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The State of South Carolina



Office of the Attorney General

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November 19, 1992

The Honorable Thomas L. Moore
Senator, District No. 25
Post Office Box 684
Clearwater, South Carolina 29822

Dear Senator Moore:

By your letter of October 30, 1992, you advised that Aiken County has not made a financial contribution to the Aiken-Barnwell Mental Health Board; as a result, Barnwell County has made all appointments to the Board for the upcoming term. You have observed that pursuant to S.C. Code Ann. § 44-15-60, representation on a mental health board is to be apportioned according to the financial contributions of the member-political subdivisions. You have asked whether it is statutorily and constitutionally permissible for Barnwell County to hold all appointments to the Board, to the exclusion of Aiken County if Aiken County did not contribute to the Board's budget.

As you observe in your letter, § 44-15-60 provides in pertinent part: "The number of members representing each county must be proportional to its share of the budget." Thus, the situation described in your letter is authorized by statute, as zero financial contribution by a county would result in zero representation on the Board on behalf of that county.

This statute, as any statute, would be presumed to be constitutional in all respects. Such a statute will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland County, 190 S.C. 270, 2 S.E.2d 777 (1939). All doubts of constitutionality are generally resolved in favor of constitutionality. It is solely within the province of the courts of this State to declare a statute unconstitutional; until such time, the statute is entitled to the presumption of constitutionality and is entitled to be followed. We must advise that we are not aware of any constitutional provisions which are violated by § 44-15-60, however.

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The system of appointments under § 44-15-60 has been examined in an opinion of this Office dated March 30, 1992, a copy of which is enclosed. You will see that the appointment process involves policy questions in addition to legal questions. Because members of mental health boards are appointed to four-year terms while county appropriations are made annually, so that the proportion of membership to which a county is entitled might change annually, you might wish to clarify the matter legislatively if you feel that another system of appointment would be more appropriate.

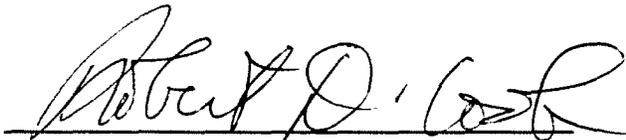
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions