

7432 Lehman



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

November 18, 2002

The Honorable Sherry Shealy Martschink
Commissioner, SC Workers' Compensation Commission
P. O. Box 1715
Columbia, South Carolina 29202-1715

Dear Commissioner Martschink:

You have asked the following additional questions regarding the functioning of the Workers' Compensation Commission:

[w]hen the appropriations bill says that members of the workers comp commission "shall be allowed" subsistence/per diem of \$95.00 a day, can the board (full commission) by policy change that, deny payment, require hotel receipts from commissioners?

Can the board by policy limit commissioners to no more than 10 days of hearings per month with subsistence?

Can the board refuse to pay the \$35.00 allowed by statute for traveling outside of the county?

LAW / ANALYSIS

You reference the current Appropriations Act, Act No. 66 of 2002. Subpart I of Section 72 X 90 (General and Temporary) provides as follows:

I. No expense shall be allowed an employee either at his place of residence or at the official headquarters of the agency by which he is employed except as provided in Paragraph E, of this section. When an employee is assigned to work a particular territory or district, and such territory or district and his official headquarters are in different localities or sections of the State, expenses may be allowed for the necessary travel to his official headquarters. The members of the Workers' Compensation Commission, Public Service Commission and the Employment Security Commission may be reimbursed at the regular mileage rate of one round trip each week from their respective homes to Columbia. No subsistence reimbursement shall be allowed to

Rembert C. Dennis

The Honorable Sherry Shealy Martschink

Page 2

November 18, 2002

a member of the Workers' Compensation Commission, Public Service Commission or the Employment Security Commission while traveling in the county of his official residence. When traveling on official business of the commission within 50 miles outside the county of his official residence, a member of the Workers' Compensation Commission, Public Service Commission or the Employment Security Commission shall be allowed subsistence expenses in the amount of \$35 per day. When traveling on official business of the commission 50 or more miles outside the county of his official residence, each member shall be allowed a subsistence allowance in the amount as provided in this act for members of the General Assembly. When out-of-state, members of the Workers' Compensation Commission, Public Service Commission and the Employment Security Commission may claim the established amount of per diem, as stated in the General Appropriation Act, or actual expenses as deemed reasonable by the Comptroller General.

Reference to existing general laws is also helpful. S.C. Code Ann. Sec. 42-3-10 et seq. creates the South Carolina Workers' Compensation Commission "composed of a judicial and administrative department and constituted and administered as provided for in this title." The Commission consists of seven members appointed by the Governor with the advice and consent of the Senate "for terms of six years and until their successors are appointed and qualify." Section 42-3-20. The purpose of the Workers' Compensation Commission is to administer and decide issues under South Carolina's Workers' Compensation Law. Pursuant thereto, "[t]he commissioners shall hear and determine all contested cases, conduct informal conferences when necessary, approve settlements, hear application for full Commission reviews and handle such other matters as may come before the department for judicial disposition."

Section 42-3-25 establishes the Chairman as the chief executive officer of the Commission. The Chairman is empowered to "execute the policies established by the Commission in its capacity as the governing body of the judicial and administrative departments." The executive assistant for the judicial department and the administrative director of the administrative department are responsible to and report to the Chairman. Section 42-3-40 authorizes the Commission to "promulgate all regulations relating to the administration of the workers' compensation laws of this state necessary to implement the provisions of this title and consistent therewith." (emphasis added).

Of course, in its opinion, this Office may only address questions of law, not issues of policy or administration. Needless to say, policy matters which are left by law to the Workers' Compensation Commission must be decided by the Commission rather than an opinion of this Office. With that caveat in mind, I will attempt to answer your inquiry.

A number of principles of statutory construction are relevant here. First and foremost, is the cardinal rule that the primary purpose in interpreting statutes is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design and policy of the

The Honorable Sherry Shealy Martschink

Page 3

November 18, 2002

lawmakers. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). A court must apply the clear and unambiguous terms of a statute according to their literal meaning. Id.

Moreover, statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative. Bell v. S.C. State Hwy. Dept., 204 S.C. 462, 30 S.E.2d 65 (1944). Generally speaking, specific laws prevail over general laws. Lloyd v. Lloyd, 295 S.C. 55, 367 S.E.2d 153 (1988).

Furthermore, the limitations of administrative officers in executing state laws enacted by the General Assembly must be a point of emphasis here. In South Carolina Tax Commission v. South Carolina Tax Board of Review, 278 S.C. 556, 559, 299 S.E. 489, 491 (1983), the South Carolina Supreme Court cautioned that

[a]n administrative agency has only such powers as have been conferred upon it by law and must act within the granted authority for an authorized purpose. It may not validly act in excess of its powers nor has it any discretion as to the recognition of or obedience to a statute. The agency must obey a law found upon the statute books until in a proper proceeding its constitutionality is judicially passed upon. Quoting, 2 Am.Jur.2d, Adm. Law, § 188, p. 21.

