

The State of South Carolina

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Office of the Attorney General

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September 26, 1989

Elaine L. Craft, Chairman
S. C. Occupational Health and
Safety Review Board
406 Greene Street
Cheraw, South Carolina 29520

Dear Ms. Craft:

As you are aware, your letter of June 28, 1989 to Attorney General Medlock was referred to me for response. In that letter, you indicate that the South Carolina Occupational Health and Safety Review Board (Board) is an agency which hears and decides contested cases arising from the State's occupational safety and health laws.

Presently, the Board's regulations permit any party to a proceeding before the Board to be represented by an attorney authorized to practice law in this State. In addition, the regulations permit a sole proprietorship to be represented by the proprietor; a partnership by any one partner; and, a corporation by any officer or employee with authority to bind the corporation.

In order to eliminate the opportunity for unauthorized persons to engage in the practice of law in proceedings before it, the Board has begun the process of promulgating an amendment to its present regulations. The new regulation, as proposed by the Board, reads as follows:

A party or intervenor may appear in person or through a representative, subject to the following restrictions:

1. An individual may represent himself or may be represented by an attorney authorized to practice law in South Carolina;

Elaine L. Craft, Chairman
Page Two
September 26, 1989

2. A proprietorship may be represented by the proprietor or an attorney authorized to practice law in South Carolina;
3. A partnership may be represented by a general partner or an attorney authorized to practice law in South Carolina;
4. A corporation must be represented by an attorney authorized to practice law in South Carolina;
5. Governmental subdivisions, Cooperatives, joint ventures associations, unions, and other unincorporated entities must be represented by an attorney authorized to practice law in South Carolina.

In view of the fact that the new regulation will not become effective until the next session of the General Assembly, at the earliest, the Board recognizes that, under its present regulatory scheme, the potential exists for persons to engage in the unauthorized practice of law in proceedings which it conducts. Thus, the question which you pose is whether the Board may begin following its proposed regulation even though that regulation will not become effective until the next legislative session. For purposes of this discussion, the term "following" will be construed to mean "enforcing."

In accordance with the provisions of 1976 S. C. Code, Section 1-23-110, an agency may not promulgate a regulation unless and until it complies with the requirements imposed by that section and by Section 1-23-120. This Office has previously opined that a regulation does not have the force and effect of law until it is promulgated pursuant to the aforementioned Code sections. Opinion of the Attny Gen., No. 79-82, June 18, 1979; Letter of June 19, 1979 to Rep. Joyce Hearn.

Clearly, the Board will not have complied with the requirements of Sections 1-23-110 and 1-23-120 until the reconvening of the General Assembly. Therefore, the regulation proposed by the Board does not have the force and effect of law and cannot be "enforced" until the Board complies with all of the pertinent provisions of Section 1-23-10, et seq.

Elaine L. Craft, Chairman
Page Three
September 26, 1989

However, the law of the State of South Carolina generally prohibits the practice of law by persons not authorized to do so. (See: CODE, Sections 40-5-310 and 40-5-320). Authorization to engage in the practice of law may be obtained only from the S. C. Supreme Court. State v. Wells, 191 S.C. 463, 5 S.E.2d 181, (1939). Consequently, until its proposed regulations become enforceable, the Board may want to refer instances of attempted unauthorized practice before it to the S. C. Supreme Court and/or the Unauthorized Practice of Law Committee of the S. C. Bar.

Please contact me if I can be of any further assistance to you in this matter.

Very truly yours,



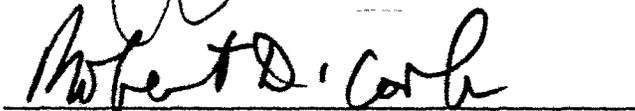
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