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The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3680
FACSIMILE: 803-253-6283

July 22, 1992

The Honorable J. Samuel Griswold
Interim Commissioner
South Carolina Department of Social Services
Post Office Box 1520
Columbia, South Carolina 29202-1520

Dear Dr. Griswold:

Your letter dated May 12, 1992, to the Attorney General was referred to me for response. After referencing a recent joint resolution adopted by the South Carolina General Assembly, your letter states:

The county directors [of the South Carolina Department of Social Services] now report to the Commissioner and the county boards are advisory. I view the county directors as employees of the Agency like all other employees, and therefore entitled to grievance rights.

Please advise me your opinion on this issue.

The primary purpose in interpreting a statute is to ascertain the intent of the legislature. Wright v. Colleton County School Dist., 301 S.C. 282, 391 S.E.2d 564 (1990). When interpreting a statute, the legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in light of the intended purpose of the statute. Gambrell v. Travelers Ins. Cos., 280 S.C. 69, 310 S.E.2d 814 (1983). Of course, statutory construction is ultimately the province of the courts. Johnson v. Pratt, 200 S.C. 315, 20 S.E.2d 865 (1942).

As you indicated, the South Carolina General Assembly recently adopted a joint resolution which provides in relevant part:

The terms of office of the present members of the South Carolina Board of Social Services are terminated on the effective date of this resolution.

All powers and duties of the South Carolina Board of Social Services are transferred temporarily to the State Budget and Control Board until the General Assembly again may address this matter.

The Budget and Control Board shall appoint an interim commissioner to assume the responsibilities of the current State Commissioners of Social Services, James L. Solomon, Jr. Upon the effective date of this resolution, Mr. Solomon shall remain an employee of the department at his current salary, receive full benefits, and serve in a consulting capacity to the interim commissioner and report directly to him until the effective date of his retirement. The interim commissioner shall report to to the Budget and Control Board and serves at the pleasure of the board. Restructuring or reorganization of the department must be consistent with existing law. An internal structural or organizational change during this interim period must be approved by the Budget and Control Board.

The county boards of social services serve only in an advisory capacity to the county directors. The directors of the county departments of social services are placed temporarily under a chain of authority directly under and answerable to the State Commissioner of Social Services until the General Assembly takes other action on this matter. [Emphasis added.]

Act No. _____, 1992 S.C. Acts _____ (J. Res. 296, 1992 Reg. Sess., 1992 S.C. Rat. Acts (approved Mar. 20, 1992)).

Chapter 3 of Title 43 of the South Carolina Code of Laws, 1976, as amended, was enacted to create and govern county departments and boards of social services. S.C. Code Ann. §§43-3-10 through 43-3-110 (1976). Those statutes provide, inter alia, that county boards have certain enumerated powers, S.C. Code Ann. §43-3-60 (1976), including the selection and direction of a county director. S.C. Code Ann. §43-3-40 (1976). The 1992 joint resolu-

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tion does not expressly repeal Chapter 3 of Title 43; instead, it provides, as you indicate, that the county boards of social services are now advisory. "Advisory" is defined as "Counselling, suggesting, or advising but not imperative or conclusive. . . ." Black's Law Dictionary 54 (6th ed. 1990). Accord McGraw v. Marion County Plan Comm'n, 174 N.E.2d 757, 760 (Ind. App. 1961)(citing Black's Law Dictionary (4th ed. 1957)). The 1992 joint resolution does not, however, specifically address the county departments of social services; therefore, they presumably remain intact with the county director as the chief executive officer who now reports to the State Commissioner of Social Services rather than the county board of social services. See S.C. Code Ann. §§43-3-10 & 43-3-40 (1976).

Relying in part upon Chapter 3 of Title 43, this Office has previously opined:

In summary, it is our advice that there exists no express provision of law authorizing the State Board or Commissioner of Social Services to take disciplinary action directly against a county director of social services. To the contrary, several statutes appear to place such authority solely in the hands of the appointing agency, the county board of social services. While an argument might be made for such authority also to reside in State DSS, under general agency law, no statute so expressly provides. Accordingly, the State Board or Commissioner would be at legal risk at this time in taking disciplinary action. Nevertheless, it is clear that the county DSS board does possess the authority to take such disciplinary action; the county board has indeed a mandatory duty to maintain and enforce all policies and procedures promulgated by State DSS.

Op. S.C. Att'y Gen. (Jan 15, 1988)(from Assistant Attorney General Patricia D. Petway to the The Honorable Joe Wilson, et al.); 84-135 Op. S.C. Att'y Gen. 322-9 (Nov. 26, 1984).

