

1978 WL 34607 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 19, 1978

***1 RE: Housing Policy**

Mr. Grady Decell
Director
Department of Youth Services
P. O. Box 21487
Columbia, S. C. 29221

Dear Mr. Decell:

You have requested an opinion from this Office regarding the present practice of the Department of Youth Services of providing housing for certain Department-employees at minimal cost. The question you have presented is of little interest to anyone outside the Department, and I think that a letter, in lieu of a formal opinion, will sufficiently answer your questions. Specifically, you have inquired whether the Department is in violation of any State law by providing housing for certain employees at minimal cost.

In researching the question, I have discussed this matter with other members of this Office and have examined the Report of the Legislative Audit Council of February 1, 1978, as well as the 1975 report of the State Housing Study Committee. I have also reviewed the pertinent statutes.

The starting point for determining whether the Department may provide any perquisites, commodities, services or other benefits to its employees is the General Appropriations Act. Section 129 of the 1977 version of that Act provides, in part, as follows:

... Salaries paid to officers and employees of the State . . . shall be paid in full for all services rendered, and no perquisites of office or employment shall be allowed in addition thereto, but such perquisites, commodities, services or other benefits shall be charged for at the prevailing local value. Act No. 219 Section 129, Statutes at Large, 1977, at page 767.

The language of Section 129 generally forecloses any perquisites or other benefits, including minimal-cost housing, for state employees and officers. There are several exceptions to the general rule, and the exceptions specifically provide for rent-free housing for certain, designated employees or officers.

The Appropriations Act, and specifically Section 129, expressly sets out the employees or officers to whom rent-free housing may be provided. As I am sure you are aware, the exceptions do not include any employees of the Department of Youth Services.

It is my opinion that only those employees expressly excepted under Section 129 may be provided rent-free housing. Section 129 also precludes the providing of minimal-cost housing in that the Section requires that non-excepted employees must be charged the prevailing local rate for any perquisites or benefits so provided.

You have further inquired as to whether the Department of Youth Services or the Budget and Control Board is charged with the responsibility of fixing a fair market value for state-owned housing. The Act does not expressly speak to the responsibility of establishing a charge which would be within the 'prevailing local rate.' However, with regard to rent-free housing for excepted employees, Section 129 provides that the 'fair market rental value of any residence furnished

to a state employee in an amount determined by the Budget and Control Board shall be listed as a portion of the compensation paid the individual.

*2 It appears that the Legislature intended that the Budget and Control Board determine the fair market rental value of rent-free housing furnished to excepted employees. I am therefore of the opinion that the Budget and Control Board must also determine the 'prevailing local value' to be charged an employee receiving a perquisite or benefit not allowed under the Act.

I have enclosed a copy of the House version of Section 133 (formerly Section 129) of the General Appropriations Act for 1978. The new Act does not provide for any additional exceptions as to employees who may be provided rent-free housing.

The Appropriations Act has already been considered by the Senate, and it has been returned to the House for final consideration of any amendments made by the Senate. There is a possibility that the House may consider minor modifications to the Act. I would certainly urge you to act as promptly as possible if you wish to pursue the matter.

I hope that this letter has been of some assistance to you, and I will be glad to discuss the matter further if you so desire. I have enclosed a copy of a memorandum from Joe Allen, Jr., Deputy Attorney General, South Carolina Tax Commission.

With kind regards,
Very truly yours,

William K. Moore
State Attorney

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