 83 S.E.2d 634 (1954) (Construction will not be given to a statute by the South Carolina Supreme Court which would make its application unreasonable or absurd.).

⁴ For example, 1987 S.C. Acts 170, §16.43 specifically provides that the Agency Head Salary Commission's recommendation will not include salary increases for agency heads of the State Board for Technical and Comprehensive Education, Department of Consumer Affairs, and Department of Archives and History.

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The Ethics Commission is an agency that is covered by the Agency Head Salary Commission and increases for the director have been determined by the Commission since the inception of the process. The 1989-90 Appropriations Act does not contain any specific proviso regarding a pay increase for the Ethics Commission Director, thus raising the question outlined above.

I understand that the Agency Head Salary Commission and the Division of Human Resource Management have interpreted the line item appropriations for agency heads reviewed by the Agency Head Commission as being a reflection of funding by the South Carolina General Assembly for that fiscal year. Such an interpretation is based, apparently in part, upon the following language contained in 1989 S.C. Acts 189, §14.36:

Funding shall be provided for an amount equivalent to the base pay increase for all employees. Any remaining increases recommended by the Agency Head Salary Commission shall be funded from the individual agency budget.

Such an interpretation which would harmonize the apparent conflicts between the provisos of the 1989-90 appropriations act is favored. Thus, according to this interpretation, the line item appropriation would be relevant for funding purposes, but the actual salary increase would be governed by the recommendation of the Agency Head Salary Commission. Such an interpretation would render all of the provisos of the 1989-90 appropriations act cited above in force and effect. Of course, the construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should not be overruled without cogent reasons. William C. Logan & Assoc. v. Leatherman, 290 S.C. 400, 351 S.E. 2d 146 (1986).

In summary, the Agency Head Salary Commission and Division of Human Resource Management apparently interpret the 1989-90 appropriations act provisos concerning agency head salaries such that the line item appropriations for agency head salaries are relevant for funding purposes while the actual salary increase for an agency head who is reviewed by the Agency Head Salary Commission is governed by the recommendation of the Agency Head Salary Commission to the South Carolina State Budget and Control Board. Such an interpretation appears to render all of the relevant provisos effective. Furthermore, such an interpretation is entitled to the most respectful consideration and should not be overruled without cogent reasons.

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Please note that this Opinion in no way addresses any recommendations as to specific salary increases for any agency heads. The Agency Head Salary Commission is vested by statute with the authority and discretion to make those policy considerations.

If I can answer any further questions, please advise me.

Sincerely,



Samuel L. Wilkins
Assistant Attorney General

SLW/fg

REVIEWED AND APPROVED BY:



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