



ALAN WILSON  
ATTORNEY GENERAL

May 12, 2016

The Honorable Gary E. Clary, Member  
South Carolina House of Representatives  
P.O. Box 142  
Columbia, SC 29211

Dear Representative Clary:

You seek our opinion regarding a possible conflict between statutes establishing the method of appointment of members of the Tri-County Technical College. By way of background, you state the following:

Currently, the Pickens County Council ("PCC) appoints three (3) members of the Tri-County Technical College ("TCTC") Commission. It is my understanding the PCC derives the authority to make these appointments from Act No. 280 of the General and Permanent Laws of South Carolina - 1971.

I requested Legislative Council to prepare a bill to vest the power of appointment of the TCTC Board with the Pickens County Delegation ("Delegation"). However, the Legislative Council informed me §59-53-220 of the Code of Laws, South Carolina (1976) provides for the appointment of the Pickens County members by the Delegation Since §59-53-220 conflicts with Act No. 280, I am asking you to clarify this conflict for me.

Please provide me with your opinion as to the controlling legislation for appointment of Commissioners to the TCTC Commission.

#### Law/Analysis

Section 59-53-220 sets forth the composition and method of appointment for the Tri-County Technical College Commission. The Commission governs the Tri-County Technical College District, established by Act No. of 1962, and composed of the counties of Anderson, Oconee and Pickens. See § 59-53-210. Section 59-53-220 provides as follows:

[t]he Commission shall consist of nine members, three from each county, to be elected by a majority of the legislative delegations of the respective counties, including the Senators. The term for one member from each county shall expire on April 1, 1963, the term for one member from each county shall

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expire on April 1, 1964, and the term from one member from each county shall expire on April 1, 1965. The successors of the original members shall serve for terms of three years or until their successors have been elected and qualified.

By contrast, Act No. 280 of 1971 provides in pertinent part as follows:

SECTION 1. Duties. -- Section 4 of Act No. 330 of 1969 is amended by striking the last sentence and inserting in lieu thereof the following: "Upon assumption of office of the council members, all appointments in Pickens County to be made upon the recommendation of the county legislative delegation, a majority of the Senators and a majority of the House members or other words or phrases of similar import, shall henceforth be made upon a recommendation of a majority of the council except as provided in the Constitution of the State." The section when amended shall read as follows:

"Section 4. All duties heretofore performed by the Pickens County Board of Commissioners and the Finance Board of Pickens County are devolved upon the county council, and such boards are abolished as of January 1, 1971; provided that the office of county supervisor is retained with all of the duties of that office except those duties as chairman of the board of commissioners. Upon assumption of office of the council members, all appointments in Pickens County to be made upon the recommendation of the county legislative delegation, a majority of the Senators and a majority of the House members or other words or phrases of similar import, shall henceforth be made upon the recommendation of a majority of the council except as provided in the Constitution of the State.

Based upon your letter, it is apparently this provision which has served as the source of authority for appointment of the Pickens members of the TCTC.

In considering your question, a number of principles of statutory construction are relevant. First and foremost, it is the cardinal rule that the primary purpose in interpreting a statute is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. State v. Blackman, 304 S.C. 270, 403 S.E.2d 660 (1991).

Moreover, statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative. Bell v. S.C. State Hwy. Comm., 204 S.C. 262, 30 S.E.2d 65 (1944). Generally speaking, specific laws prevail over general laws and later legislation controls precedent over earlier legislation. Lloyd v. Lloyd, 295 S.C. 55, 367 S.E.2d 153 (1988).

Two cases decided by the Supreme Court illustrate these principles. In Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979), the Supreme Court addressed the question of a sheriff's authority to terminate a deputy who violated the sheriff's policy prohibition "moonlighting" at an establishment which sold alcoholic beverages. The Court noted that § 23-13-10 expressly provides that deputy sheriffs serve at the "pleasure" of the sheriff. Notwithstanding this "pleasure" statute, appellate, however, argued that the county grievance act served as a "limitation on the previously unbridled 'pleasure' of the sheriff." The Court nevertheless rejected appellant's argument, concluding that the "pleasure" statute was "of a specific nature" as to deputy sheriffs and that it was "not to be considered 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." 254 S.E.2d at 50. Thus, the sheriff's decision to terminate the deputy was upheld.

