

01-122

BANKING AND FINANCE: MONEY AND INTEREST.

CIVIL REMEDIES AND PROCEDURE: ACTIONS.

Bank or savings institution may impose returned check processing charge in such amount as agreed, in writing, by borrower, regardless of statutory limitations on returned check processing charges in context of civil actions seeking recovery for such charges.

The Honorable Walter A. Stosch
Member, Senate of Virginia
November 29, 2001

You ask whether § 6.1-330.63(A) of the *Code of Virginia* permits a bank to impose a returned check processing charge in such amount as may be agreed by the borrower, regardless of limitations on returned check processing charges contained in § 8.01-27.1.

For the purposes of this opinion, you ask that I assume that a borrower enters into a contract for revolving credit, such as a credit card agreement, with a bank or savings institution. The contract permits the borrower to make payments on the revolving credit account by personal check. The contract provides that, in the event the borrower's depository refuses payment on the check because of a lack of funds in or credit with the depository, the bank may impose a returned check processing charge. The processing charge may be greater than \$25.

Section 6.1-330.63, a portion of Chapter 7.3 of Title 6.1, governs the charges that a bank may impose under a contract for revolving credit. The first paragraph of § 6.1-330.63(A) provides:

Notwithstanding any other provision of this chapter, any bank or savings institution may impose finance charges and other charges and fees at such rates and in such amounts and manner as may be agreed by the borrower under a contract for revolving credit or any plan which permits an obligor to avail himself of the credit so established.

The above phrase, "[n]otwithstanding any other provision of *this* chapter,"¹ indicates a legislative intent to override any potential conflicts

with other provisions of Chapter 7.3 of Title 6.1 relating to money and interest. The phrase is clearly and unambiguously limited only to any conflicts arising from other provisions of Chapter 7.3. Use of such phrase in this limited manner is in contrast to a statute containing the phrase, "notwithstanding any other provision of *law*."² The latter phrase indicates a clear legislative intent to override any potential conflicts with *all* earlier legislation.³

Section 8.01-27.1 addresses returned check processing charges involving checks in the context of civil actions seeking recovery for such charges:

A. In any civil claim or action made or brought against the drawer of a check, draft or order, payment of which has been refused by the drawee depository because of lack of funds in or credit with such drawee depository, the holder or his agent shall be entitled to claim, in addition to the face amount of the check (i) legal interest from the date of the check, (ii) the protest or bad check return fee, if any, charged to the holder by his bank or other depository, and (iii) a processing charge of twenty-five dollars.

B. Any holder of a check, draft or order, payment of which has been refused by the drawee for insufficient funds or credit, who charges the drawer amounts in excess of those authorized in subsection A on account of payment being so refused shall, upon demand, be liable to the drawer for the lesser of (i) twenty-five dollars plus the excess of the authorized amount or (ii) twice the amount charged in excess of the authorized amount.

In analyzing § 6.1-330.63, which permits a Virginia bank to impose charges and fees in such amounts as may be agreed by the borrower under a contract for revolving credit, with § 8.01-27.1, several rules of statutory construction apply. First, a statute should not be construed to frustrate its purpose.⁴ Secondly, statutes related to the same subject should be considered *in pari materia*.⁵ Finally, statutes dealing with the same subject matter should be construed to achieve a harmonious result.⁶

The mere fact that statutes relate to the same subject or are part of the same general plan, however, does not mean that they cannot also be in conflict. Indeed, the reason for considering statutes *in pari materia* is that this permits "any apparent inconsistencies [to] be ironed out whenever that is possible."⁷ Thus, the Supreme Court of Virginia has recognized that the requirement that statutes relating to the same subject be considered as *in pari materia* is only one among many rules of statutory construction:

In the construction of statutes, the courts have but one object, to which all rules of construction are subservient, and that is to ascertain the will of the legislature, the true intent and meaning of the statute, which are to be gathered by giving to all the words used their plain meaning, and construing all statutes *in pari materia* in such manner as to reconcile, if possible, any discordant feature which may exist, and make the body of the laws harmonious and just in their operation.^[8]

Sections 8.01-27.1(A) and 6.1-330.63(A), in my view, deal with the same general subject matter. Section 8.01-27.1(A), however, begins with the introductory phrase, "[i]n any civil claim or action made or brought against the drawer of a check." This phrase indicates a clear legislative intent for § 8.01-27.1(A) to apply in the case of civil actions for the recovery of fees arising from checks on which a drawee depository has refused to make payment. "While not part of the code section, in the strictest sense, the caption may be considered in construing the statute, as it is 'valuable and indicative of legislative intent.'"⁹ "A title may be read in an attempt to ascertain an act's purpose, though it is no part of the act itself."¹⁰ The caption of § 8.01-27.1(A) is "[a]dditional recovery in certain civil actions concerning checks."

