

1976 WL 30909 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 17, 1976

*1 An interpretative regulation of the South Carolina Board of Chiropractic Examiners, dated October 26, 1976, approving use of such machines and equipment as have generally been used in Chiropractic practice and analysis in South Carolina for the past ten (10) years and requiring specific approval by the Board of any machine, equipment or instrument introduced in the past three years, is invalid for uncertainty.

Member

South Carolina Board of Chiropractic Examiners

QUESTION PRESENTED:

Is the rule promulgated by the South Carolina Board of Chiropractic Examiners, approving use of such machines and equipment as have generally been used in Chiropractic practice and analysis in South Carolina for the past ten (10) years and requiring specific approval of the Board of any machine, equipment or instrument introduced in the past three years, valid?

STATUTES, CASES, ETC.:

Act No. 745, 1976 Acts and Joint Resolutions of the General Assembly of the State of South Carolina

Section 56-351, South Carolina Code of Laws (1962)

73 C.J.S. Public Administrative Bodies and Procedure, §§ 100, 105

Vol. 1A Sutherland Statutory Construction (4th Ed. Text and Commentary) Section 21.16

Article 1, Section 3, South Carolina Constitution

Fourteenth Amendment, United States Constitution

The City of Florence v. George, 241 S.C. 77, 127 S.E. 2d 210 (1962)

Bauer, et al. v. The State of South Carolina, et al., Op. No. 20262 (filed July 16, 1976)

DISCUSSION OF ISSUE:

On July 27, 1976, Act No. 745, 1976 Acts and Joint Resolutions of the General Assembly of the State of South Carolina, was approved by the Governor to take effect ninety (90) days subsequent on October 25, 1976. Section 2 of Act No. 745, amending Section 56-351, South Carolina Code of Laws (1962), states in relevant part as follows:

‘(b) ‘Chiropractic practice’ is defined as the spinal analysis of any interference with normal nerve transmission and expression, and by adjustment to the articulations of the vertebral column and its immediate articulations for the

restoration and maintenance of health and the normal regimen and rehabilitation of the patient without the use of drugs or surgery.

(c) 'Analysis' is defined as physical examination, the use of x-ray and procedures generally used in the practice of Chiropractic.

(d) Any machine used in 'Chiropractic practice' or 'Analysis' must first be approved by the South Carolina Board of Chiropractic Examiners.

On October 26, 1976, the South Carolina Board of Chiropractic Examiners, charged with the duty of administering and enforcing the newly amended Chiropractic Act, promulgated an administrative regulation pursuant to the hereinabove quoted Act which states in relevant part as follows:

'The South Carolina Board of Chiropractic Examiners hereby permits and approves the use of such machines and equipment as have generally been used in Chiropractic practice and analysis in South Carolina for the past ten (10) years, provided that any machine, equipment or instrument introduced in the past three years must be subject to specific approval of the Board upon petition of the party desiring its use . . .'

*2 Generally, a rule or regulation of a public administrative agency is subject to the same principles of construction as apply to the construction of statutes. In this regard, such a rule or regulation should be definite and certain. It should not be subject to the objection that it fails to lay down adequate legislative standards, since it must contain a guide or standard applicable alike to all individuals similarly situated so that anyone interested may be able to determine his own rights or exemptions thereunder. 73 C.J.S. Public Administrative Bodies and Procedure, §§ 100, 105; see also Vol. 1A Sutherland Statutory Construction (4th Ed. Text and Commentary) Section 21.16, pertaining to the requirement of definiteness in legislative composition.

The hereinabove quoted interpretative regulation, in failing to set out the specific machines and equipment which are approved for use by the Board or, in the alternative, the specific standards by which such approval will be given, is so utterly vague, uncertain and unreasonable in its import that it is, as a practical matter, completely unenforceable. Furthermore, it appears to be a certainty that any effort on the part of the Board to enforce the provisions of this regulation would be validly open to charges of denial of due process and equal protection under Article 1, Section 3 of the South Carolina Constitution and the Fourteenth Amendment of the United States Constitution for failure to adequately apprise the public of what machines and equipment have in fact been approved and, more importantly, disapproved. It is therefore the opinion of this Office that said regulation is invalid for uncertainty.

The question of whether or not the South Carolina Board of Chiropractic Examiners has been legislatively delegated authority to approve therapeutic machines such as ultra-sound and diathermy, these being procedures preparatory to and complimentary to a Chiropractic adjustment, is yet to be resolved by our research. Since the statutory wording is not subject to a clear and unambiguous interpretation, rules of statutory construction emphasizing a determination of legislative intent become important. In this regard, reference is made to the attached copy of the originally submitted amendment to Bill Number H.3895, contained in the official legislative history of Act No. 745 filed with the Secretary of State. In essence, it is readily evident that the words, 'the procedure preparatory to and complimentary to the correction thereof' were deleted in their entirety by the Legislature before Bill No. H.3895 became law; this constituting admissible evidence of the legislative intent to specifically delete any machines of this nature from 'Chiropractic practice'.

At any rate since the subject contemporaneous interpretative regulation, promulgated by the Board of Chiropractic Examiners pursuant to Act No. 745, clearly demonstrates the inherent problems caused by the Act's ambiguities, it is sincerely submitted that the Legislature very urgently needs to reassess the purposes behind its amendment of Section

56-351, South Carolina Code of Laws, and promulgate a statute which does not improperly give an absolute and unregulated discretion to the Board of Chiropractic Examiners. [The City of Florence v. George, 241 S.C. 77, 127 S.E. 2d 210 \(1962\)](#); and which comprehensively and specifically redefines the scope of Chiropractic in a manner leaving no doubt as to what procedures a licensed Chiropractor is entitled to perform in the practice of his or her profession. Before amendment, Section 56-351 unquestioningly accomplished this. [Bauer, et al. v. State of South Carolina, et al., Op. No. 20262, \(filed July 16, 1976\)](#).

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