

1976 WL 30567 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 28, 1976

*1 Dr. James A. Keith
State Board of Examiners in Psychology
Department of Family Practice
Medical University of South Carolina
Charleston, South Carolina 29401

Dear Dr. Keith:

You have requested an opinion from this Office as to whether or not the State Board of Examiners in Psychology (Board) must deposit its revenues and other funds with the State Treasurer pursuant to the provisions of the 1976-77 General Appropriations Act, notwithstanding the contradictory language of Section 56-1343.16, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.). In my opinion, it must.

Section 56-1543.116 provides in part:

All fees collected by the Board and all gifts or grants received shall be deposited in the State Treasury to the credit of the Board. . . .

That provision, along with the other provisions of the Board's organic act, was enacted in 1968. 55 STAT. 2412 (1968). The 1976-77 General Appropriations Act, however, in Section 104 thereof, provides:

Provided, That notwithstanding provisions of the 1962 Code of Laws of South Carolina, as amended, Sections 56-1543.101 through 56-1543.117, all revenues and income from licenses, examination fees, other fees, sale of commodities and services, and income derived from any other Board of Commission source or activity shall be remitted to the State Treasurer as collected, when practicable, but at least once each week, and shall be credited to the General Fund of the State. Provided, Further, all assessments, fees and/or licenses shall be levied in an amount sufficient to at least equal the amount appropriated in this section and the employer costs of retirement, Social Security, health and other insurance. [Emphasis added.]

Inasmuch as the two provisions are inconsistent and, further, inasmuch as the 1976-1977 General Appropriations Act represents the latest declaration of the legislature, those provisions of Section 104 of the Appropriations Act which conflict with provisions of Section 56-1543.116 of the Code are deemed to have repealed the conflicting provisions of the earlier statute, especially so in view of the language hereinabove underlined. See, [Garey v. City of Myrtle Beach, 263 S.C. 247, 209 S.E.2d 893](#); [City of Spartanburg v. Blalock, 223 S.C. 252, 75 S.E.2d 361](#); 1A SUTHERLAND STATUTORY CONSTRUCTION Implied Amendments § 22.20; *id.*, Implied Repeals § 22.22.

Additionally, you have raised the question of whether or not the procedure mandated by the 1976-1977 General Appropriations Act amounts to a special tax upon psychologists. In my opinion, it does not. The general view is that: [i]f the fee is exacted for the primary purpose of regulating or restraining an occupation or privilege deemed dangerous to the public or to be specially in need of public control, and compliance with certain conditions is required in addition to the payment of the prescribed sum, such fee is a license fee or license tax properly imposed in the exercise of the police power and is not strictly speaking an ordinary tax . . . 53 C.J.S. Licenses § 3 at 452.

*2 Sections 56-1543.101-.117 of the Code clearly require an applicant for licensure as a psychologist to do more than merely pay the prescribed licensing fee in order to obtain that license. Consequently, the amount paid by an applicant is not a tax but a license fee and the deposit of those fees into the General Fund of the State cannot, therefore, be considered as a special tax against psychologists who derive no benefit therefrom.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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