

1976 WL 30552 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 16, 1976

*1 Hon. John C. Wilkie, Jr.
Executive Secretary
South Carolina Pharmacy Board
P. O. Box 11927
Columbia, South Carolina 29211

Dear Mr. Wilkie:

The Board of Pharmaceutical Examiners (Board) has requested that this Office institute proceedings pursuant to the Uniform Declaratory Judgments Act [§§ 10-2001 *et seq.*, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended] to challenge the constitutionality of Act No. 287 of 1975 [59 STAT. 751 (1975)], which Act provides that the South Carolina Department of Health and Environmental Control (DHEC) may establish policies whereby duly registered nurses operating under the direction of a physician and under the guidance of a registered pharmacist may dispense drugs in certain public health programs either now existing or to be approved in the future by the South Carolina Medical Association (SCMA).

On February 6, 1976, Assistant Attorney General Kenneth P. Woodington issued an opinion relating to Act No. 287 to F. Joseph Hodge, who at that time was the Executive Secretary of the Board. The opinion concluded that: Public health nurses may, under Act No. 287 of 1975, dispense all drugs except 'controlled substances' (drugs on Schedules I through V of the state and federal controlled substances acts), provided that such dispensing is done in connection with an existing public health care program, and provided that all other state and federal statutes and regulations concerning the dispensing of drugs are complied with.

The delegation by Act No. 287 of 1975 of legislative authority to the South Carolina Medical Association is invalid, but that portion of the act is severable.

That opinion also states that inasmuch as Act No. 287 clearly contravenes the provisions of § 56-1312 of the South Carolina Code authorizing the dispensing of medicinal drugs by a registered pharmacist only, it must be deemed to effect a partial repeal of that section by implication.

In view of my Office's already enunciated position that Act No. 287 is a valid enactment, I cannot grant the Board's request. Moreover, inasmuch as there appears to me to be no sound legal basis for such litigation and very little, if any, likelihood of a successful challenge to the validity of Act No. 287, I feel that, pursuant to the authority vested in me by the provisions of Section 1-235 of the South Carolina Code of Laws, I must refuse the Board's alternative request that it be authorized to employ private counsel to institute such proceedings. Of course, there remains to the Board the option of seeking a revision or repeal of Act No. 287 as well as the probability, as I understand it, of a legal challenge to the Act by the South Carolina Pharmaceutical Association.

Very truly yours,

Daniel R. McLeod
Attorney General

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