

The State of South Carolina



Office of the Attorney General

Opinion No 86-104

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October 14, 1986

Mr. Larry W. Propes
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Dear Larry:

You have asked this Office whether the judicial department is authorized to expend the special fund provided in Item VII, Section 4, Part I of Act 540 of 1986 (Appropriations Act) for payment of commitment expenses associated with the commitment of alcohol and drug addicts. Act 487 of 1986 provides new procedures for the commitment of alcohol and drug addicts. We conclude that the clear instruction of the relevant proviso cannot be reasonably read to authorize such use of the special fund.

The relevant proviso reads:

That the appropriation for continued implementation of Article 7, Chapter 17, of Title 44 of the 1976 Code, relating to commitments, admissions and discharges to mental health facilities, shall be expended for the compensation of court appointed private examiners, guardians ad litem, and attorneys for proposed patients, and related costs arising from the filing, service and copying of legal papers and the transcription of hearings or testimony. Court appointed private examiners, guardians ad litem and attorneys shall be paid at such rates or schedules as are jointly determined to be reasonable by the South Carolina Association of Probate Judges, the State Court Administrator and the South Carolina Department of Mental Health with the approval of the Attorney General.

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Section 4, Part I of Act 540. The statutes referenced in the proviso, Article 7, Chapter 17 of Title 44, provide the procedures for the commitment of mentally ill persons for treatment at mental health facilities. "Mental health facilities" is specifically defined by statute as a hospital, clinic or other institution for the care and treatment of persons who have psychiatric illnesses. See, Section 44-23-10(14).

Pursuant to express legislative direction in Act 487 of 1986, the recently enacted commitment statutes for the alcohol and drug addicts are to be codified in Title 44, Chapter 52 of the South Carolina Code. Sections 44-52-10 et. seq., South Carolina Code of Laws as amended through 1986. These statutes provide the procedures for the commitment of persons impaired by dependency upon alcohol or drugs to a "treatment facility" as defined therein. A treatment facility is a facility licensed or approved by the Department of Health and Environmental Control equipped to provide for the care and treatment of chemically dependent persons including the Division of Alcohol and Drug Addiction Services of the South Carolina Department of Mental Health, and any other treatment facility approved by the Commissioner of Mental Health. Section 44-52-10(4).

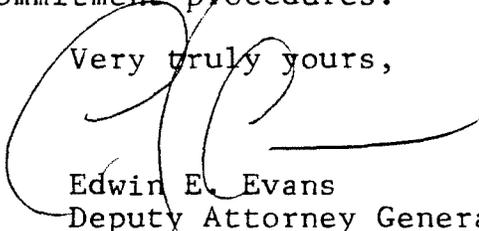
A comparison of the statutes relating to the commitment of the mentally ill found in Article 7, Chapter 17 with the statutes relating to the commitment of persons who are chemically dependent found in Chapter 52 demonstrates clearly that they are separate and distinct provisions that relate to different subjects. Moreover, and importantly, the proviso that authorizes and limits the expenditure of the special fund is expressly applicable only to expenses related to the commitment of the mentally ill pursuant to Article 7, Chapter 17, Title 44. Since the terms of the statutory provision are clear and unambiguous, they must be applied according to their literal meaning because the legislative intent is unmistakable. See, Martin v. Ellisor, 266 S.C. 377, 232 S.E.2d 415 (1976).

I note as well that Act 487 of 1986 was approved on the same date as the Appropriations Act. Thus, it must be presumed that the general assembly knew that the procedures for the commitment of alcohol and drug addicts were to be codified in Chapter 52 of Title 44, when it enacted the proviso authorizing the expenditure of the special fund and expressly limited its application to expenses related to the commitment of the mentally ill pursuant to Article 7, Chapter 17 of Title 44. I also find it significant that the special fund in prior years has not been expended for expenses related to the commitment of alcohol and drug addicts pursuant to the now repealed Chapter 51 of Title 44.

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For the same reasons we additionally conclude that the proviso found in Section 155, Part I of Act 540 is inapplicable to the commitment procedures provided in Chapter 52 of Title 44. In so concluding, we express no opinion as to any other provision of law that may require participation by public agencies and their employees in these commitment procedures.

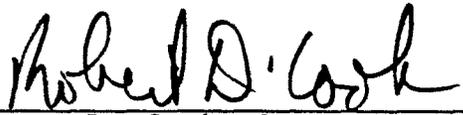
Very truly yours,



Edwin E. Evans
Deputy Attorney General

EEE:jca

Approved and reviewed:



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