



ALAN WILSON
ATTORNEY GENERAL

March 31, 2015

The Honorable Chandra E. Dillard
House of Representatives, District No. 23
414-B Blatt Building
Columbia, SC 29201

Dear Representative Dillard:

Attorney General Alan Wilson has referred your letter dated February 10, 2015 to the Opinions section for a response. The following is this Office's understanding of your questions and our opinion based on that understanding.

Issues:

Does South Carolina Code § 40-19-270(C) authorize the S.C. State Board of Funeral Service to provide a temporary permit for the operation of a funeral establishment (as defined in S.C. Code § 40-19-20(11)) to a person that has not been a licensed director of a funeral home for one year when S.C. Code § 40-19-20(16) defines a "manager" as one who is a licensed funeral home director for at least one year?

Does South Carolina Code § 40-19-270(C) authorize the S.C. State Board of Funeral Service to provide a temporary permit for the operation of a funeral establishment (as defined in S.C. Code § 40-19-20(11)) to a person who has not met the residency requirements when the State Board of Funeral Service Regulation 57-10(C) requires one to be a resident of the State for at least one year before they may be a manager of a funeral home?

Law/Analysis:

By way of background, it is this Office's understanding the South Carolina State Board of Funeral Service (hereinafter "Board") created pursuant to statutory authority found in South Carolina Code § 40-19-10. As you note in your questions, the statutory authority to issue a temporary permit is found in S.C. Code § 40-19-270(C), which states:

No permit to operate a funeral establishment or crematory may be issued unless the funeral establishment or crematory has a manager when the establishment or crematory is open for any type of funeral business or activity. The board must be notified within thirty days upon the death, resignation, or incapacity of the manager of a funeral establishment or crematory as provided for in Regulation 57-10(c) and may issue a temporary permit to another manager upon terms and conditions the board considers to be in the best interest of the community in which the establishment or crematory is located.

S.C. Code § 40-19-270(C) (1976 Code, as amended) (emphasis added). A “manager” is provided for in Regulation 57-10(C) as one who has been a resident of this State for at least one year before becoming the manager. S.C. Code Reg. 57-10(C) (1999). Moreover, as you note in your question, South Carolina Code § 40-19-20(16) defines a “manager” as one who is a licensed funeral home director for at least one year in this State. Section 40-19-20(16) reads as follows:

As used in this chapter:

...
(16) “Manager” means a licensed funeral director who has been licensed in this State for at least one year, who is a fulltime regular employee, and who is responsible for and has the binding authority from the owner for the day-to-day management of funeral establishments or crematories including compliance with all applicable laws governed by this chapter and Chapters 7 and 8 of Title 32.

S.C. Code § 40-19-20(16) (emphasis added).

With the aforementioned statutory authority in mind, let us look to South Carolina Code § 40-19-270(C) to determine use of the word “manager” is intended to mean someone who has been licensed in South Carolina as a funeral director for at least one year. As a background regarding statutory interpretation, the cardinal rule of statutory construction is to ascertain the intent of the legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). An entire statute’s interpretation must be “practical, reasonable, and fair” and consistent with the purpose, plan and reasoning behind its making. Id. at 816. Statutes are to be interpreted with a “sensible construction,” and a “literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose.” U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). Like a court, this Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006). The dominant factor concerning statutory construction is the intent of the legislature, not the language used. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)). As this Office has previously stated:

The language of a statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Multi-Cinema, Ltd. v. S.C. Tax Commission, 292 S.C. 411, 357 S.E.2d 6 (1987). And where two statutes are in apparent conflict, they should be construed, if reasonably possible, to give force and effect to each. Stone & Clamp, General Contractors v. Holmes, 217 S.C. 203, 60 S.E.2d 231 (1950). This rule applies with peculiar force to statutes passed during the same legislative session, and as to such statutes, they must not be construed as inconsistent if they can reasonably be construed otherwise. State ex rel. S.C. Tax Commission v. Brown, 154 S.C. 55, 151 S.E. 218 (1930).

Op. S.C. Atty. Gen., 1988 WL 485345 (December 1, 1988).