And, in Anders v. County Council of Richland Co., 284 S.C. 142, 325 S.E.2d 538 (1985), the chief investigator of the Solicitor's Office was terminated by the solicitor. The investigator challenged the termination through an appeal to Richland County council which concluded that the investigator was wrongfully terminated and reinstated him. On appeal to the Supreme Court, the Solicitor contended that § 1-7-405, which states that employees of the Solicitor serve at his or her "pleasure," controlled. The Supreme Court agreed, referencing Rhodes v. Smith, supra as follows:

[i]t is apparent that Section 1-7-405 controls. This Section specifically applies to Solicitors. On the other hand, Section 4-9-30(7) speaks in a broad generalization referring only to elected officials. The language of Section 1-7-405 gives a Solicitor broad power to fire employees. See Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979) [construing S.C. Code Ann. § 23-13-10 (1976) which gives similar power to sheriffs].

325 S.E.2d at 539.

Clearly, Act No. 280 of 1971 was enacted subsequent to § 59-53-220. On the other hand, however, Act No. 280 of 1971 relates to "all appointments in Pickens County" by the legislative delegation, while § 59-53-220 relates specifically to the Pickens County members of TCTC. While Act No. 280 does refer to "all" such appointments previously made by the delegation, and that such appointments shall "henceforth" be made by a majority of council (except as provided in the Constitution), there is no express repeal of § 59-53-220 contained in Act No. 280. Thus, a good argument can be made that § 59-53-220 remains unaffected by Act No. 280 of 1971. See

also Op. S.C. Att’y Gen., 2006 WL 981695 (March 20, 2006) [“To the extent of any conflict between the two, the special statute usually prevails.”].

Such a reading is supported by another prior opinion. In Op. S.C. Att’y Gen., 1977 WL 37198 (August 1, 1977), we addressed a question as to whether “the Legislative Delegation or the local county council would recommend appointments to the Pickens County Election Commission.” There, we noted that [i]n 1969 and 1971 two Acts were enacted [Act No. 330 of 1969, Act No. 280 of 1971] which devolved the power of appointment of all boards onto the existing county council.” We stated that “[t]he question has now arisen if this legislation is still in effect following the enactment of the Home Rule Act.” We advised as follows:

[i]t has been the prior opinion of this Office that these Acts do not survive the enactment of the Home Rule Act, as they were Acts granting powers to a previously existing form of government. This form of government was replaced by the present council established pursuant to the provisions of Act No. 283 of 1975, the “home rule” legislation. The present Council possesses those powers which Act No. 283 prescribes for it, as well as those prescribed by the general laws. See, e.g. 58 STAT. 2018 (1974). The devolution of the recommendation and appointment powers upon the Pickens County Council created by 1969 and 1971 Acts have not been similarly conferred upon the present Council either expressly or impliedly, by the provisions of Act No. 283 of 1975. In fact, Section 4-9-170 of the 1976 Code provides in part:

. . . Each council shall have such appointive powers with regard to existing boards and commissions as may be authorized by the General Assembly . . ., but this authority shall not extend to school districts, special purpose districts, or other political subdivisions created by the General Assembly, . . . .

Pursuant to this provision, various county councils have been statutorily vested with the recommendation and appointment powers formerly possessed by their respective legislative delegation. See, e.g. 59 STAT. 23 (1975); 59 STAT. 2187 (1976). Such legislation, however, has apparently not been re-enacted with regard to Pickens County, and therefore, the Act authorizing the County Council to recommend appointments would no longer be effective following the Home Rule Act.

We have been unable to locate a statute which continues the power of Pickens County Council to appoint certain members of the TCTC Board following adoption of Home Rule legislation in 1975. Of course, any local law for Pickens County only may be subject to constitutional challenge. Thus, reliance upon Act No. 280 for the appointment authority of TCTC members may well be misplaced.

