

# The State of South Carolina



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March 23, 1987

The Honorable Donald H. Holland  
Member, South Carolina Senate  
P. O. Box 142  
Columbia, South Carolina 29202

Dear Senator Holland:

In your letter of March 17, 1987, you request an opinion as to whether the second paragraph of a proposed amendment to Section 40-3-120 (Section 6 of Senate Bill 173) is constitutional. This section will provide that the South Carolina Board of Architectural Examiners may levy a civil penalty against any registrant of up to Two Thousand (\$2,000.00) Dollars for each violation of that chapter, not to exceed a total of Ten Thousand (\$10,000.00) Dollars in any case. The penalty will be remitted to the State Treasurer and held in a special fund from which the State Treasurer must, with the approval of the State Budget and Control Board, reimburse the Board for the costs of the case. When the special fund exceeds Twenty Thousand (\$20,000.00) Dollars, the excess funds are remitted to the general fund of the State.

While your letter is not specific as to the constitutional question you are raising, I shall assume for the purposes of this opinion that you are questioning whether the General Assembly would be authorizing an administrative agency to exercise powers essentially judicial in nature in violation of the separation of powers mandate of Article I, § 8 of the South Carolina Constitution.

While administrative agencies have no general judicial powers, they may perform some quasi-judicial duties. Thus, for example, the General Assembly has authorized the Board to hold administrative hearings against registrants who have been accused of dishonest practice, unprofessional conduct, or incompetence. See, Section 40-3-120, South Carolina Code of Laws (1976). In this regard it has been stated that:

...the legislature does not encroach on the judicial branch in authorizing an administrative agency to perform an act, which is essentially of an executive or

administrative nature, in a judicial manner where the power to act in such manner is incidental to, or reasonably necessary for, the proper performance of the administrative duty entrusted to it, and it may delegate so-called judicial functions to an administrative board or commission.

So, legislative acts granting to an administrative agency quasi-judicial power are valid, where the legislature has laid down the policy and established the standards while leaving to the agency the determination of facts to which the legislative policy is to apply. 73 C.J.S., Public Administrative Law and Procedure §33, p. 422 (1983). (Emphasis added.)

Certainly, the State may regulate the practice of professions under its police power, even to the point where previously accepted practitioners are denied license renewal. Dantzler v. Callison, 230 S.C. 75, 94 S.E.2d 177 (1956). The State may subject licensees at any time to new restrictions and regulations for the public good. Id.

In this instance, the authority of the Board to impose a civil fine is incidental to, and reasonably necessary for, the proper execution of the Board's duty to regulate the practice of architecture in South Carolina. Therefore, so long as the General Assembly has set standards or policy for the Board to follow in imposing civil fines, there is no constitutional infirmity by the Board exercising this quasi-judicial power. We believe that with slight modification S.173 will comply.

The potential problem with S.173, as written, is that the General Assembly has given the Architectural Board unbridled discretion to impose any fine up to Two Thousand (\$2,000.00) Dollars without regard to the nature or gravity of the violation. In a similar situation, the Maryland Court of Appeals struck down a county ordinance that authorized a Commission on Landlord-Tenant Affairs to impose a One Thousand (\$1,000.00) Dollar penalty for any violation of the ordinance. The Court held that the total absence of legislative safeguards or standard constituted an invalid delegation of legislative powers and violated due process of law. The Court noted that without such standards, no meaningful judicial review of the administrative agency's action could be taken. County Council, Montgomery Cty. v. Investors Funding Corp., 270 Md. 403, 312 A.2d 225 (1973).

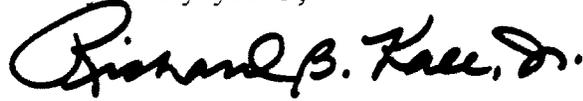
Therefore, it is our recommendation that Section 6 of S.173 be amended as follows:

For each violation of the provisions of this chapter or the regulations promulgated by the board, the board may require the architect, firm, corporation, professional association or partnership to pay a civil penalty of up

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to two thousand dollars, the amount to be determined by  
the seriousness of the violation.

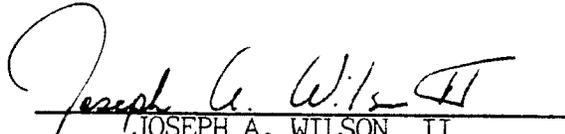
Very truly yours,



Richard B. Kale, Jr.  
Senior Assistant Attorney General

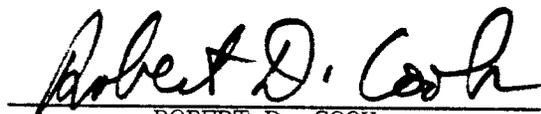
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REVIEWED AND APPROVED:



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