

1974 WL 27974 (S.C.A.G.)  
Office of the Attorney General  
State of South Carolina  
September 26, 1974

\*1 Mr. Doyle W. Kay  
Executive Director  
Anderson County Alcohol and Drug Abuse Commission  
P. O. Box 1656  
128 W. Benson Street  
Anderson, South Carolina 29621

Dear Mr. Kay:

Your inquiry into whether R-1233, 'An Act to Prohibit the Abuse, Neglect, or Exploitation of a Senile or Developmentally Disabled Person', also covers the alcoholic, has been referred to me. The answer is no.

Article 3, Section 17, S. C. Constitution requires that: 'Every act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title.' The title of Act No. 1082 (R-1233, H-2900) refers only to the Senile and Developmentally Disabled person. The alcoholic does not fall within the statutory definition of either 'Senility', Section 2(4) or 'Developmentally disabled persons', Section 2(1).

Section 1 of the Act does purport to cover 'like incapacities' which by its definition in Section 2(3) could conceivably include the alcoholic. However, like incapacities' was not part of the title, therefore, the application of 'like incapacities' must be very restrictive.

Article 3, Section 17, was incorporated in the Constitution of 1895 from the Constitution of 1868. The South Carolina Supreme Court has recognized this as a wise provision to prevent confusion and doubt as to the exact meaning and intent of legislative enactments. [Floyd v. Perrin, 30 S. C. 1 \(1888\)](#). More recently the Court has recognized the purpose of the provision to prevent surprise or fraud upon the legislature or the people. [Moffett vs Traxler, 247 S. C. 298 \(1966\)](#).

Further, this act provides criminal penalties, in Sections 5 and 11, referring only to acts against the 'senile' or 'developmentally disabled person'. In order to apply a penal statute creating a new offense, the statute must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, and a statute that either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of 'due process of law'. [State v. Standard Oil, 195 S. C. 267 \(1941\)](#).

This act never explicitly refers to the alcoholic, thus, men of common intelligence could easily differ as to its meaning and application. Therefore, the penal aspects of the statute can not be given effect.

This opinion, however, should not be construed as limiting anything within the discretion of the Family Court, or the permissive aspects of the Act as it pertains to the Department of Social Services, particularly, Sections 3 and 4; or the application of the act to a senile or developmentally disabled person who is also an alcoholic.

Further, it should be noted that there are existing provisions under Title 32, Code of Laws of S. C., 1962, as amended, to have a person declared incompetent to manage his own affairs, and a committee appointed. Such procedure may solve the problem you cite in your inquiry.

\*2 I hope that this will answer your questions, and I will be glad to provide any further assistance.  
Sincerely,

Harry B. Burchstead, Jr.  
Legal Assistant

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