

1981 WL 157770 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 22, 1981

*1 Honorable Joyce C. Hearn
Member
House of Representatives
1316 Berkeley Road
Columbia, South Carolina 29205

Dear Joyce:

I have finally determined what I think is the answer to the question raised in your letter to me of March 5 concerning the constitutionality of rules promulgated with different standards for different child day care centers.

The “regulations” with which you are concerned are not, in fact, regulations but are standards proposed to be established by DSS in determining the identity of those day care centers who wish to voluntarily participate in day care programs funded through Title XX of the Social Security Act. The standards apparently would have no general public applicability but would set forth the manner in which a potential provider must staff his or her facility should he or she desire to enter into a contract with DSS to provide services funded under Title XX. The Department does not, therefore, propose to follow the procedures established for regulations in the Administrative Procedures Act. Persons interested in the application of these standards were given an opportunity to appear before the DSS Commission recently. Some of them have done so but I have no information as to the final action undertaken by the Commission. I have not seen the standards but there is no doubt in my mind that should different standards apply to different child day care centers occupying similar postures and presenting similar circumstances, a serious constitutional question would then be presented. I would suggest that if your constituent has any question in this regard, I will be pleased to talk with him at his convenience.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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