

1976 WL 30916 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
December 30, 1976

*1 Mr. Ed McElveen
Lee County Administrator
Lee County Courthouse
Bishopville, South Carolina 29010

Dear Mr. McElveen:

In response to your request for an opinion from this Office as to the effective date of the implementation of the provisions of Act No. 283, the 'home rule' legislation, by Lee County, our Office has consistently taken the position that the new powers granted to counties by provisions of Act No. 283 cannot be exercised until the United States Department of Justice has given its approval to the new form of county government and to the county's method of election pursuant to Section 5 of the 1965 Voting Rights Act. Accordingly, the present Lee County Council should select its chairman and other officers pursuant to the statutes pertaining to the Lee County Council before the enactment of Act No. 283. See, e.g., 55 STAT. 3153 (1968).

I was so sorry to hear about your wife's accident and hope that she improves rapidly.
With kindest personal regards,

Karen LeCraft Henderson
Assistant Attorney General

ATTACHMENT
December 30, 1976
Irvin D. Parker

Administrator

Department of Consumer Affairs

A rule or regulation required by the Consumer Protection Code, Code of Laws of South Carolina §§ 8-500.101 et seq., which is promulgated after January 1, 1977 pursuant to the emergency promulgation provisions of the State Register and Administrative Procedures Act, 59 Acts and Joint Resolutions 1758 (1976) is considered effective and may be relied upon according to its terms for a period of 90 days from the date of promulgation without General Assembly approval. A rule or regulation promulgated pursuant to the Act which does not conform to the emergency promulgation provisions is not to be considered effective and should not be relied upon until it receives General Assembly approval.

QUESTION PRESENTED:

Under what circumstances can a rule or regulation required by the Consumer Protection Code, Code of Laws of South Carolina §§ 8-800.100, et seq., be considered effective and relied upon by members of the public when it is promulgated after January 1, 1977, pursuant to the State Register and Administrative Procedures Act, 59 Acts and Joint Resolutions 1758 (1976)?

AUTHORITIES CITED:

Code of Laws of South Carolina §§ 8-800.101 et seq. (1975 Cum. Supp.), as amended, 59 Acts and Joint Resolutions 1792 (1976).

59 Acts and Joint Resolutions 1758 (1976). (Section numbers referred to herein are from Acts and Joint Resolutions Advance Sheet No. 6 (1976) and not the slip Act.).

[Murray v. Sovereign Camp, W.O.W.](#), 192 S.C. 101, 5 S.E. 2d 560 (1939).

[Home Building & Loan Assoc. v. City of Spartanburg](#), 185 S.C. 313, 194 S.E. 139 (1937).

DISCUSSION:

The Administrator of the Department of Consumer Affairs has broad rule-making authority concerning technical matters which require clarification and elaboration under the Consumer Protection Code, Code of Laws of South Carolina §§ 8-800.101 et seq., (1975 Cum. Supp.), as amended, 59 Acts and Joint Resolutions 1792 (1976).¹ Code of Laws of South Carolina § 8.800-446(3) provides that a creditor who does an act or omits an act in conformity with any rule or regulation with not be liable for a penalty for violation of the Code notwithstanding that such rule or regulation may be amended or rescinded or determined by judicial or other authority to be erroneous or invalid for any reason. Thus, it is important that the public know the circumstances under which they may rely on the regulations of the Department of Consumer Affairs.

*2 Section 13 of the State Register and Administrative Procedures Act, 59 Acts and Joint Resolutions 1758 (1976) establishes the criteria for judging when a regulation is effective and then may be relied upon by the public. Section 13 consists of two sentences each containing a general enactment and a qualification. For convenience of examination, each such general enactment and qualification is separated, one from the other:

'All rules and regulations promulgated by state boards, commissions, committees or agencies shall be null and void unless approved by the General Assembly at the session of the General Assembly following their promulgation;

provided, however, that in emergency circumstances which require the immediate promulgation and implementation of a rule or document, the promulgating agency shall publish a notice so stating in newspapers of general circulation in this State for a period of one week.