In addition, we have consistently opined that § 4-9-170, which provides that, beginning January 1, 1980, county councils may, by ordinance, provide for the appointment of all county boards and commissions, is insufficient to bestow appointment power with respect to a local TEC Board. For example, in Op. S.C. Att’y Gen., 2008 WL 5476547 (December 8, 2008), we stated the following:

[i]n several opinions of this Office, we addressed whether this provision (§ 4-9-170) transferred appointment authority for various technical college commissions from county legislative delegations to their respective county councils. Ops. S.C. Att’y Gen., July 29, 1980; January 28, 1980, January 4, 1980; December 31, 1979. In our August 9, 1979 opinion, we explained that according to Moye v. Caughman, 285 S.C. 140, 217 S.E.2d 36 (1975), “education is not a county function and that consequently, the General Assembly is free to continue to enact local legislation regarding school matters.” Op. S.C. Att’y Gen., August 9, 1979. Thus, we concluded that “perhaps county councils were not intended to exercise any powers with respect to education in its broadest sense. If the Legislature in fact intended this result, then the Council will not be empowered to change the method of appointing the Commission Members on January 1, 1980.” Id. Accordingly, we determined Section 4-9-170 did not alter the method of appointing members to the Williamsburg Technical vocational and Adult Education Center Commission. Id.

In our December 31, 1979 Opinion, citing Moye, we again explained that public education is the duty of the Legislature, not the counties. Op. S.C. Att’y Gen., December 31, 1979. We concluded that public institutions or leaning include technical colleges and therefore technical colleges are a responsibility of the Legislature. Id. We supported this determination by the fact that technical colleges fall under the oversight of the State board for Technical and Comprehensive Education, a state agency. Id. Thus, we determined that counties do not derive power from the Home Rule legislation in regards to technical colleges. Id.

Section 4-9-170 states that, beginning January 1, 1980, councils “. . . shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution.” This authority does not appear to be sufficient to give the counties the power to provide for the appointment of the members of technical college commissions. That duty should continue to rest with the legislature under Article XI, § 3.

(emphasis added). Thus, notwithstanding the fact that “Greenville County Council appointed commissioners to the Greenville Technical College Board of Commissioners,” our 2008 Opinion

concluded that “the Delegation currently holds authority to make recommendations to the Governor for appointments to the Commission.”

For many of the same reasons, we believe a court would conclude that § 59-53-220, rather than Act No. 280 of 1971, is controlling here. As we have noted, § 59-53-220 is specific as to TCTC, whereas Act No. 280 is general to all offices previously appointed by the Delegation. Inasmuch as Act No. 280 of 1971 did not expressly repeal § 59-53-220, we believe a court could reconcile the two statutes by treating § 59-53-220 as the more specific earlier statute. Moreover, as we have also concluded in our 2008 Opinion, appointment of members of a TEC Board is not a county function, but remains a prerogative of the General Assembly. Section 4-9-170 thus would not provide additional appointive authority to the county council. Accordingly, we believe a court would likely reconcile these two statutes in favor of § 59-53-220.

Further, based upon our 1977 Opinion, discussed above, it is the conclusion of this Office that the Home Rule Act (Act No. 283 of 1975), in effect, superseded statutes such as Act No. 280 of 1971 because existing county councils at the time of Home Rule’s adoption were not one of the authorized forms of government pursuant to Home Rule. In that 1977 Opinion, we concluded that Act No. 280 of 1971 “would no longer be effective following the Home Rule Act.”


### **Conclusion**

Based upon the foregoing analysis, it is our opinion that a court would likely conclude that the appointment authority of the Pickens County members of TCTC properly belongs to the Pickens County Legislative Delegation pursuant to § 59-53-220. We believe that principles of statutory construction compel this conclusion, as does our 1977 opinion finding that Act No. 280 of 1971 -- giving general appointment authority to the Pickens County Council -- did not survive the Home Rule Act (Act No. 283 of 1975). Moreover, in the context of the appointment authority of the members of the Greenville TEC Board, we have previously concluded that the power over a TEC Board is not a county function, but instead relates to education and thus belongs to the General Assembly, pursuant to Article XI, § 3 of the Constitution. As a result, that 2008 opinion concluded that appointment of the members of the Greenville TEC Board rests with the Delegation rather than County Council. For all these reasons, we likewise conclude that the Pickens County Legislative Delegation possesses the authority to appoint the Pickens County members of TCTC, pursuant to § 59-53-220.

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Notwithstanding our conclusion herein which is, of course, advisory, and given the continuing confusion over this issue, the General Assembly may still wish to clarify the law to ensure certainty. It continues to be our view that because TEC Boards relate to education, the Home Rule amendments did not bestow authority over local TEC Boards to county councils, and that Act No. 280 of 1971 does not provide appointment authority for Pickens members of TCTC.

Sincerely,



Robert D. Cook  
Solicitor General