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FLYNN, J., dissenting. I respectfully dissent from the result reached by the majority.

First, I do so because if jurisdiction is exercised to review the claim of the plaintiff town of East Hampton (town), there is a substantial issue to be decided, namely whether a special act granting the municipality the right to provide water prevails over a general statute by which the commissioner of public health purports to give that right to others. The town, for almost forty years, was authorized by 31 Spec. Acts 206, No. 216 (1963) to provide water service within its boundaries, and there has been no express repeal of this special act. The special act expressly gives to the municipality the entire geographical area of East Hampton as its service area. See Spec. Acts 206, No. 216, § 1. "[I]t is a canon of statutory construction that a later statute general in its terms and not expressly repealing a prior special or specific statute will be considered as not intended to affect the special or specific provisions of the earlier statute, unless the intention to effect the repeal is clearly manifested or unavoidably implied by the irreconcilability of the continued operation of both." 73 Am. Jur. 2d 464, Statutes § 300 (2001); see also *Clisham* v. *Board of Police Commissioners*, 223 Conn. 354, 360 n.12, 613 A.2d 254 (1992) ("[b]ecause, in enacting [the statute at issue], the legislature has not shown a manifest intent to repeal [the related special act], to the extent that the provisions of the special act and the general statute are inconsistent, the special act is controlling").

In this case, there has not been any general reference in the legislation itself to indicate that the provisions of General Statutes §§ 25-33g and 25-33h would prevail over any charter provision, special act or ordinance as the legislature knew how to do, and expressly has done, time and time again when adopting legislation that it specifically wanted to supersede prior legislation. See, e.g., General Statutes § 13a-198n ("[n]otwithstanding any provision of the general statutes or any regulation issued pursuant to such statutes or any provision of any special act to the contrary, the [d]epartment of [t]ransportation shall not construct the Route 2-3 access road in the vicinity of Forbes Street, East Hartford"); General Statutes § 16-262o (b) ("[n]otwithstanding the provisions of any special act, the [d]epartment of [p]ublic [u]tility [c]ontrol shall extend the franchise areas of the acquiring water company to the service area of the water company acquired pursuant to this section"); General Statutes § 22a-368 (b) ("[n]otwithstanding any other provision of the general statutes or any special act to the contrary, no person or municipality shall, after July 1, 1982, commence to divert water from the

waters of the state without first obtaining a permit for such diversion from the commissioner''); General Statutes § 25-32b (''[n]otwithstanding any other provision of the general statutes or regulations . . . or special act or municipal ordinance, the [c]ommissioner of [p]ublic [h]ealth may authorize or order the sale, supply or taking of any waters'').

In addition, I find it relevant that General Statutes § 25-33g expressly states that ''[i]n establishing such [service area] boundaries the commissioner shall maintain existing service areas and consider the orderly and efficient development of public water supplies . . . .''[1] General Statutes § 25-33g (b). The existing service area, as expressly granted to the town by special act, was not, in this instance, maintained by the commissioner.

Second, if we assume that the defendant's actions constituted an order, the town has a statutory right to an appeal. Both the trial court and the majority opinion refer to the commissioner's action as an ''order.'' Given the consequences of the defendant's actions in conjunction with the assumption that an order was created, I believe that General Statutes (Rev. to 1999) §§ 25-32 (j) and 25-32 (k), now (k) and (*l*), are implicated.[2] The effect of the commissioner's action was to declare a moratorium on any further expansion of the municipal water system to unserved parts of the town, to take away from the municipality those parts of the town which constitute the unserved area and to grant them to another entity. Section 25-32 (j) provides: ''The commissioner may issue an order declaring a moratorium on the expansion or addition to any existing public water system that he deems incapable of providing new services with a pure and adequate water supply.''

Additionally, § 25-32 (k), now (*l*), provides that ''[t]he commissioner may issue, modify or revoke orders as needed to carry out the provisions of part III of this chapter. Except as provided otherwise in this part, such order shall be issued, modified or revoked in accordance with procedures set forth in subsection (b) of section 25-34.''