Section 6.1-330.63(A), however, specifically permits banks to impose "other charges and fees ... as may be agreed by the borrower," "[n]otwithstanding any other provision of this chapter." The caption of § 6.1-330.63 is "[c]harges by banks or savings institutions; revolving credit." Section 6.1-330.63(A), therefore, specifically permits banks to impose finance charges and other charges and fees as agreed by the borrower. An accepted principle of statutory construction is that, when it is not clear which of two statutes applies, the more specific statute prevails over the more general.¹¹ Also, when statutes provide different procedures on the same subject matter, "the general must give way to the specific."¹²

In this instance, it is clear that both §§ 8.01-27.1(A) and 6.1-330.63(A) apply to the instant factual situation. It is, in my view, apparent that § 6.1-330.63(A) is the more specific statute pertaining to "other charges and fees" that may be imposed by banks per agreement with their borrower. In addition, the basic provisions of § 8.01-27.1(A) originally were enacted by the 1981 Session of the General Assembly,¹³ while those of § 6.1-330.63 originally were enacted by the 1987 Session of the General Assembly.¹⁴ The General Assembly is presumed to know what statutes previously have been enacted.¹⁵ A cardinal rule of statutory construction is that conflicts between laws are to be avoided whenever possible, with general and special laws viewed in harmony so as to give effect to all acts of the legislature.¹⁶

I must, therefore, conclude that the General Assembly intends to permit banks and savings institutions to treat revolving credit contracts in a manner distinct and different from general civil actions brought against the drawer of a check, draft or order. Consequently, based on the above, I conclude that § 6.1-330.63(A) permits a bank or savings institution to impose a returned check processing charge in such amount as is agreed by the borrower, regardless of limitations on returned check processing charges contained in § 8.01-27.1.¹⁷

¹Va. Code Ann. § 6.1-330.63(A) (Michie Repl. Vol. 1999) (emphasis added).

²See, e.g., Va. Code Ann. § 58.1-3010 (Michie Repl. Vol. 2000); § 24.2-684 (Repl. Vol. 2000); § 15.2-2100(A) (Michie Supp. 2001); § 10.1-1126.1(B) (Michie Repl. Vol. 1998).

³See Op. Va. Att'y Gen.: 1998 at 19, 21; 1996 at 197, 198; 1987-1988 at 1, 2.

⁴See Op. Va. Att'y Gen.: 1999 at 59, 60; 1982-1983 at 309, 311.

⁵See *Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7 (1957); 1996 Op. Va. Att'y Gen. 134, 135. Statutes *in pari materia* are those "[o]n the same subject; relating to the same matter." Black's Law Dictionary 794 (7th ed. 1999). Such statutes "may be construed together, so that inconsistencies in one statute may be resolved by looking at another statute on the same subject." *Id.*

⁶See *Prillaman*, 199 Va. at 405, 100 S.E.2d at 7; 1990 Op. Va. Att'y Gen. 126, 128.

⁷*Commonwealth v. Sanderson*, 170 Va. 33, 38, 195 S.E. 516, 518 (1938).

⁸*Covington Virginian, Inc. v. Woods*, 182 Va. 538, 548-49, 29 S.E.2d 406, 411 (1944); *Tyson v. Scott*, 116 Va. 243, 253, 81 S.E. 57, 61 (1914).

⁹*Bell v. Com.*, 21 Va. App. 693, 701, 467 S.E.2d 289, 293 (1996) (quoting *Krummert v. Commonwealth*, 186 Va. 581, 584, 43 S.E.2d 831, 832 (1947)).

¹⁰*Hawkins v. Commonwealth*, 255 Va. 261, 269, 497 S.E.2d 839, 842 (1998).

¹¹See *Va. National Bank v. Harris*, 220 Va. 336, 257 S.E.2d 867 (1979); *Scott v. Lichford*, 164 Va. 419, 180 S.E. 393 (1935); *City of Roanoke v. Land*, 137 Va. 89, 119 S.E. 59 (1923); *Op. Va. Att’y Gen.*: 1990 at 227, 228; 1987-1988 at 276, 277; 1980-1981 at 330, 331.

¹²*Davis v. Davis*, 206 Va. 381, 386, 143 S.E.2d 835, 839 (1965); *see also* 1976-1977 *Op. Va. Att’y Gen.* 93, 94.

¹³1981 Va. Acts ch. 230, at 255, 256.

¹⁴1987 Va. Acts ch. 622, at 1026, 1029-30.

¹⁵See *School Board v. Patterson*, 111 Va. 482, 487-88, 69 S.E. 337, 339 (1910); *Op. Va. Att’y Gen.*: 2000 at 191, 193; 1987-1988, *supra* note 3, at 2; 1985-1986 at 65, 67.

¹⁶See *Op. Va. Att’y Gen.*: 1993 at 135, 137 (stating principle that statutes dealing with same subject must be read together to give effect to all provisions if possible applies when one of state statutes being construed is local charter); 1986-1987 at 40, 41 (stating principle that general statute and charter provisions should be construed to avoid apparent conflicts) (citing 1983-1984 at 140, 142 (stating principle that general act and special act on same subject and applying in same locality at same time should be construed, if reasonably possible, to give force and effect to each)).

¹⁷My conclusion is consistent with a 1995 opinion of the Attorney General that considers the question whether § 8.01-27.1 permits retail merchants to post in a conspicuous place in their business establishment a notice of a returned check processing charge, creating an express contract for such charge above the amount contained in § 8.01-27.1. See 1995 *Op. Va. Att’y Gen.* 21. The opinion does not address the interplay between §§ 8.01-27.1 and 6.1-330.63, and is confined to the activities of retail merchants.

[Back to November Index](#)