

The State of South Carolina

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November 7, 1985

Honorable Robert J. Sheheen
Chairman, House Judiciary Committee
and Sunset Review of Reorganization
1111 Church Street
Camden, South Carolina 29020

Dear Representative Sheheen:

You have requested this Office's guidance in several areas related to the implementation of "Sunset" procedures.^{1/} In order to respond to the individual questions presented a brief preliminary discussion of the Sunset Legislation is necessary.

Of course, in construing legislation the cardinal rule is to ascertain and give effect to the intent of the legislature if that intent can be determined. Adams v. Clarendon County School District No. 2, 270 S.C. 266, 241 S.E.2d 897 (1978). And, as here, where the General Assembly has expressly related the purpose of the legislation, this express purpose serves as a true indication of the legislature's intention. 73 Am.Jur.2d Statutes, § 158; City of Spartanburg v. Leonard, 180 S.C. 491, 186 S.E. 395 (1936). The preamble to the Sunset Legislation expresses the goal of the legislature to provide for a systematic overview of various occupational and professional regulatory laws to determine the need for their continued existence. See, § 1 of Act 608.

^{1/} In 1978, the General Assembly enacted what is commonly known as Sunset Legislation. Act 608 of 1978 Acts and Joint Resolutions [§§ 1-20-10, et seq., South Carolina Code of Laws (1984 Cum.Supp.)]

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Pursuant to the legislation, sunset responsibility is placed upon the State Reorganization Commission, and in that context, the Commission's related general authority provided in its enabling provisions is extended. See, §§ 1-19-10, et seq. and § 1-20-80. Related provisions, such as §§ 1-20-10, et seq. (Sunset Legislation) and §§ 1-19-10, et seq. (enabling act) are deemed to be in pari materia, and accordingly, they should be construed together and read consistently so that each is operational and explanatory of the other. Op. Atty. Gen., July 24, 1984; Fishburn v. Fishburn, 171 S.C. 408, 172 S.E.2d 426 (1934). Thus, the powers and authority granted the Reorganization Commission in its enabling legislation, at least where applicable, generally exists to support the Commission in fulfilling the additional responsibilities placed upon it by the Sunset Legislation.

A review of the legislative scheme provided in the enabling and the Sunset provisions reveals a clear intent on the part of the General Assembly to provide an effective, systematic system of review of the continued need and effectiveness of various licensing and regulatory laws. Moreover, the Sunset provisions provide for automatic termination of certain specified agencies and regulatory programs upon the occurrence of scheduled dates. Throughout the entire legislation, the Reorganization Commission is given the principal responsibility to implement this legislative purpose and is required specifically to make its report relative to the continued operation of an agency scheduled for Sunset termination. § 1-20-20.

While a great deal of discretion is vested with the Commission regarding the composition of its report, § 1-19-170 provides guidance as to the content. This related provision authorizes the Commission to draft, consistent with its recommendation of either termination or consolidation of an agency or program, a detailed report inclusive of a plan for winding up the affairs of the agency or program and resulting disposition of its assets. Again, we emphasize that while this provision (§ 1-19-170) is not expressly made applicable to the Commission's responsibility under the Sunset Legislation, it is reasonable to assume that the General Assembly was aware of this related provision when it directed the Commission to provide a similar report pursuant to its extended power under the Sunset Legislation. Thus, as we have concluded, the Reorganization Commission retains principal responsibility and authority to schedule and supervise the winding up of the affairs of an agency or program terminated pursuant to Sunset review. This authority

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is intended to be adequate to fulfill the Act's purposes.

1. May the agency scheduled for termination continue to collect the fees it had previously assessed during its wind-up year?

While the Sunset Legislation provisions clearly envision that the winding-up period will focus upon the goal of terminating the program or agency, the Act expressly provides that "[d]uring the wind-up period, termination shall not reduce or otherwise limit the powers or authority of such agency" and "[a]t the conclusion of the wind-up period, all laws and regulations ... shall be deemed repealed." Section 1-20-30, (emphasis added). Thus, the legislature's intent, as expressed in its language, is that all laws, including any fee provisions, remain in effect during the wind-up period until final termination occurs in accordance with the termination plan or schedule.

2. Would these fees be applicable only to renewal of licenses or must a new entry into the regulated profession during the wind-up year also pay any fees during this final year?

