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County Commissions – County Employees – Merit System – County Administrators

Both Acts 82-206 and Act 79-466 apply to the hiring and firing process of the chief clerk or county administrator for Marshall County. Act 82-206 controls ***how*** the merit system procedure and process must be applied. Act 79-466 controls ***who*** actually performs the hiring and firing of the chief clerk or county administrator on behalf of the Marshall County Commission.

Dear Mr. Maze:

This opinion of the Attorney General is issued in response to your request on behalf of the Marshall County Commission.

QUESTION

Which act, Act 82-206 or Act 79-466, is applicable to the hiring and firing of a new Marshall County Administrator?

FACTS AND ANALYSIS

Your request specifically asks whether Act 79-466 has been implicitly or directly overruled in light of Act 82-206. A clear reading of both acts demonstrates that Act 82-206 did not either directly or implicitly repeal Act 79-466,

but rather, merely added the protections of the merit system process to certain county employees, including the chief clerk or county administrator of the Marshall County Commission. This Office understands that the terms "chief clerk" and "county administrator" refer to the same position within Marshall County.

There is a presumption that the Legislature did not intend to make any alteration in the law beyond what it declares either expressly or by unmistakable implication. *Holmes v. Sanders*, 729 So. 2d 314, 316 (Ala. 1999); *Ex parte Ala. Alcoholic Beverage Control Bd.*, 683 So. 2d 952, 956 (Ala. 1996); *Beasley v. MacDonald Eng'g Co.*, 287 Ala. 189, 197, 249 So. 2d 844, 851 (1971); *Duncan v. Rudulph*, 245 Ala. 175, 176-77, 16 So. 2d 313, 314 (1944). Well-settled law provides that a later statute may repeal an earlier statute by implication only under certain circumstances, such as when the two statutes, taken together, are so repugnant to each other that they become irreconcilable. "Repeal of a statute by implication is not favored, however, and a prior act is not repealed unless provisions of a subsequent act are directly repugnant to the former." *Merrell v. City of Huntsville,* 460 So.2d 1248, 1251 (Ala. 1984), *citing Ex parte Jones,* 212 Ala. 259, 102 So. 234 (1924).

It is only when two laws are in irreconcilable conflict with each other that it must be presumed that the Legislature intended that the latter should repeal the former. If there is a reasonable field of operation, by a just construction for both, they will both be given effect. *Hurley v. Marshall County Comm'n*, 614 So. 2d 427, 431 (Ala. 1993); *Davis v. Browder,* 231 Ala. 332, 335, 165 So. 89, 91 (1935), *quoted in City of Tuscaloosa v. Ala. Retail Ass'n,* 466 So. 2d 103, 106 (Ala. 1985). In matters of statutory interpretation, it is presumed that the Legislature, in enacting new legislation, knows the existing law. *Ex parte Fontaine Trailer Co.*, 854 So. 2d 71 (Ala. 2003), *quoting Blue Cross & Blue Shield of Ala., Inc. v. Nielsen*, 714 So. 2d 293, 297 (Ala. 1998).

Moreover, in construing statutes, courts do not interpret provisions in isolation, but consider them in the context of the entire statutory scheme. *Siegelman v. Ala. Ass'n of School Boards*, 819 So. 2d 568, 582 (Ala. 2001). Where more than one Code section is involved, each should be construed in harmony with the other Code sections in effect, so far as is practical. *Kinard v. Jordan*, 646 So. 2d 1380, 1383 (Ala. 1994).

In resolving conflict between statutory provisions, whenever possible, statutes must be construed *in pari materia* in the light of their application to the same general subject matter. *Opinion of the Justices* No. 334, 599 So. 2d 1166, 1168 (Ala. 1992); *Bynum v. Campbell*, 419 So. 2d 1370, 1374 (Ala. 1982). Finally, well-settled law provides that, in interpreting two closely related

statutes, interpretation should not be given that, without clear reason, defeats the policy of the other. *Ginsberg v. Union Cent. Life Ins. Co.*, 240 Ala. 299, 304, 198 So. 855, 858 (1940).

