

1982 WL 189183 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 23, 1982

*1 Mr. Louis L. Rosen
Asst. Director
S.C. Court Administration
S. C. Supreme Court
Box 11788
Columbia, S. C. 29211

Dear Louis:

You have requested the opinion of this office as to whether § 155 of the 1981 Appropriations Act (Act 178, Acts and Joint Resolutions of South Carolina, 1981) gives probate courts the authority to compel state employees to conduct mental examinations. Section 155 reads as follows:

'Provided, Further, That it is the responsibility of all agencies, departments and institutions of state government, to provide at no cost and as a part of the regular services of the agency, department or institution such services as are necessary to carry out the provisions of Article 7, Chapter 17 of Title 44 of the 1976 Code (Judicial Commitment), Chapter 3 of Title 17 of the 1976 Code (Defense of Indigents), and Article 1 of Chapter 3 of Title 16 of the 1976 Code (Death Penalty), as amended, upon request of the Judicial Department and/or the appropriate court. To this end, state agencies are directed to furnish to the Judicial Department a list of their employees who are competent to serve as court examiners. The Judicial Department shall forward a copy of this list to the appropriate courts, and the courts shall utilize the services of such state employees whenever feasible. State employees shall receive no additional compensation for performing such services. Provided, however, that for the purpose of interpreting this section, individuals serving an internship or residency as an academic requirement shall not be considered state employees.'

Prior to the passage of § 155, an opinion of this office dated June 2, 1981, which I wrote, concluded that probate courts lacked the statutory or inherent power to compel a physician to perform an examination of a person for purposes of commitment. Now, section 155 directs state agencies to provide services under statutes pertaining to judicial commitment, defense of indigents and the death penalty and, in doing so, to furnish a list of employees qualified to serve as court examiners. The courts are directed to utilize those employees' services whenever feasible. Thus, this section makes clear that competent state employees may be appointed by the court to serve, without compensation, as 'court examiners' for the purposes of the above-named statutes. Accordingly, because the court has the authority to appoint them, it may hold them in contempt for failing to comply with the order of appointment.

Although the term 'court examiners' is not defined in § 155, the full scope of it need not be addressed for the purposes of this opinion. It would clearly include persons qualified to perform mental examinations, about whom you have asked, because mental examinations are an integral part of judicial commitment. [See §§ 44-17-530 and 44-17-540 of the Code of Laws of South Carolina \(1976\)](#), as amended. Whether these court examiners for mental examinations would include mental health counselors and social workers, as well as physicians, as you have inquired, would depend upon whether their areas of expertise qualified them to perform such examinations under the statutes pertaining to judicial commitment, defense of indigents and the death penalty. For example, for the purposes of judicial commitment, the designated examiner must be ' . . . a physician duly licensed by the Board of Medical Examiners of this State or a person registered by the Commission as specially qualified, under standards established by it, in the diagnosis of mental or related illnesses.'

*2 The opinion of this office is that a probate court may appoint appropriate state employees to conduct mental examinations under § 155 of the 1981 Appropriations Act and hold them in contempt if they fail to do so. If we may be of further assistance, please let us know.

Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

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