

1977 WL 37413 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 1, 1977

\*1 The Honorable James M. Waddell, Jr.  
Chairman  
S. C. Coastal Council

SUESTION PRESENTED:

Must the interim rules and regulations required under Section 13(b) of Act No. 123 of 1977 comply with the provisions of Act No. 176 of 1977 concerning legislative review of agency regulations?

AUTHORITIES:

Act No. 671 of 1976;

Act No. 123 of 1977;

Act No 176 of 1977;

[McMillan Feed Mills, Inc., of South Carolina v. Mayer](#), 265 S.C. 500, 220 S.E.2d 221 (1975);

[Green v. Thornton](#), 265 S.C. 436, 219 S.E.2d 827 (1975);

[McGlohon v. Harlan](#), 254 S.C. 207, 174 S.E.2d 753 (1970);

2A Sutherland, Statutory Construction (4th Ed., 1973).

DISCUSSION:

Section 13(b) of Act No. 123 of 1977 requires that the South Carolina Coastal Council ‘publish and make available’ certain interim rules and regulations concerning the Council's procedure in evaluating permit applications. The Act provides that: Within sixty days of the effective date of this Act the Council shall publish and make available the interim rules and regulations it will follow in evaluating permit applications. These interim rules and regulations shall be used in evaluating and granting or denying all permit applications until such time as the final rules and regulations are adopted in accordance with this section and Act 671 of 1976. Within one hundred and twenty days of the effective date of this act, the Council shall publish and make available to local and regional governments and interested citizens for review and comment a draft of the final rules and regulations it will follow in evaluating permit applications. Sixty days after making such guidelines available the Council shall hold a public hearing affording all interested persons an opportunity to comment on such guidelines. Following the public hearing the Council shall in ninety days publish final rules and regulations. Provided, however, the interim rules and regulations shall not be subject to the provisions of Act 671 of 1976. (Emphasis Added)

Act No. 123 of 1977 was signed by the Honorable James B. Edwards on May 24, 1977. Section 24 of the Act, however, provided that the Act would not take effect until July 1, 1977. Therefore, the interim rules and regulations required under Section 13(b) must be published within sixty (60) days of July 1, 1977. The question presented is whether these interim rules and regulations must receive legislative approval as specified in Article 1, Section 12, of Act No. 176 of 1977.

In 1977, the General Assembly passed Act No. 176, which requires that all State agency regulations be submitted to the General Assembly for review. Article 1, Section 12, Act No. 176 of 1977. The Act provides exceptions to this requirement if an emergency situation arises when the General Assembly is not in session and ‘. . . for regulations promulgated to maintain compliance with federal law including but not limited to grant programs.’ Article 2, Section 12, Act No. 176 of 1977.

\*2 The General Assembly adjourned on June 17, 1977. It was therefore impossible for the South Carolina Coastal Council to promulgate any interim rules and regulations within the sixty days specified by Act No. 123 and also satisfy the legislative review provisions of Act No. 176. Furthermore, the Council's interim rules and regulations do not qualify under the exceptions in Act No. 176, because such interim rules and regulations concern only the Council's procedure for evaluating, granting or denying permit applications.

The Act establishing the Coastal Council was signed prior to June 13, 1977, which was the date that Act No. 176 was signed by the Governor. Article III, Section 2, of Act No. 176 repealed Act No. 671 of 1976, which had previously governed the promulgation of agency rules and regulations. Thus, Act No. 671 of 1976 was in effect at the time the Coastal Council Act was passed. While they differ in specifics, Act No. 176 and Act No. 671 both provide for review by the General Assembly of all agency rules and regulations. However, neither Act provides for interim rules and regulations, such as those required in the Coastal Council Act.

The General Assembly obviously did not intend that promulgation of the Council's interim rules and regulations would be covered by Act No. 671. The last sentence of Section 13(b) provides that ‘. . . the interim rules and regulations shall not be subject to the provisions of Act No. 671 of 1976.’ Furthermore, by requiring the Council to ‘publish and make available’ these interim rules and regulations during a sixty (60) day period when it would not be in session, the General Assembly created a situation where the Council could not possibly comply with the legislative review procedure established by Act No. 671. Of course, the Council's interim rules and regulations remain in effect only until the Council's final rules and regulations become effective, and these final rules and regulations are not exempted from legislative review. Thus, the General Assembly provided for interim rules and regulations to enable the Council to evaluate, grant or deny permit applications at an earlier date than would otherwise be possible if legislative review was required.

The remaining problem is that Act No. 176 repealed Act No. 671 between the date the Council's Act was signed and the date the Act became effective. One of the primary rules of statutory construction is that the intent of the legislature is to be determined and applied whenever possible.

This rule has undergone numerous restatements, rephrasing, and reformations, but the essence of it, that the legislative will governs decisions as to how statutes are to be construed, continues to be the test most often declared by Courts. 2A Sutherland, Statutory Construction, Section 45.05 (4th Ed., 1973).

This primary rule of construction has been observed by South Carolina Courts on numerous occasions. E.g., [McMillan Feed Mills, Inc., of South Carolina v. Mayer](#), 265 S.C. 500, 220 S.E.2d 221 (1975); [Green v. Thornton](#), 265 S.C. 436, 219 S.E.2d 827 (1975); [McGlohon v. Harlan](#), 254 S.C. 207, 174 S.E.2d 753 (1970). It appears that the General Assembly intended that the Council's interim rules and regulations be effective without prior legislative approval. Any other interpretation would render it impossible to comply with the Act's time provisions. The General Assembly authorized a special type of rules and regulations during an interim period until final rules and regulations could be adopted. In fact, Act No. 176 of 1977 does not even allude to interim rules and regulations. Therefore, there is no conflict between the statutes by interpreting the legislative intent behind

Act No. 123 as not requiring that the interim rules and regulations of that Act comply with the legislative review provisions of Act No. 176.<sup>1</sup>

CONCLUSION:

\*3 It is the opinion of this Office that the South Carolina Coastal Council's interim rules and regulations, authorized in Section 13(b) of Act No. 123 of 1977, need not comply with the provisions of Article 1, Section 12, Act No. 176 of 1977.

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Footnotes

1 However, the final rules and regulations must be promulgated in accordance with the Coastal Council Act and with Act No. 176 of 1977.

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