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Office of the Attorney General

State of South Carolina

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*1 Mr. Irvin D. Parker
South Carolina Department of Consumer Affairs

QUESTIONS

When the Administrator of the Department of Consumer Affairs is involved in the promulgation of regulations pursuant to the Administrative Procedure Act may he follow the procedure set forth in Code of Laws of South Carolina § 37-6-404 (1976) to the exclusion of Section 17 of Article I of the Administrative Procedure Act?

Must the Administrator provide a hearing under Section 11 of Article I of the Administrative Procedure Act even though Code of Laws of South Carolina § 37-6-404 (1976) requires an oral hearing only in certain circumstances?

STATUTES AND CASES

Code of Laws of South Carolina §§ 34-1-101 et seq. (1976);

60 Acts and Joint Resolutions 291 (1977);

[McGlohon v. Harlan](#), 254 S.C. 207, 174 S.E.2d 753 (1970);

[State ex rel. McLeod v. Montgomery](#), 244 S.C. 308, 136 S.E.2d 778 (1964);

[Town of Forest Acres v. Seigler](#), 224 S.C. 166, 77 S.E.2d 900 (1953);

[Crescent Manufacturing Company v. Tax Commission](#), 129 S.C. 480, 124 S.E. 761 (1924).

DISCUSSION

The fundamental goal of one who is construing statutes is to arrive at the legislative intent. [McGlohon v. Harlan](#), 254 S.C. 207, 174 S.E.2d 753 (1970). This opinion is written with that principal in mind and is an attempt to harmonize conflicting provisions to achieve a reasonable interpretation of the Administrative Procedures Act.

The first question posed is concerned with the conflicts between Code of Laws of South Carolina § 37-6-404 (hereinafter referred to as the Consumer Protection Code) and § 17 of Article I of 60 Acts and Joint Resolutions 391 (1977) (hereinafter referred to as the Administrative Procedures Act). Both of these sections prescribe procedures for the promulgation of regulations.¹ Conflicts arise in that the Consumer Protection Code provides for twenty days' advance notice of intended action and publication in one newspaper of general circulation in the State while the Administrative Procedures Act provides for thirty days' advance notice and publication in two newspapers of general circulation in the State.

The question is resolved by Section 17(c) of Article I of the Administrative Procedures Act which provides:

The provision of this section shall not apply to any agency whose rule-making procedures, including notice requirements, are specifically prescribed by law other than in the provisions of Article II.²

This provision illustrates the legislative intent that a specific statute like the Consumer Protection Code, which specifies different regulation-making procedures should control over the provision of Section 17 of the Administrative Procedures Act.

It should be noted that Section 17(c) exemption is only applicable to the provisions of Section 17 of the Administrative Procedures Act. Section 11 of that Act, for instance, provides that general notice of a proposed regulation must be published in the State Register. An argument could be made that since Section 17(a) refers to publishing in the State Register pursuant to Section 11, that the exempting clause removes the requirement of publication in the State Register of such notices. It is, however, the opinion of this Office that the publishing requirement of notice in the State Register should be complied with because otherwise one would not only be exempting the provisions of Section 17 but all other provisions of the act dealing with notice requirements. Section 4, for example, provides that regulations proposed to be promulgated must be filed with the Legislative Council and published in the State Register.

*2 The second question deals with the problem of when an agency is required to hold a hearing on its proposed regulations. Article I, Section 17(a)(2) of the Administrative Procedures Act provides that an opportunity for an oral hearing must be granted if requested by certain specified individuals and groups. The Consumer Protection Code has a similar provision in § 37-6-404(1)(b). Article I, Section 11(c) of the Administrative Procedures Act however deals with the same topic. Fortunately, these sections can be harmonized for Section 11(c) provides that the agency shall give interested persons an opportunity to be heard through submission of written requests, views or arguments, with or without opportunity for oral presentation (emphasis added). In conformity with the principle that a statute should be construed so that all of its parts harmonize ([Crescent Manufacturing Company v. Tax Commission](#), 129 S.C. 480, 124 S.E. 761 (1924)), it is the opinion of this Office that an oral hearing is only required if it is requested by the specified parties in Section 17(a)(2) of the Administrative Procedures Act or Section 37-6-404(1)(b) of the Consumer Protection Code.

CONCLUSION

The Administrator of the Department of Consumer Affairs may follow the procedure set forth in Code of Laws of South Carolina § 37-6-404 (1976) when promulgating regulations.

The Administrator is only required to hold an oral hearing in the circumstances specified in § 37-6-404(1)(b).

Richard D. Bybee
Staff Attorney

Footnotes

- 1 Section 1(4) of the Administrative Procedures Act defines 'regulation' as 'each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency . . .'. Section 37-6-402(5) of the Consumer Protection Code provides 'that rule means each rule authorized by this title that applies generally and implements, interprets or prescribes law or policy or each statement of the Administrator that applies generally and describes the Administrator's organization of his office . . .'. For the purposes of this opinion the terms are deemed synonymous and the term regulation will be used.
- 2 This section refers to rule-making procedures (emphasis added). Article II, Section 1(6) of the Administrative Procedures Act defines rule as each final agency statement, decision, or order in a contested case. This office interprets 'rule-making' to mean regulation-making as it would be absurd for an agency to give notice and invite public comment on its decisions in all classes of contested cases. [State ex rel. McLeod v. Montgomery](#), 244 S.C. 308, 136 S.E.2d 778 (1964). The previous Administrative Procedures Act (Act 671 of 1976) required the agency to give this type of notice of its action only when it was promulgating regulations and not prior to issuing its decisions in contested cases. The same situation exists in the Model State Administrative Procedures Act from which this section was

derived. It seems clear that this is a clerical mistake which can be resolved by giving effect to the intention of the Legislature as it was expressed in the previous act. [Town of Forest Acres v. Seigler, 224 S.C. 166, 77 S.E.2d 900 \(1953\)](#). Furthermore, the phrase 'in the provisions of Article II' is interpreted to mean 'in the provisions of Article I' since that is the article dealing with regulation-making.
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