

1979 S.C. Op. Atty. Gen. 55 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-40, 1979 WL 29046

Office of the Attorney General

State of South Carolina

Opinion No. 79-40

March 5, 1979

*1 (1) The term ‘any action’ as used in the eighteenth proviso of § 31, Part I, Act No. 644, Acts and joint Resolutions of South Carolina, 1978, means the passage of an Act or Joint Resolution by the General Assembly, based upon the report required of the State Board of Education in said proviso.

(2) Section 31, Part I, Act No. 644, is a temporary provision of law and expires at the end of the 1978–79 Fiscal Year.

(3) § 31, Part I, Act No. 644, Acts and Joint Resolutions of South Carolina, 1978, has the force of law until its expiration.

Member
House of Representatives

CITATION OF AUTHORITIES:

Act No. 644, Acts and Joint Resolutions of South

Carolina, 1978; [Plowden v. Beattie](#), 198 S.C. 229, 193 S.E. 651 (1937); [Crouch v. Benet](#), 198 S.C. 185, 17 S.E.2d 320 (1941); and [Brooks v. Jones](#), 80 S.C. 443, 61 S.E. 946 (1908).

QUESTIONS PRESENTED:

(1) What is the meaning of the term ‘any action’ as used in the eighteenth proviso of § 31, Part I, Act No. 644, Acts and Joint Resolutions of South Carolina, 1978?

(2) Is § 31, Part I, Act No. 644 effective beyond the 1978–79 Fiscal Year?

(3) Notwithstanding the answer to question number 2 herein, does § 31, Part I, Act No. 644 have the force of law?

Act No. 644, Acts and Joint Resolutions of South Carolina, 1978, (General Appropriations Act for Fiscal Year 1978–79), in Part I, § 31, contains a proviso requiring the State Department of Education to make a report to the General Assembly by February 15, 1979, ‘outlining the long range impact of continued use of the National Teachers Examination [sic] on the quality and supply of public school teachers in South Carolina.’ The proviso further requires that the report ‘include consideration of alternatives to the use of the National Teachers Examination [sic] for Certification.’ Finally, the proviso states:

In the event no action is taken by the General Assembly during the 1979 session the composite score used by the Department of Education to determine successful passage of the National Teachers Examination [sic] shall be set at the passing score in effect on July 1, 1975 (975 points). [emphasis added].

The proviso, contained in the General Appropriations Act obviously has teachers certification as its object. While [Article III, § 17, Constitution of South Carolina](#), requires that ‘Every Act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title,’ enactments of the General Assembly are presumed constitutional, unless invalidity be

demonstrated beyond a reasonable doubt. [Plowden v. Beattie](#), 185 S.C. 229, 193 S.E. 651 (1937), and [Crouch v. Benet](#), 198 S.C. 185, 17 S.E. 2d 320 (1941).

As to question number 1, the apparent intention of the General Assembly in Act No. 644 of 1978, is that a stated condition become effective in the event the General Assembly takes no action concerning the reports and recommendations mandated in the proviso in questions. 'Action' in this instance apparently means the enactment of an Act or Joint Resolution, carrying the force of law.

*2 Act No. 644 of 1978, the General Appropriations Act, is temporary legislation, intended to be effective for Fiscal Year 1978–79. The Act's temporary character is not altered by inclusion of permanent provisions of law therein; moreover, the proviso in question is contained in Part I, entitled 'Operation of State Government,' rather than Part II entitled, 'Permanent Provisions.' Therefore, the proviso in question is effective until the current General Appropriations Act expires at the end of Fiscal Year 1978–79, and, while in effect, the proviso suspends the operation of any prior inconsistent statutes [Plowden v. Beattie](#), supra, and [Brooks v. Jones](#), 80 S.C. 443, 61 S.E. 946 (1908). Once the 1978–79, General Appropriation Act expires, any suspended prior inconsistent statute becomes applicable again.

In answer to the third question, the subject proviso has the force of law so long as the 1978–79 General Appropriations Act is in effect.

CONCLUSION:

The term 'any action' contained in the eighteenth proviso § 31, Part I, of Act Number 644 of 1978 means the passage of an Act or Joint Resolution of the General Assembly. This proviso is effective and carries the force of law until the current General Appropriation Act (Act No. 644) expires at the end of Fiscal Year 1978–79.

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