Section 25-34 (b) then sets forth the manner in which a party affected by an order shall be notified and the manner in which such party may challenge that order. Initially, I note that there is no indication in the record that the defendant complied with the notice requirement clearly set forth in § 25-34 (b) by mailing a copy of the challenged order to the town by certified mail. There is, however, an assertion by the town that it repeatedly requested a hearing and was told that a hearing would be held. Paragraph fifteen of the town's complaint alleged: ''Representatives of the plaintiff town immediately and periodically prevailed upon the [defendant] to correct the procedural irregularities associated with the [Southeastern Connecticut Water Utility Coordinating Committee's] recommendation and allow the

town and the public an opportunity at a public hearing to show the [defendant] why the town of East Hampton should be designated as the exclusive service area provider for water within the town of East Hampton, with the exception of areas currently served by others."[3] If, in fact, it is an order, § 25-34 (b) provides that if a hearing is requested, it shall be granted, and the request for a hearing suffices as a condition precedent to taking an appeal from an order. Furthermore, the hearing contemplated by § 25-34 (b), in which "the recipient of the order may . . . show why the findings in the order are not based on substantial evidence or that the order is an abuse of discretion," would seem to satisfy the requirements for a "contested case" as that term is defined by General Statutes § 4-166 (2). Additionally, § 25-34 (b) expressly provides that "[a]ny hearing shall be deemed to be a contested case and held in accordance with the provisions of chapter 54."

Third and alternatively, if the commissioner's action approving the plan, which takes away the right of the municipal water company to serve the unserved areas of the town, is viewed as being akin to a "decision" rather than an order, I agree with the third claim of the town. In its third claim, the town contended that the commissioner's decision constituted a final decision in a "contest case," sufficient to meet the definition found in General Statutes § 4-166 (2).[4]

In *Herman* v. *Division of Special Revenue*, 193 Conn. 379, 382, 477 A.2d 119 (1984), our Supreme Court outlined a three part test to be used in determining whether a matter constitutes an appealable "contested case." The first part of the test is whether a legal right, duty or privilege is at issue. Id. Clearly, that is satisfied here because the result of the commissioner's approval of the contested plan resulted in the abrogation of a statutory right of the municipal water company, granted by Spec. Acts 206, No. 216, § 1, to service the entire town.

The second prong requires that the matter statutorily be required to be determined by the agency. Id. That prong is satisfied by § 25-33g, which requires the commissioner to set the service area boundaries.

The third and final prong requires that the agency determination be made "after an opportunity for hearing or in which a hearing is in fact held . . . ." Id. This prong, arguably, is satisfied by §§ 25-33g and 25-33h and their requirements that the municipality be given an opportunity to be heard as to the development of this water system plan. The committee, which is charged with advising the commissioner as to the appropriate designation of service areas, was required by §§ 25-33g (b) and 25-33h (b) to solicit comments and to respond to those comments. I agree with the town that this is tantamount to a hearing. I concede that this was not a right to a hearing before the commissioner, but it was statutorily required before the commissioner could act,

and it is, therefore, more than the slender reed of a federally mandated hearing that our Supreme Court, in *Morel* v. *Commissioner of Public Health*, 262 Conn. 222, 237, 811 A.2d 1256 (2002), found insufficient to meet the third prong.

Accordingly, I dissent.

[1] I find it significant that although the drafters of General Statutes § 25-33g repeated the phrase, ''[i]f there is no agreement by the committee'' in the two preceding sentences, they did not repeat it in this final sentence, which leads me to the conclusion that the commissioner's obligation to maintain existing service areas applies whether or not an agreement has been reached by the committee.

[2] The provisions contained in General Statutes (Rev. to 1999) § 25-32 (j) and (k) were renumbered and are now contained in General Statutes § 25-32 (k) and (*l*), respectively.

[3] When a motion to dismiss is the procedure that is used, the court views all of the allegations contained in the complaint as true in passing on the motion.

[4] General Statutes § 4-166 (2) defines that term ''contested case'' to mean ''a proceeding, including but not restricted to rate-making, price fixing and licensing, in which the legal rights, duties or privileges of a party are required by statute to be determined by an agency after an opportunity for hearing or in which a hearing is in fact held, but does not include proceedings on a petition for a declaratory ruling under section 4-176 or hearings referred to in section 4-168 . . . .''