

1977 S.C. Op. Atty. Gen. 279 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-353, 1977 WL 24692

Office of the Attorney General

State of South Carolina

Opinion No. 77-353

November 4, 1977

*1 Honorable Cyril B. Busbee
State Superintendent of Education
Department of Education
Rutledge Office Building
Columbia, South Carolina 29201
ATTN: Ms. Dale Buxton
Mr. Lewis Lanier

Dear Mr. Busbee:

You have requested advice as to the proper procedure to follow when promulgating emergency regulations pursuant to the State Register and Administrative Procedures Act (Act 176 of 1977). I conferred with your Department's attorneys in an attempt to clarify a confusing and poorly drafted section of the Act. The following is a discussion of the procedures that this Office feels should be followed when promulgating emergency regulations.

The confusion and uncertainty were created when the General Assembly dealt with emergency situations in two different sections. Adhering to the principle that a statute should be construed so that all of its parts harmonize and are consistent with its general scope and object [[Crescent Mfg. Co. v. Tax Commission, 129 S.C. 480, 124 S.E. 761 \(1924\)](#)], these two sections have been interpreted to apply to emergency situations where an agency finds that an imminent peril to the public health, safety and welfare requires immediate promulgation of an emergency regulation.

Once an agency has determined that such a situation exists, the agency should publish a notice of proposed emergency regulation making in two newspapers of general circulation in this State one week prior to promulgation. It should be noted that only Section 12 requires this type of notice and Section 12 by its terms is limited to those emergency situations which arise when the General Assembly is not in session. It is the recommendation of this Office, however, that this procedure be followed when promulgating an emergency regulation when the General Assembly is in session and when it is not in session to ensure that the object of the statute, public notice and participation in regulation making, is fulfilled. Furthermore, although the act does not detail what the notice should contain, it is the recommendation of this Office that the notice include a description of the subjects and issues involved in the proposed regulation and a statement as to the necessity of its immediate promulgation. These recommendations are only suggestions of a better procedure to be followed in normal situations.

Upon promulgation of the emergency regulation, the agency should then file the regulation and a statement as to the necessity of immediate promulgation with the Legislative Council so that it can be published in the State Register. Although this procedure is only specified in Section 13, Section 4 of the Act requires that it be so filed.

To ensure that the public has notice of emergency regulations, this Office heretofore has interpreted the provisions of Sections 12 and 13 to apply to every emergency regulation no matter when it is promulgated. However, Section 12 clearly states that these types of regulations, when promulgated when the General Assembly is not in session, are effective for ninety days from the date of promulgation and are renewable only if the General Assembly is not in regular session at the end of the ninety-day period. Section 13 provides that the emergency regulations shall remain in effect for ninety days only and shall not be renewed. Since Section 12 applies to regulations promulgated when the General Assembly is not in session, it is presumed that Section 13 applies to regulations promulgated when the General Assembly is in session.

*2 I trust this discussion of the procedures to be followed is an adequate explanation of conflicting sections of the Act. If I can be of further assistance, please let me know.

Sincerely yours,

Richard D. Bybee
Staff Attorney

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