

Schools, general law in conflict with special acts

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The Honorable Jerry Melvin
Chairperson, Education Innovation Committee
Florida House of Representatives
The Capitol, Suite 1301
402 South Monroe Street
Tallahassee, Florida 32399-1300

Dear Representative Melvin:

You ask whether various special acts relating to the school district employees of Volusia, Duval, and Hillsborough county school districts have been superseded by the provisions of Chapter 97-310, Laws of Florida.[1] Attorney General Butterworth has asked me to respond.

The special acts in question grant specific rights relating to assessment procedures and criteria and establish general contract provisions for school district employees employed by those districts. During the 1997 regular session, however, the Legislature enacted Chapter 97-310, Laws of Florida. The act substantially amended the provisions of sections 231.29 and 231.36, Florida Statutes, relating to the assessment of school district personnel and contracts with instructional staff, supervisors, and principals.

The 1997 legislation, as introduced, originally provided that the act superseded any special law or local law to the contrary.[2] The bill was amended to allow persons employed before July 1, 1997, by the district school boards of Duval, Hillsborough, and Volusia counties to retain all rights arising from Chapter 18964, Laws of Florida 1937, as amended; Chapter 21197, Laws of Florida 1941, as amended; and Chapter 21287, Laws of Florida 1941, as amended. The bill was finally amended to delete not only the language recognizing an exception for the special acts relating to Duval, Hillsborough, and Volusia counties but also the language stating that the act supersedes any special or local law.

You ask whether the 1997 legislation repealed the special acts by implication. Although such repeals are not favored, the courts have held that a special act may be repealed or modified by a general act where the general act is a general revision of the whole subject or where the two acts are so irreconcilable as to clearly demonstrate a legislative intent to repeal.[3]

The amendments to section 231.29, Florida Statutes, by Chapter 97-310, Laws of Florida, make no exceptions relating to the date of employment, type of contract, contract status, or county of employment. Moreover, the special acts do contain terms that are inconsistent with the provisions of Chapter 97-310, *supra*.

It is, however, a fundamental rule of construction that the legislative intent must be ascertained and given effect.[4] The rules regarding implied repeal are based upon the implication that the

inconsistency between the two acts demonstrates a legislative intent to repeal.[5] During the current legislative session, however, bills have been filed in both the House of Representatives and in the Senate that would apply the general law provisions of sections 231.29 and 231.36, Florida Statutes, as amended by Chapter 97-310, Laws of Florida, to all Duval County school district personnel employed July 1, 1998, and after.[6] The staff analysis for House Bill 3651 states that school district personnel employed prior to July 1, 1998, continuously by the district would "retain all rights currently provided by the district's special acts," indicating that the special acts continue to be viable.[7]

Thus, there appears to be conflicting evidence of legislative intent on this matter. In light of the above, the Legislature may wish to clarify its intent on this issue.

I trust that the above informal advisory comments may be of some assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

[1] Those special acts are Chapter 18964, Laws of Florida 1937, as amended; Chapter 21197, Laws of Florida 1941, as amended; and Chapter 21287, Laws of Florida 1941, as amended.

[2] See SB 340, and its companion bill, HB 559, filed in the Florida House of Representatives.

[3] See, e.g., *Alvarez v. Board of Trustees of City Pension Fund for Firefighters and Police Officers in City of Tampa*, 580 So. 2d 151 (Fla. 1991) (special act may be impliedly repealed or modified by general act where the general act is a general revision of the whole subject or where the two acts are so irreconcilable as to clearly demonstrate a legislative intent to repeal); *Miami Water Works Local No. 654 v. City of Miami*, 26 So. 2d 194, 196 (Fla. 1946).

[4] See, *City of St. Petersburg v. Siebold*, 48 So. 2d 291, 293 (Fla. 1950); *In re Order on Prosecution of Criminal Appeals by Tenth Judicial Circuit Public Defender*, 561 So. 2d 1130 (Fla. 1990) (legislative intent is the polestar by which court must be guided in interpreting statutory provisions).

[5] See *Alvarez, supra*; *Board of Pension Trustees of City General Employees Pension Plan v. Vizcaino*, 635 So. 2d 1012 (Fla. 1st DCA 1994) (general law may repeal special act when revising entire subject or when so irreconcilable as to manifest clear legislative intent to do so).

[6] See HB 3651 and SB 664 (1998).

[7] Florida House of Representatives Committee on Community Affairs Bill Research & Economic Impact Statement on HB 3651, dated March 10, 1998. *And see*, Senate Staff Analysis

and Economic Impact Statement on SB 664, dated March 2, 1998, stating that school district employees who were continuously employed by the Duval County School District before July 1, 1998, will "retain rights granted under the county's local tenure laws."