



ALAN WILSON  
ATTORNEY GENERAL

March 9, 2015

Shannon Furr Bobertz, Esq.  
Office of Chief Counsel  
South Carolina Department of Natural Resources  
PO Box 167  
Columbia, SC 29202

Dear Ms. Bobertz:

This Office received your request for an opinion as to the effect of amended South Carolina Code Section 48-4-50 on the duties of the Department of Natural Resources Board. You state that the "amendment calls into question several statutory provisions which previously vested the DNR Board with specific authority." You are asking which of the statutes you provided are in direct conflict with Section 48-4-50 and which provisions of the South Carolina Code are no longer valid based on the amendment.

**LAW/ANALYSIS:**

You direct our attention to Section 48-4-50 of the South Carolina Code which provides:

The board [of the Department of Natural Resources] must be vested with the duty and authority to set the policies for the department subject only to the laws of this State and the United States. The board has no duty or authority concerning the management of, control over, or administration of the day to day affairs of the department.

S.C. Code Ann. § 48-4-50 (1976 Code, as amended). As you explained in your letter, Section 48-4-50 stated prior to its amendment:

The board shall be vested with the duty and authority to oversee, manage, and control the operation, administration, and organization of the department subject only to the laws of this State and the United States.

S.C. Code Ann. § 48-4-50 (prior to its amendment by 2012 South Carolina Laws Act 215).

To answer your question, it is necessary to provide a brief background on statutory interpretation. In prior opinions, we have discussed the principles of statutory construction and they are as follows:

“[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 581 (2000). . . “[C]ourts will reject a statutory interpretation that would lead to an absurd result not intended by the legislature or that would defeat plain legislative intention.” State v. Johnson, 396 S.C. 182, 189, 720 S.E.2d 516, 520 (Ct. App. 2011). . . .

Op. S.C. Atty. Gen., September 18, 2013, (2013 WL 5494616).

Our Office has also determined that:

‘[s]ections which are part of the same statutory law of the State must be construed together. 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. Statutes pertaining to the same subject matter must be harmonized if at all possible.’ In Interest of Doe, 318 S.C. 527, 531-32, 458 S.E.2d 556, 559 (Ct. App. 1995) (citations omitted). However, ‘[w]here there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.’ Capco of Summerville, Inc. v. J.H. Gayle Constr. Co. Inc., 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006).

Op. S.C. Atty. Gen., July 28, 2014 (2014 WL 3886690) (quoting Op. S.C. Atty. Gen., July 11, 2008 (2008 WL 3198122)). We stated more succinctly in Op. S.C. Atty. Gen., March 20, 2006 (2006 WL 981695) (citing Criterion Insurance Company v. Hoffman, 258 S.C. 282, 188 S.E.2d 459 (1972); Op. Atty. Gen. dated August 5, 1986) that “[i]t is a rule of statutory construction that general and specific statutes should be harmonized if possible. However to the extent of any conflict between the two, the special [sic] statute usually prevails.”

You provided our Office with sixty-one different subsections of statutes<sup>1</sup> granting the DNR Board certain powers. At first glance, these statutes do not appear to conflict with amended Section 48-4-50 because they are setting rules, guidelines, and programs for the Department of Natural Resources and they are not interfering with the everyday operations of the Department. To the extent that they do in any way conflict with amended Section 48-4-50, they are specific statutes because they direct the DNR Board to take specific actions while Section 48-4-50 directs the DNR Board in more general terms. Since the sixty-one subsections of statutes are more specific, they prevail over Section 48-4-50. Accordingly, the DNR Board needs to continue to act in the manner required by the statutes you provided until otherwise advised by the Legislature.

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<sup>1</sup> See Sections 1-30-10; 1-30-75; 48-4-30; 48-4-50; 50-3-10; 1-23-111; 48-4-60; 48-4-70; 48-4-80; 48-9-610; 48-9-1210; 48-59-40; 49-29-110; 50-3-130; 50-3-170; 50-3-180; 50-1-310; 50-3-330; 50-3-510; 50-3-720; 50-3-760; 50-3-740; 50-3-750; 50-11-10; 50-11-20; 50-15-40; 50-3-910; 50-3-940; 50-3-950; 50-3-110; 50-15-50; 51-17-40; 51-17-90; 50-17-40; 51-17-80; 51-17-90; 51-17-100; 51-17-115; 50-3-90; 50-9-670; 50-11-2310; 50-13-1920; 50-19-1320; 50-13-1960; 50-13-1960; 50-5-1950; 50-17-50; and 54-6-10.