Consistent with our response to inquiry 1, we believe that the agency should continue to collect all fees required by law until the applicable statute or regulation providing for the fees is repealed in accordance with the termination plan. Fees generated by licensing laws become part of the State's General Fund and thus they are not constrained to be expended in the regulation of the subject occupation or profession, but however, may be used by the State in the general operation of government. Section 1 of Act 201 of 1985 (Appropriations Act).

3. Is the expenditure of these funds (fee generated revenue) limited to activity directed at cessation of agency operation or may it be used for discipline of the profession?

We advise that the expenditure of agency revenue is not limited solely to termination activities. The legislative scheme contemplates that according to the termination plan,

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agency or program operations will be phased out in a judicious fashion; but however, until a particular activity (such as regulation of licensees) is terminated, all statutes regulating the occupation and profession remain in effect and expenditure of agency revenue to enforce such laws would be appropriate.

4. On whom lies the responsibility to notify all licensees of cessation of the agency, the Reorganization Commission or some other entity such as the agency or the Attorney General?

Again, the Sunset Legislation provides a wide latitude of flexibility in the structure of the termination plan or report. Most likely, the Reorganization Commission will determine that notification of licensees should be accomplished by the regulatory authority since that agency would routinely notify its licensees of matters affecting their licensure status.

5. If an agency in its wind-up year is to be limited in its activity to cessation then this must be further defined. The agency must prepare its records for the Archives. The agency or some entity must give notice to its licensees. It must prepare to give up any office space, equipment and supplies to the appropriate agency of the State. Its employees, if any, should receive any benefits to which they are entitled under State rules and regulations. Are there activities additional to these which the agency ought to carry out?

The termination plan should guide the agency in its disposition of property and records. You have identified the primary considerations that will occur. I refer you to § 30-1-40 relating to the transfer of public records to the successor agency or official or to the Archives if there is no appropriate successor. The procedure for disposition of surplus property is provided in the State's Consolidated Procurement Review Code. See, § 11-35-3810 of the amended Code.

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6. If the agency can wind up its operation in less than the year provided by statute, may it do so?

The legislative scheme clearly envisions that there will be some agencies or programs that may be terminated prior to July 1 of the year following the legislative year wherein the legislature failed to continue the operation of the agency or program, respectively. § 1-20-30. The Reorganization Commission, operating in conjunction with the regulatory authority, could schedule final termination prior to July 1 based upon its evaluation of the complexity of the winding up of the affairs of the regulatory authority or program. Again, the Commission exercises a wide latitude of discretion in this area; However, the statute clearly contemplates that July 1 of the following year is the outer most limit for a terminated agency to wind-up its affairs.

7. How will earlier wind-up affect fees, licensing and notice of termination to regulated professions?

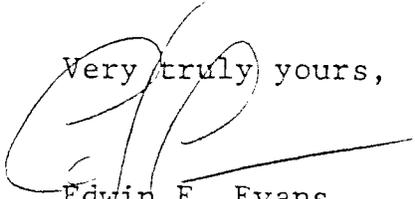
The applicable licensing and fee statutes will be repealed at the date of termination as earlier discussed. This date may be scheduled by the Reorganization Commission in advance of July 1.

Finally, you have inquired as to what affect termination of the regulatory program governing the licensing of massuers and masseuses will have upon the statutory provisions located in Title 40, Chapter 29 of the South Carolina Code. It appears that every statutory provision within this Chapter, including the penalty provision, relates integrally to the regulation and licensing of massuers and masseuses or the operation of related businesses; thus, we advise that these statutes are repealed pursuant to § 1-20-30 which provides in pertinent part that "[a]t the conclusion of the wind-up period, all laws and regulations governing, authorizing and otherwise dealing with the terminated agency, shall be deemed repealed to the extent to which such laws and regulations address the terminated agency." Of course, here, the General Assembly has terminated a licensing and regulatory program instead of an entire agency. Thus, all laws and regulations governing or otherwise dealing with the terminated licensing and regulatory program will be deemed repealed at the conclusion of the wind-up period.

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Please call upon us if we may provide additional assistance.

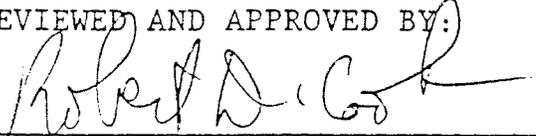
Very truly yours,



Edwin E. Evans
Deputy Attorney General

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