Rules and documents promulgated under this section shall be effective for ninety days from the date of promulgation and thereafter shall be null and void;

provided, further, that such rules and documents may become effective upon compliance with the other provisions of this Act.'

Fundamental rules of statutory construction require that a statute be construed so as to harmonize and give effect to every provision of the enactment and to apply to each of its words the ordinary meaning commonly attributed to such words. [Home Building & Loan Ass'n. v. City of Spartanburg](#), 185 S.C. 313, 194 S.E. 139 (1937), [Murray v. Sovereign Comp. W.O.W.](#) 192 S.C. 101, 5 S.E. 2d 560 (1939). The conclusions noted herein with regard to Section 13 were reached in an attempt to reconcile each phrase of the section with other language of that section and of the entire Act, and to apply ordinary meaning to the words.

This office has reached the conclusion and is of the opinion that except when the emergency procedures of Section 13 are invoked, considered infra, rules and regulations promulgated in conformance with other provisions of the Act are

not valid or effective against a person until approved by the General Assembly.² It has been suggested that the phrase ‘null and void’ means that the rule or regulation has some status or vitality arising from its promulgation which is then nullified by disapproval or inaction of the General Assembly. However, such a view cannot be reconciled with the specific provision for promulgation of regulations during emergency circumstances. It appears from an examination of § 13 in its entirety that the General Assembly provided only one means by which a lawfully promulgated regulation could be given the force and effect of law against members of the public before approval by the General Assembly. Other regulations must have General Assembly approval before they become effective.

The balance of § 13 is directed toward emergency promulgation of rules and documents. In order for a rule or document to qualify for emergency promulgation, it must satisfy these criteria:

*3 1. The agency responsible for the promulgation of the proposed rule or document must make a finding that emergency circumstances exist which require its immediate promulgation and implementation.

2. Notice of this finding must appear in newspapers of general circulation in this State for a period of one week.

3. Such rules or documents will become effective only upon compliance with other provisions of the Act. See, e.g. §§ 3, 5, 7, 8 and 12 dealing with notice, hearing and filing requirements for proposed rule making. It should be noted however that § 12(b)(3)(ii) and § 12(d)(3) provide that if the agency for good cause finds that notice, public procedure thereon and the delay period of thirty days after publication are impracticable, unnecessary or contrary to the public interest, then those requirements do not apply.

Rules and documents promulgated under the emergency promulgation provision shall be effective for a period of 90 days from the date of promulgation.³ Thus, if the document or rule has been filed pursuant to the filing requirement of the act, only during the period from the time that the regulation becomes effective until a date 90 days after its promulgation is the regulation valid and effective and capable of being relied upon by members of the public. In order for an emergency rule to become a permanent rule, it must thereafter comply with the other provisions of the act.

CONCLUSION:

A rule or regulation required by the Consumer Protection Code, Code of Laws of South Carolina §§ 8-500.101 *et seq.*, which is promulgated after January 1, 1977 pursuant to the emergency promulgation provisions of the State Register and Administrative Procedures Act, 59 Acts and Joint Resolutions 1758 (1976) is considered effective and may be relied upon according to its terms for a period of 90 days from the date of promulgation without General Assembly approval. A rule or regulation promulgated pursuant to the Act which does not conform to the emergency promulgation provisions is not to be considered effective and should not be relied upon until it receives General Assembly approval.

Marvin C. Jones
Assistant Attorney General

Footnotes

1 For examples, *see* Code of Laws of South Carolina §§ 8-800.131(1); 8-800.446(2).

2 The terms ‘valid’ and ‘effective’ appear to be used interchangeably throughout the Act and we read those terms as referring to regulations which have the force and effect of law and upon which the public may rely. See for example §§ 7, 13 and 14.

3 This opinion should not be construed as offering any opinion whatever as to the authority of state agencies to continue regulations in effect for subsequent terms of 90 days by completing the emergency rule making process with the same rule or document every 90 days.

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