The State Employee Grievance Procedure Act of 1982, S.C. Code Ann. §§8-17-310 through 8-17-380 (1976 & 1991 Supp.), creates a proper forum for certain specified grievances of permanent state

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employees. ^{1/} That Act, however, contains specific statutory exemptions, including "[a]ny chief administrative officer who has the authority and responsibility for any agency within state government including the divisions of the Budget and Control Board." S.C. Code Ann. §8-17-370(8)(1976). Analyzing that exemption, this Office has previously opined that a director of a community mental health center was a chief administrative officer exempted from the Act's coverage. Op. S.C. Att'y Gen. (Oct. 25, 1982)(from Assistant Attorney General Vance J. Bettis to William S. Hall, M.D.). Applying the logic of that opinion, the South Carolina Department of Social Services (by a letter dated November 17, 1987, from Commissioner James L. Solomon, Jr., to Richard M. Gergel, Esq.) and the South Carolina Budget and Control Board, Division of Human Resource Management (by a letter dated February 12, 1988, from Stephen C. Osborne to Richard M. Gergel, Esq.) have concluded that an Aiken County Director was exempt from the State Employee Grievance Act of 1982 pursuant to §8-17-370(8).

You question what impact the recent joint resolution quoted above has upon the grievance rights of county directors. Unfortunately, that impact is not entirely clear. That joint resolution falls short of repealing the provisions of Chapter 3 of Title 43 but changes the role of the county boards to advisory. Nevertheless, the county boards are still in existence and have a role concerning the county departments. Moreover, that joint resolution expressly states that the county directors are placed "temporarily" under the authority and control of the State Commissioner of Social Services "until the General Assembly takes other action on this matter." This temporariness further complicates the issue you raise. "Temporarily" has been defined as "[l]asting for a time only, existing or continuing for a limited time, not of long duration, not permanent, transitory, changing, but a short time." Black's Law Dictionary, 1464 (6th ed. 1990). Accord Worthington v. McDaniel, 246 Iowa 466, 68 N.W.2d 89 (1955). The State Employee Grievance Procedure Act of 1982 was promulgated to apply to permanent state employees, S.C. Code Ann. §§8-17-320(10) & 8-17-330 (1976), with specifically designated exemptions. Thus, the language of the State Employee Grievance Procedure Act of 1982 appears to require permanency. An interpretation that the 1992 joint resolution provides county directors with grievance rights during the temporary period of that resolution's applicability raises various issues. For example, could a county director, if now entitled to grievance rights, grieve a disciplinary action taken before the effective date of the joint resolution?

^{1/} For a general discussion of the State Employee Grievance Procedure Act of 1982, please see 8 S.C. Jur. Public Officers and Public Employees §§59-64 (1991).

Or, what entity, the county board or the State Department of Social Services, would be involved in the internal grievance process provided in §8-17-330? Or, when the temporary period ends, what constitutional issues might impact on any decision to structure the positions for county directors such that they again fall within an exemption? Such questions suggest that the temporariness of the recent joint resolution might not have intended to create grievance rights for these county directors. Nevertheless, that joint resolution eliminates (at least temporarily) one of the reasons that this Office has previously opined that no express provision of law authorizes the State Board or Commissioner of Social Services to take disciplinary action directly against a county director of social services.

In addition, the county directors apparently remain, after the 1992 joint resolution, as the chief executive officer of the county departments of social services (although the county directors' chain of authority is now directly under and answerable to the State Commissioner of Social Services rather than the county boards of social services). The exemption contained in §8-17-370(8) relates to: "[a]ny chief administrative officer who has the authority and responsibility for any agency within State government including the divisions of the Budget and Control Board." Section 8-17-320(1) of the State Employee Grievance Act of 1982 defines "agency" to mean "any department, institution, board, commission, council, division, bureau, center, school, hospital or other facility that is a governmental unit of the State of South Carolina. Public schools, special purpose districts, and other units of local government are excluded from this definition." Despite the final sentence of that definition, an argument could be made that the county directors, as the chief executive officer of the county departments, continue to fall within the exemption of §8-17-370(8) based on the specific role and hybrid nature of these county departments. Your letter does not contain details concerning the specific roles of the county departments and county directors of social services as a result of the 1992 joint resolution. Therefore, this Office cannot assess whether the county directors might continue to be exempted under §8-17-370(8). Furthermore, the ephemeral quality and unclear language of that joint resolution leaves uncertain whether or not the South Carolina General Assembly intended to create grievance rights under the State Employee Grievance Procedure Act of 1982 for county directors of social services. Thus, you may want to seek legislative or judicial clarification on this issue.

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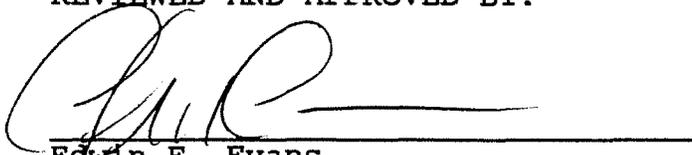
I hope this information will be of assistance to you.

Sincerely,

Samuel L. Wilkins

Samuel L. Wilkins
Assistant Attorney General

SLW/fg
REVIEWED AND APPROVED BY:



Edwin E. Evans
Chief Deputy Attorney General



Robert D. Cook
Executive Assistant for Opinions