

The State of South Carolina



Office of the Attorney General

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April 8, 1986

Mr. C. Douglas Chavous
Executive Secretary
South Carolina Board of Pharmacy
Post Office Box 11927
Columbia, South Carolina 29211

Dear Mr. Chavous:

Your recent letter to the Attorney General has been referred to me for handling and reply. Please address any future correspondence in this matter directly to me.

In your letter you request an opinion of this Office concerning the necessary delegation of authority for the Board of Pharmacy to promulgate regulations setting out a program of continuing education for pharmacists in this State. This Office had previously reviewed that question and rendered its opinion dated May 28, 1985, to the effect that your proposed Regulation 99-41 appeared to go beyond the minimum qualifications for licensing and license renewal set out in the Pharmacy Practice Act (Section 40-43-10 et seq. of the 1976 Code of Laws of South Carolina). You advise that since then the Legislature has amended the Act and, among other things, provided language which may provide the requisite authority for the promulgation at this time of proposed R. 99-41.

The amendment effected by Act No. 321 of 1986 (H. 2536) provides, in pertinent part, that the Board's duties include, among other things, "determining the ethical and professional competence, on a continuing basis, of pharmacists...." There appears to be no direct reference to authority to provide for continuing education either in the title or other provisions of Act No. 321. The unamended portions of the Pharmacy Practice Act similarly contain no express reference to such authority to require continuing education. Where the General Assembly has intended to provide for continuing education, it has usually done so by express language. Compare, Section 40-36-110 (h) [with respect to occupational therapists, Board "may provide for continuing professional education"]; Section 40-38-180 [continuing education for opticians]; Section 40-61-70 [sanitarians, continuing education].

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Inasmuch as a regulation must necessarily be supported by enabling legislation, there continues to be a very substantial question as to the effectiveness of the new language to accomplish the goal of authorizing a continuing education program. Indeed, a stronger argument can be made, in our view, in opposition to R. 99-41 than in support thereof based upon the pertinent language of Act No. 321. There being no clear, unambiguous expression of legislative intent either in that language or elsewhere, we must conclude that the subject language fails to delegate the requisite authority to promulgate R. 99-41 at this time. Therefore, we respectfully recommend against promulgating proposed R. 99-41 based upon the purported authority contained in Act No. 321 of 1986.

Concerning your second question regarding the necessity of notice and a public hearing, please be advised that the nature of notice and hearing requirements implicitly requires the existence of appropriate legislative authority prior to the proposed promulgation of a regulation. Since the previous notice and proposed hearing as to proposed R. 99.41 occurred prior to the subsequent legislative action, it appears that a new notice and public hearing would have to be conducted subsequent to the passage of appropriate legislative authority. Therefore, at some time in the future when the Legislature clearly delegates the requisite authority to the Board of Pharmacy, a new notice and public hearing concerning proposed R. 99-41 should be noticed and conducted.

We trust the preceding discussion adequately answers your questions, however, if any further assistance or explanation is required, please do not hesitate to contact us.

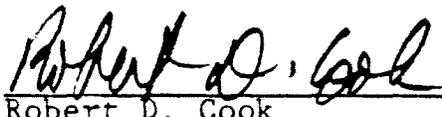
Very truly yours,



Richard P. Wilson
Assistant Attorney General

RPW:bvc
cc: Charles W. Gambrell, Jr.
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions