

1978 S.C. Op. Atty. Gen. 250 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-218, 1978 WL 22686

Office of the Attorney General

State of South Carolina

Opinion No. 78-218

June 12, 1978

***1 SUBJECT: Administrative Procedure, Rules and Regulations, Time**

Where the State Board of Nursing submits regulations to the General Assembly for review and, prior to the expiration of the ninety day review period, makes changes in the regulations with provisions which were presented and discussed at a public hearing, such revisions are proper without additional notice and public comment. Moreover, the ninety day period of review as to the regulations originally submitted is ended on the day that the revised regulations are submitted, and a new ninety day period of review as to the revised regulations is begun on the day they are submitted.

TO: Mrs. Ruth Q. Seigler, R.N.
Executive Director
State Board of Nursing

QUESTIONS:

1. May the State Board of Nursing submit regulations to the General Assembly for review and then, prior to the expiration of the ninety day review period, make revisions in the regulations without additional public notice and comment?
2. If such revisions are proper, when does the ninety day review period as to the revised regulations expire?

STATUTES AND CASES:

Act No. 176, Statutes at Large of South Carolina (1977):
Article I, Section 1(4)

Article I, Section 12

Article I, Section 17(a)(2)

[Schoening v. United States Aviation Underwriters, Inc.](#) 265 Minn. 119, 120 N.W.2d 859 (1963)

[State ex. inf. Crain ex. rel. Peebles v. Moore](#) 339 Mo. 492, 99 S.W.2d 17 (1936).

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

[State ex rel. Nagle v. Leader Co.](#), 97 Mont. 586, 37 P.2d 561 (1934).

DISCUSSION:

For purposes of this opinion, the relevant facts are as follows:

Pursuant to the requirements of Act 176 of 1977, proceedings to promulgate certain regulations were begun by the State Board of Nursing. The proposed regulations were filed with the Legislative Council, notice thereof was duly published, and comment was received at a public hearing on March 7, 1978. After considering all submissions respecting the proposed regulations, the Board submitted its final regulations to the General Assembly for review on March 16, 1978. The Senate Medical Affairs Committee reviewed the Board's regulations and requested certain revisions be made. Without further notice and public comment, the Board made the requested changes and submitted the regulations, as revised, to the General Assembly on May 9, 1978. The changes so made related to matters which were presented and discussed at the public hearing. In its letters transmitting the revised regulations to the General Assembly, the Board specifically stated that the regulations were a redrafted version of the regulations previously submitted.

Your first question asks whether the Board could make the revisions in regulations it had previously submitted to the General Assembly without additional notice and public comment. It is the opinion of this office that it could.

*2 Article I, Section 17(a)(2) of Act 1976 requires that a state agency afford interested persons the opportunity to submit comment on proposed regulations. It further requires that '(t)he agency shall consider fully all written and oral submissions respecting the proposed rule.' Since the revisions made by the Board related to matters which presented and discussed at the public hearing, it is clear that those revisions could properly have been included in the original regulations submitted to the General Assembly on March 16, 1978. The fact that the revisions were not so included does not alter the fact that they were fully discussed at the hearing and were a proper subject for inclusion in the original regulations. Further notice and public comment would add nothing and would therefore be deprecative and unnecessary.

Moreover, the changes made by the Board do not appear to be 'amendments' which would require compliance with the notice and comment procedures of the Act. Since the original regulations did not have the legislative approval required in Article I, Section 12, they had not become law as of the time the revised regulations were submitted on May 9. 'Amendments' are generally defined as alterations or modifications of prior and existing law. See eq., [State ex. inf. Crain ex. rel. Peebles v. Moore, 339 Mo. 492, 99 S.W.2d 17 \(1936\)](#); [State ex. rel. Nagle v. Leader Co., 97 Mont. 586, 37 P.2d 561 \(1934\)](#); [Schoening v. United States Aviation Underwriters, Inc., 265 Minn. 119, 120 N.W.2d 859 \(1963\)](#). Furthermore, it seems clear that amendments under the Act which require compliance with the notice and comment procedure are only those amendments of regulations which already have the force and effect of law. The term 'regulation' is defined as including 'the amendment . . . of a prior regulation . . .' [Article I, Section 1(4)], thereby requiring such amendments to comply with the notice and comment procedures. It was the intent of the legislature, however, that the phrase 'prior regulation' only refer to those regulations already in existence and having the force of law. To construe the literal words of the phrase as including any previously drafted regulation, irrespective of whether the regulation had become law or not, could lead to the absurd interpretation that the lawmaking procedures of Article I must be followed to amend that which is not itself law. It is doubtful that such a result was intended by the legislature. Since the words of a statute will not be construed so as to lead to absurd results, [State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 \(1964\)](#), the phrase 'prior regulation' only refers to regulations already having the force of law. Therefore, the revisions made by the Board were not amendments requiring compliance with the Act's notice and comment procedure.

Your second question asks when the ninety day period of review provided for in Article I, Section 12 expires as to the regulations as revised. Article I, Section 12 provides that a copy of any regulations promulgated by an agency must be submitted to both houses of the General Assembly along with a request for review. Since a simple request for review is sufficient to initiate the review process, it seems reasonable that an agency which has previously requested review of its regulations could also halt such review, prior to the expiration of the ninety day period, by making a similar request to the General Assembly. The Board's transmittal letter of May 9 sufficiently notified the General Assembly that the Board wanted legislative review of the original regulations terminated and review of the revised regulations begun. The ninety day review period as to the original regulations should therefore have been ended as of May 9, 1978. Article I, Section 12, however, plainly gives the General Assembly a full ninety days to review final regulations promulgated by

state agencies. Since the revised regulations were different from the original regulations and constituted the final version of the regulations which the Board wanted reviewed, it is the opinion of this office that a new ninety day review period should have begun on May 9, 1978.

CONCLUSION:

*3 It is therefore the opinion of this office that where the State Board of Nursing submits regulations to the General Assembly for review and, prior to the expiration of the ninety day review period, makes changes in the regulations with provisions which were presented and discussed at a public hearing, such revisions are proper without additional notice and public comment. Moreover, the ninety day period of review as to the regulations originally submitted is ended on the day that the revised regulations are submitted, and a new ninety day period of review as to the revised regulations is begun on the day they are submitted.

L. Kennedy Boggs
State Attorney

1978 S.C. Op. Atty. Gen. 250 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-218, 1978 WL 22686