Act 79-466 sets forth the powers and duties of the chairman of the Marshall County Commission. 1979 Ala. Acts 79-466, 848, 852. Section 9 of the act specifically authorizes the chairman of the Commission to employ a chief clerk, who shall be subject to the direct control and supervision of the chairman. *Id.*

Act 82-206 provides for the establishment of a personnel board and a merit system of employment within Marshall County and generally includes the employees of the Marshall County Commission. The provisions of the act are applicable to "all officials and employees in the service of the County or any board paid by the Marshall County Commission. . . ." 1982 Ala. Acts 82-206, 242, 242-43.

The act defines "employee" as "any person . . . who is employed in the service of Marshall County or any board, agency or instrumentality thereof." *Id.* at 242. The chief clerk falls within this definition of employee. The "appointing authority" is defined by the act to mean "in the case of employees in the offices of the elected officials of the county, such elected officials, and means, in the case of all other county employees, the county governing body, or the Board or other agency supervising their work. *Id.* at 242.

The express language of Act 82-206 delegates to the Marshall County Personnel Board ("Personnel Board") the decision-making authority regarding how the procedures and methods of the merit system process must be applied when making the decision to hire a employee of the Marshall County Commission, such as the preparation of the certified list of persons eligible for appointment. 1982 Ala. Acts No. 82-206, 242. The act, however, delegates the decision-making power regarding who to select to the appointing authority, provided that the appointing authority follows the procedures outlined in the merit system process such as selecting one of the top three individuals on the certified list of eligible candidates. 1982 Ala. Acts 82-206, 242, 245.

Because Act 82-206 does not specifically repeal the authority of the chairman of the Commission to appoint, control, and supervise the chief clerk, Act 82-206 and Act 79-466 must be read *in pari materia* to give effect to both provisions where possible. Although the appointing authority for most county employees is the county governing body, with respect to the chief clerk, the chairman of the Commission is the appointing authority as set forth in Act 79-466. Thus, the chairman is vested with the power to make the appointment of

the chief clerk, but must make the appointment pursuant to the provisions of the merit system created by Act 82-206. Thus, the chairman must select a chief clerk based upon the certified list of eligible candidates provided by the Personnel Board.

With respect to termination or discharge of county employees, section 13 of Act 82-206 provides, in pertinent part, as follows:

> The county commission, ***any member of the governing body,*** or the head of any department or office, respectively ***can remove, discharge, or demote any merit employee who is directly under the*** governing body, ***member thereof,*** or department head provided that within five calendar days a report in writing is made to the Board and the employee, giving the reason for such removal, discharge or demotion.

1982 Ala. Acts No. 82-206, 242, 246-47 (emphasis added). This section further provides for an appeal process to the Personnel Board. *Id.*

Section 9 of Act 79-466 also specifically provides as follows for the discharge of the chief clerk:

> 1) The chief clerk may be discharged by a vote of four of the district commissioners.
>
> 2) The chief clerk may be discharged at any time by the chairman who hired the chief clerk during that chairman's tenure in office as chairman.
>
> 3) The chief clerk may be discharged by a chairman other than the chairman who hired the chief clerk by a vote of two of the district commissioners in addition to the chairman.

1979 Ala. Acts 79-466, 848, 852-53.

These two provisions should be read *in pari materia* to give effect to both provisions where possible. Act 79-466 sets forth three ways that the chief clerk may be discharged: (1) by four county commissioners; (2) by the chairman of the commission who hired the chief clerk, but only during the chairman's term as chairman; and (3) by a vote of the chairman, other than the chairman who hired the chief clerk, and two county commissioners. These persons may be

considered the same persons who have the authority to remove, discharge, or demote the chief clerk under Act 82-206. The removal, discharge, or demotion must be conducted in accordance with the specific merit system protections provided by section 13 of the Act 82-206.

CONCLUSION

Both Acts 82-206 and 79-466 apply to the hiring and firing process of the chief clerk or county administrator for Marshall County. Act 82-206 controls ***how*** the merit system procedure and process must be applied. Act 79-466 controls ***who*** actually performs the hiring and firing of the chief clerk or county administrator on behalf of the County Commission.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Julia Weller of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

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