Additionally, there is no indication from the language of Section 48-4-50 that the Legislature intended to repeal the sixty-one subsections. We determined in a prior opinion that:

as explained in Hodges, 341 S.C. at 88-89, 533 S.E.2d at 583<sup>2</sup>:

The law does not favor the implied repeal of statute. Butler v. Unisun Ins., 323 S.C. 402, 475 S.E.2d 758 (1996). Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative. *Id.* “It is presumed that the Legislature is familiar with prior legislation, and that if it intends to repeal existing laws it would ... expressly do so; hence, if by any fair or liberal construction two acts may be made to harmonize, no court is justified in deciding that the later repealed the first.” Justice v. Pantry, 330 S.C. 37, 43-44, 496 S.E.2d 871, 874 (Ct.App.1998) (quoting State v. Hood, 181 S.C. 488, 491, 188 S.E. 134, 136(1936)).

Moreover, “[s]tatutes of a specific nature are not to be considered as repealed by a later general statute unless there is a direct reference to the former statute or the intent of the legislature to repeal the earlier statute is implicit.” Rhodes v. Smith, 273 S.C. 13, 16, 254 S.E.2d 49, 50 (1979).

Op. S.C. Atty. Gen., May 21, 2013 (2013 WL 2367500).

In our opinion, there is no expressed or implied intent to repeal the provisions of the sixty-one subsections by amended Section 48-4-50 and so they are still valid.<sup>3</sup> This is supported by the language of section 48-4-70 which provides general duties of the DNR Board. Section 48-4-70 states:

The board shall:

(1) hold meetings, as considered necessary by the chairman, with a majority of the board members constituting a quorum. The board may hold meetings, transact business, or conduct investigations at any place necessary; however, its primary office is in Columbia;

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<sup>2</sup> Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 581 (2000).

<sup>3</sup> “Acts of the legislature are presumed valid until held otherwise by a court and actions of the officers carrying out the duties required by the legislative enactment are valid, even if the enactment is later determined unconstitutional or invalid.” Op. S.C. Atty. Gen., Op. No. 92-41, July 28, 1992 (1992 WL 575647) (quoting State ex rel. McLeod v. Court of Probate of Colleton County, 266 S.C. 279, 223 S.E.2d 166 (1976)).

- (2) formulate and recommend legislation to enhance uniformity, enforcement, and administration of the wildlife, marine, and natural resource laws;
- (3) make an annual report to the General Assembly on all matters relating to its action;
- (4) require those of its officers, agents, and employees it designates to give bond for the faithful performance of their duties in the sum and with the sureties it determines, and all premiums on the bonds must be paid by the board;
- (5) pay travel expenses; and purchase or lease all necessary facilities, equipment, books, periodicals, and supplies for the performance of its duties; and
- (6) exercise and perform other powers and duties as granted to it or imposed upon it by law.

S.C. Code Ann. § 48-4-70 (1976 Code, as amended) (emphasis added). This is also supported by the language of section 48-4-80 which provides:

The board may:

- (1) make rules and promulgate regulations, not inconsistent with law, to aid in the performance of its duties. The board may prescribe the extent, if any, to which these rules and regulations must be applied without retroactive effect.
- (2) exercise all authority granted to it under the laws and regulations relating to wildlife, marine and natural resources.
- (3) conduct such hearings as may be required by law.

S.C. Code Ann. § 48-4-80 (1976 Code, as amended) (emphasis added).

The DNR Board is required to exercise such other powers and duties imposed upon it by law and to exercise all authority granted to it by laws and regulations relating to wildlife, marine, and natural resources. Therefore, it is required to perform the duties in the statutes you provided until the Legislature directs otherwise.

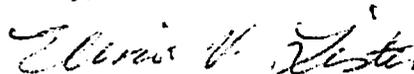
**CONCLUSION**

In conclusion, this Office believes that the law is as follows:

1. The statutes you provided regarding the duties of the DNR Board do not appear to conflict with amended Section 48-4-50 because they are setting rules, guidelines, and programs for the Department of Natural Resources and they are not interfering with the every day operations of the Department.
2. To the extent that the statutes you provided do in any way conflict with amended Section 48-4-50, they prevail over Section 48-4-50, a general statute, because they direct the DNR Board to take specific actions. Accordingly, the DNR Board needs to continue to act in the manner required by the statutes until otherwise advised by the Legislature.
3. There is no expressed or implied intent to repeal the provisions of the statutes you provided by amended Section 48-4-50.

Please be aware that this is only an opinion as to how this Office believes a court would interpret the law in this matter.

Sincerely,



Elinor V. Lister  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General