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August 1, 1985

William S. Hall, M.D.
State Commissioner of Mental Health
S. C. Department of Mental Health
P. O. Box 485
Columbia, SC 29202

Dear Dr. Hall:

In your letter of May 16, 1985, to the Attorney General, you have inquired as to the scope of §44-11-100, South Carolina Code of Laws, 1976, as amended. Section 44-11-100 provides that "no member of the Department of Mental Health or officer or employee of any state mental health facility shall be financially benefited by any contract or purchase made by any state mental health facility." Specifically, you have inquired whether an operator of a community care home would be prohibited from serving as a member of a local mental health center board under this statute. You have also inquired as to whether the spouse of a mental health center employee would be prohibited from entering into a lease agreement with the center.

As to the first question, the language of §44-11-100 contains no direct prohibition to an operator of a community care home serving on a local mental health center board. The statute merely prohibits any financial benefit by a member of a board through a contract or purchase made by a state mental health facility. A community care residential facility (community care home) provides care for individuals who by reason of age or physical or mental infirmity are unable to care sufficiently for themselves or chemically addicted individuals seeking detoxification services. Individuals may come to the community care home through private referrals or agency referrals such as the Department of Social Services, the Department of Mental Retardation or the Department of Mental Health. Although the community care homes are now being licensed by the Department of Health and Environmental Control, they continue to be regulated to some limited extent by the agency placing the client in the community care home. Pursuant to §44-7-540, South Carolina Code of Laws, 1976, as amended, the community care home must contract with the placing agency for an individual plan of care for those clients

REQUEST LETTER

William S. Hall, M.D.
Page 2
August 1, 1985

referred to it. Although no money is involved in this particular transaction, the purpose of the agreement is to obtain clients who will pay for services provided by the community care home. Therefore, financial benefit is involved, at least indirectly, in the transaction. For this reason, it is our conclusion that, pursuant to §44-11-100, the operator of a community care home could be on a local mental health center board, but during his tenure would have to absolve himself of any contractual agreements with the Department of Mental Health or its facilities, and could not enter into any new agreement with the Department or any of its facilities while a member of the local board. The community care home, however, would not be prohibited from seeking clients through other available avenues of referral. This conclusion is based on our interpretation of §44-11-100 and does not consider the provisions of the Ethics Act. In your letter, you state that the State Ethics Commission has already dealt with the issue and concluded that such service would not be prohibited by the Ethics Act, although the person would be required to follow the disclosure and disqualification procedures of the Act. (Advisory Opinion SEC 85-030).

As to the second question, the clear language of §44-11-100 limits its application to members of the Department of Mental Health, officers or employees of any mental health facility from financially benefiting from a contract or purchase made by any state mental health facility. No mention is made of spouses or other household members. Similar legislation to §44-11-100 is contained in the State Ethics Act, §8-13-10, et seq., South Carolina Code of Laws, 1976, as amended, which was promulgated to prevent personal gain through official conduct and eliminate conflict of interest of public officials and employees. However, the provisions of the Ethics Act clearly extend to members of the household, as well as the employee or officer. 1/ In interpreting a statute, the intention of the legislature must be gathered from a literal interpretation of the language of the statute where the language is plain and unambiguous and when the meaning of the words is plain and obvious. Anders v. South Carolina Parole and Community Corrections Board, 305 S.E.2d 229 (1983), and Independence Insurance Company v. Independent Life and Accident Insurance Company, 218 S.C. 22, 61

1/ The provisions of the State Ethics Act are mentioned here only for comparison. Any question regarding whether the action would be prohibited under the State Ethics Act should be directed to the Ethics Commission.

William S. Hall, M.D.
Page 3
August 1, 1985

S.E.2d 399 (1950). Therefore, it is the conclusion of this Office that since the language of §44-11-100 is limited to members of the Department of Mental Health officers or employees of any mental health facility, the independent actions of the spouse of an employee would not be governed by this section. In the case which you have cited, the employee has no ownership in the property and, therefore, the transaction would not be prohibited by §44-11-100.

I hope this information sufficiently answers your inquiries.

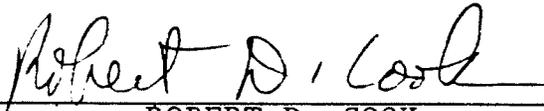
Sincerely,



B. J. Willoughby
Assistant Attorney General

BJW/rho

REVIEWED AND APPROVED:



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