

1979 WL 43143 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
October 29, 1979

***1 RE: Opinion concerning amendments to Administrative Procedure Act**

Honorable Virgil L. Conrad
Commissioner
S.C. Dept. of Social Services
P.O. Box 1520
Columbia, SC 29202

Dear Commissioner Conrad:

You have asked for advice concerning the applicability of certain provisions of the Administrative Procedure Act to administrative hearings conducted by the Department of Social Services. Act 188 of 1979 amended the Administrative Procedure Act (Act 176 of 1977) by transferring several sections which had previously been in Article I of the Act to Article II of the Act. The amendment had the effect of transferring Sections 17, 18, 19 and 20 from Article I of Act 176 and incorporating those sections into Article II of Act 188 as Sections 7A, 7B, 7C and 7D. Your letter is particularly concerned about the applicability of the requirements of Section 7A to administrative hearings conducted by the Department of Social Services.

Section 7A makes substantial changes in the conduct of contested cases under the Administrative Procedure Act. It is now required that prior to the issuance of a decision in a contested case, an agency must give at least 30 days notice of its intended action, including publication in at least two newspapers of general circulation, and must include in such notice the substance of the intended action and the manner in which interested persons may present their views on the intended action. Section 7A(a)(1). The agency is further required to afford all interested persons reasonable opportunity to submit views on the intended action and, in certain circumstances, conduct a public hearing. Section 7A(a)(2). Of course these sections were formerly incorporated in the procedure for promulgation of regulations by State agencies, as found in Article I of Act 176 of 1977. However, the fact that the General Assembly has now seen fit to transfer these sections to the Article concerning contested cases in Act 188 of 1979 shows an unmistakable legislative intent that these sections apply to contested cases, and not to the promulgation of regulations.

Your immediate question can be answered by reference to the exclusion contained in Section 7A(c). That section provides that '(t)he provisions of this section [7A] shall not apply to any agency whose rule-making procedure, including notice requirements, are specifically prescribed by law other than in the provisions of this article.' Thus, for those agencies whose 'contested case decision (rule)' making procedures are prescribed by law somewhere other than in Article II of Act 188, the provisions of Section 7A do not apply. [South Carolina Code §§ 43-5-150, 43-5-155, 43-5-160, 43-5-165, 43-5-170 and 43-5-175 \(1976\)](#), as amended, specifically provide for procedures in cases where public assistance is denied, withdrawn or modified. Moreover, the Department of Social Services has promulgated a comprehensive regulation prescribing a procedure for conducting 'fair hearings.' See, Rule 114-35.1, Regulations of the South Carolina Department of Social Services. An administrative regulation which is duly promulgated in accordance with statutory authority has the force and effect of law. [Mace v. Berry, 225 S.C. 160, 81 S.E.2d 276 \(1954\)](#). Since hearing procedures for your agency are provided by law other than in the provisions of Article II of the APA, it is the opinion of this office that the provisions of Section 7A would not be applicable to the administrative hearings which you conduct.

Very truly yours,

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Assistant Attorney General

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