

1979 WL 43082 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 25, 1979

***1 Re: Opinion Concerning Withdrawal of Regulations**

The Honorable Bill Campbell
House Member
District #72-Richland County
House of Representatives
Columbia, S. C.

Dear Representative Campbell:

Pursuant to your letters of June 13, 1979 and June 14, 1979. I enclose herewith the referenced opinion from this Office. The opinion addresses itself to the following two questions:

(1) Once an agency has submitted proposed regulations to the General Assembly for review, does the agency still have the authority to withdraw its regulations from consideration by the General Assembly?

(2) Even if the agency has the authority to withdraw its regulations from review by the General Assembly, must the agency afford additional notice and opportunity for comment prior to doing so?

While your questions were inspired by the recent action taken by the Department of Health and Environmental Control, the opinion has been written in general language which sets forth the legal powers and duties of any agency in the same circumstances.

It is my understanding that the Board of Health & Environmental Control decided to withdraw the regulations on June 12, 1979, prior to the time when the regulations would have been on file with the General Assembly for a period of ninety (90) days. On the same date, it is my understanding that Mr. William M. Wilson, Chairman of the Board of Health & Environmental Control, wrote to the Speaker of the House and the President of the Senate and asked that the regulations be returned to the Department for further review and consideration. It is further my understanding that, while the House of Representatives did not return the regulations to the Department, the Senate complied with the request and did so. [South Carolina Code § 1-23-120 \(1976\)](#) requires that regulations promulgated by state agencies must be submitted to both Houses of the General Assembly for review. That section further provides that if the General Assembly takes no action upon the regulations during the ninety (90) day period in which they are to be filed, the regulations become effective. Since the regulations must be filed with both Houses of the General Assembly for review, it seems clear that the regulations would have to be filed with both Houses for the full ninety (90) day period before the 'default' approval of regulations could take place. In this case, the Senate returned the regulations to the Department prior to the expiration of the ninety (90) day review period. It therefore appears that the regulations originally submitted to the General Assembly by the Department cannot become effective by the lapse of ninety (90) days without action by the General Assembly.

I trust that this information will be of assistance to you.

Very truly yours,

L. Kennedy Boggs
Assistant Attorney General

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