

1981 WL 158089 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 29, 1981

***1 RE: Opinion Request Concerning Another Way, Inc. and Zoning**

Mr. Harry W. Davis, Jr.
Commissioner
S. C. Department of Youth Services
P. O. Box 5837
Columbia, S. C. 29250

Dear Mr. Davis:

I am in receipt of your opinion request dated December 3, 1981, concerning the application of the Union Zoning Ordinance to Another Way, Inc., a foster care program center that is an independent contractor of the Department of Youth Services. Please be advised that since Another Way, Inc. is not a state agency, this Office is unable to give it legal advice or opinion concerning its operation.

Since this matter concerns the operation of the local zoning ordinance of Union, the interpretation of the Union attorney would be binding. Therefore, I urge that you seek his counsel.

For your information, our research has developed the following which might be of use to you. It is the opinion of this Office that the State is immune from zoning regulations of the municipalities unless the State is specifically made subject to such regulations by statutory enactment. 1963 Op. Atty Gen. No. 1598, p.176. 1967 Op. Atty Gen. No. 2325, p.147. (Copies attached). Nevertheless, it is the policy of the State Budget and Control Board that the agencies should abide by local zoning ordinances and procedurally request variances when appropriate. Therefore, based on the zoning material supplied, it would appear that Another Way, Inc., could properly be defined as a 'child-care center' because of the lack of the familial relationship. (Zoning Ordinance § 1-30). Therefore, it would require approval by the City Council of Union in accordance with Section 1-18 for the center to be developed there in line with the Ordinance in an R-10 area.

I am also enclosing a copy of a New Jersey Supreme Court case, [Berger v. State, 364 A.2d. 993 \(1976\)](#), in which that court found a zoning ordinance which limited certain areas to single family dwelling and narrowly defined 'family' violated due process in its application to a group home for your information. If I can be of further assistance or information in this matter, please feel free to contact me.

Sincerely,

Donald J. Zelenka
Assistant Attorney General

1981 WL 158089 (S.C.A.G.)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.