

The State of South Carolina



Office of the Attorney General

OPINION A-87-25
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March 26, 1987

The Honorable Michael L. Fair
Member, House of Representatives
323B Blatt Building
Columbia, South Carolina 29211

Dear Representative Fair:

By your letter of March 6, 1987, you have referred to the statute of South Carolina which states that extramarital sexual intercourse is illegal. Section 16-15-60, Code of Laws of South Carolina (1976), provides criminal penalties for those persons convicted of the offenses of adultery or fornication. With that statute in mind, you have asked whether the State of South Carolina has a legally defensible position in giving contraceptives to unmarried persons. Because of federal regulations, your question must be answered affirmatively.

Family planning services, including the provision of contraceptives, are provided by the South Carolina Department of Health and Environmental Control (DHEC). Federal grants are provided to the states for family planning services under the Public Health Service Act, the relevant portion of which is 42 U.S.C. § 300 et seq. The federal regulations governing participation in family planning projects found at 42 C.F.R. § 59.5 require that family planning services must be provided "without regard to religion, race, color, national origin, handicapping condition, age, sex, number of pregnancies, or marital status." 42 C.F.R. § 59.5 (a)(4) (emphasis added). DHEC Regulation 61-89, Section 4(b) echoes the federal regulation:

Federal regulations require that services be provided without regard to religion, race, color, national origin, creed, handicapping conditions, sex, number of pregnancies, marital status, age, or contraceptive preference. Particular age or risk groups may be given priority, but no group may be denied service because of any of the listed factors. [Emphasis added.]

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A preemption problem can develop if a state receiving family planning grant funds from the federal government were to vary from federal standards or guidelines. Planned Parenthood Association of Utah v. Matheson, 582 F.Supp. 1001 (D. Utah 1983).

Based on the foregoing, the State of South Carolina, through the family planning services offered by DHEC, is not permitted to base the receipt of family planning services upon the fact that an individual is married. As a condition of receiving federal funds, the State is not permitted to discriminate on the basis of marital status; to do so would very likely result in the loss of federal funding for the family planning services. Thus, family planning services must be offered to ~~un~~unmarried persons, notwithstanding that Section 16-15-60 of the Code in effect proscribes extramarital sexual intercourse. Due to the federal requirements which this State must observe, the State does have a legally defensible position in giving contraceptives to unmarried persons.

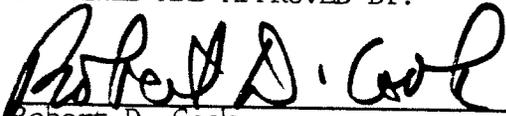
With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/rhm

REVIEWED AND APPROVED BY:



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