And, in Goodman v. City of Cola., 318 S.C. 488, 458 S.E.2d 531 (1995), the Court noted that while regulations authorized by the legislature have the force of law, Faile v. S.C. Employment Security Comm., 267 S.C. 536, 230 S.E.2d 219 (1976), a regulation of an administrative agency may not alter or add to a statute. Society of Professional Journalists v. Sexton, 283 S.C. 563, 324 S.E.2d 313 (1984). Administrative rule making which materially alters or adds to the statutory law is void. Milliken v. S.C. Dept. of Labor, 275 S.C. 264, 269 S.E.2d 763 (1980).

It has also been stated that the power to make laws is a legislative power and may not be exercised by executive officers or bodies, either by means of rules, regulations, or orders having the effect of legislation, or otherwise. Similarly, the power to alter or repeal laws resides only in the General Assembly and executive officers may not by means of construction, rules and regulations, orders or otherwise, extend, alter, repeal, set at naught or disregard laws enacted by the Legislature. 16 C.J.S. Constitutional Law, § 217. An administrative officer may apply only the policy declared in the statutes with respect to the matter which he purports to act and he may not set different standards or change the policy. 73 C.J.S., Public Administrative Law and Procedure, § 32.

Moreover, it is well recognized that the General Assembly possesses full authority to make such appropriations as it deems necessary in the absence of a specific constitutional limitation. Clarke v. S. C. Public Service Authority, 177 S.C. 427, 181 S.E. 481 (1935). Such power residing in the Legislature to appropriate funds – i.e., the designation of how public monies are to be spent

The Honorable Sherry Shealy Martschink

Page 4

November 18, 2002

– is plenary, except as restricted by the Constitution. Cox v. Bates, 237 S.C. 198, 116 S.E.2d 828 (1960). Indeed, Art. X, § 9 of the Constitution specifies that “money shall be drawn from the Treasury only in pursuance of appropriations made by law.” Most recently, in Condon v. Hodges, 349 S.C. 232, 562 S.E.2d 623 (2002), the Supreme Court of South Carolina stated that “there is no provision in the South Carolina Code or Constitution which provides that members of the executive branch have the ability to transfer funds from those to whom the General Assembly has appropriated money.” 349 S.C. at 245. See, Gilstrap v. S. C. Budget and Control Bd., 310 S. C. 210, 423 S.E.2d 101 (1992) [the General Assembly cannot delegate its legislative power to appropriate money to executive branch members such as Budget and Control Board].

Specifically your questions are:

1. When the appropriations bill says that members of the workers’ comp commission “shall be allowed” subsistence/per diem of \$95.00 a day, can the board (full commission) by policy change that, deny payment, require hotel receipts from commissioners?

No. The General Assembly has established the per diem amount and the full Commission possesses no authority to alter or amend this amount established by law. Notwithstanding that the Commission possesses authority to promulgate regulations, this authority does not extend to an amendment of the statutes referenced above or a refusal to pay the authorized amount. Soc. of Profess. Journalists v. Sexton, supra. As to your question regarding hotel receipts, the law does not speak to such requirement. Such would be an administrative decision beyond the scope of an opinion of this Office. I would only note that any requirement regarding hotel receipts cannot change the statutory requirement regarding payment of per diem.

2. Can the board by policy limit commissioners to no more than 10 days of hearings per month with subsistence?

I assume your question is whether the board or the Workers’ Compensation Commission can limit the number of hearings where subsistence is actually paid to commissioners. If so, the answer is “no.” Subsistence for commissioners outside the county of residence is set by statute and the commission is not authorized to vary statutory law by designating certain days where no subsistence is paid or by limiting the number of days per month where subsistence is paid.

3. Can the board refuse to pay the \$35.00 allowed by statute for traveling outside of the county?

No. For the same reasons discussed above, in view of the fact that the Legislature has determined that a commissioner traveling outside of the county is entitled to a subsistence

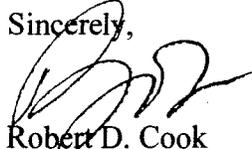
The Honorable Sherry Shealy Martschink

Page 5

November 18, 2002

of \$35.00 per day, the Commission cannot refuse to pay the statutory amount. As was recognized in Condon v. Hodges, supra, where the General Assembly has appropriated funds (authorized the spending thereof), the executive branch cannot refuse to carry out the legislative mandate.

Sincerely,



Robert D. Cook

Assistant Deputy Attorney General

RDC/an