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Regarding your first question, “manager” is clearly defined by statute as a licensed funeral director who has already been licensed for a year in South Carolina. S.C. Code § 40-19-20(16). Moreover, the definition of “manager” applies to all of Title 40 Chapter 19. *Id.* If the term “manager” did not comply with the statutory definition as found in South Carolina Code § 40-19-20(16), a person with no training whatsoever theoretically could be given the opportunity to embalm or cremate people pursuant to S.C. Code § 40-19-270(C). We do not think this was the intent behind the statute, as the Legislature could have easily written “issue a temporary permit to another person” instead of “another manager.” *Id.* (emphasis added). To interpret otherwise would be against the logical and plain meaning of the statute. In other words, it could allow the Board to issue a temporary permit to anyone the Board chooses in its discretion, even if the person has no training in cremation or embalming. As we opined above, we do not think that was the intent of the Legislature. Accordingly, the part of the statute that reads “upon terms and conditions the board considers to be in the best interest of the community in which the establishment or crematory is located” may refer to the permit requirements for a funeral home in South Carolina Code § 40-19-265 (thus giving discretion in meeting the requirements in § 40-19-265 (A)(1)-(3), (5)-(6) in regards to issuing a temporary permit). Consequently, we do not see how you can interpret “manager” as used in South Carolina Code § 40-19-270(C) to mean anything but how it is defined for use in Chapter 19 of Title 40.

Regarding your second question, the South Carolina Board of Funeral Service has statutory authority to promulgate regulations. S.C. Code § 40-19-60; Brooks v. S.C. State Board of Funeral Service, 271 S.C. 457, 247 S.E.2d 820 (1978). The Board’s regulations are found in Chapter 57 of South Carolina’s Code of Regulations. Regulation 57-10 details the requirements for a permit to operate a funeral establishment. S.C. Code Reg. 57-10 (1999). One such requirement in the regulation is the submission of the name of a manager who is a licensed funeral director. S.C. Code Reg. 57-10(C) (1999). The regulation goes on to require that the manager of the funeral home seeking a permit for a funeral establishment must be a resident of this State for at least one year before becoming the manager of the facility. *Id.* As our State’s Supreme Court has stated, rules adopted by a board cannot be substantially more or less restrictive than the governing statutes, nor can there be a conflict between the rules and the statutes. Brooks v. S.C. State Board of Funeral Service, 271 S.C. 457, 247 S.E.2d 820 (1978). The court must determine if such a rule or regulation is reasonable in its implementation of the statute. *Id.* Thus, as long as a court would determine that the regulation is reasonable and a consistent interpretation of the statute, the regulation would stand and would have to be followed. *See, e.g., Ops. S.C. Att’y Gen.*, 1986 WL 289890 (a properly-enacted regulation carries a presumption of validity) (citing Faile v. S.C. Employment Security Commission, 267 S.C. 536, 230 S.E.2d 219 (1976)); 2011 WL 4592375 (September 9, 2011) (there is a presumption of validity regarding regulations) (citing Faile, supra; University of S.C. v. Batson, 271 S.C. 242, 246, S.E.2d 882 (1982)). Because the statutory definition of “manager” requires one to be a funeral director who has been licensed in South Carolina for at least one year, we believe a court would determine the one year residency requirement established by Regulation 57-10 is a reasonable implementation of and consistent with South Carolina Code § 40-19-270(C). Thus, unless and until a court declares otherwise, we believe Regulation 57-10 should be followed accordingly.

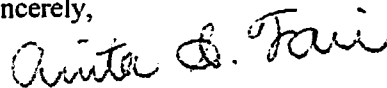
Conclusion:

Based on the information presented to us at this time, we believe a court will determine a “manager” as used in South Carolina Code § 40-19-270(C) must comply with the statutory definition of a “manager” as found in South Carolina Code § 40-19-20(16) and that Regulation 57-10 should be followed unless and until a court declares otherwise. Nevertheless, there are many other sources and authorities you may want to refer to for a further analysis. For a binding determination, this Office would recommend seeking a

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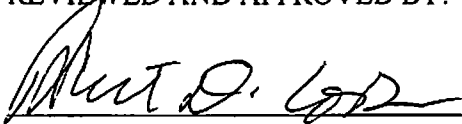
declaratory judgment from a court on these matters, as only a court of law can interpret statutes. S.C. Code § 15-53-20. Until a court or the Legislature specifically addresses the issues presented in your letter, this is only a legal opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General