

1976 WL 30423 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 6, 1976

\*1 Dr. R. Archie Ellis  
Commissioner  
South Carolina Department of Social Services  
Post Office Box 1520  
Columbia, South Carolina 29202

Dear Dr. Ellis:

This is in reply to your letter of March 29, 1976, in which you enclosed a copy of a letter from Mrs. Virginia M. Smyth, Regional Commissioner, Department of Health, Education and Welfare, Region IV, Atlanta, Georgia. In her letter, Mrs. Smyth has requested an opinion 'as to whether the recently adopted Appropriations Act and/or other State statutes as currently interpreted prevent the State Department of Social Services from carrying out the State Plan commitments in the AFDC and Medicaid programs.'

Mrs. Smyth's letter makes reference to the 'advisory' opinion from this Office dated January 29, 1976, wherein it was concluded 'that the South Carolina Department of Social Services possesses no statutory authority to enforce the county departments of social services to comply with its rules and regulations nor to impose sanctions for failure to so comply.' (Emphasis added).

The distinction must be made as to the statutory authority to impose penalties or monetary sanctions against the county departments, and any recourse that the South Carolina State Department of Social Services would have to enforce a failure to comply by virtue of appropriate legal action against a county department. The point that was being made was that in light of the requirement of the Social Security Act that the programs must be statewide in effect was that the State Department could not withhold funding to a county department for failure to comply with an appropriate regulation promulgated by the State Department. This course of action would in and of itself be violative of the AFDC and the Medicaid programs.

By virtue of Section 71-8, Code of Laws of South Carolina (1962), it is provided in part:

'The State Department shall supervise and administer the public welfare activities and functions of the State as provided in this chapter or as otherwise authorized by law and may act as the agent of the State, cooperate with any Federal agency for the purpose of carrying out matters of mutual concern and administer any Federal funds granted the State in the furtherance of the duties imposed upon the State Department . . . The Department may adopt all necessary rules and regulations and formulate policies and methods of administration, when not otherwise fixed by law, to carry out effectively the activities and responsibilities delegated to it . . .'

Section 71-9, Code of Laws of South Carolina (1962) provides:

'The State Department shall supervise the administration of assistance under this chapter. The State Department shall prescribe the form of and print and supply to county departments blanks of applications, reports, affidavits and such other forms as it may deem advisable. The State Department shall make rules and regulations necessary for the carrying out of the provisions of this chapter to the end that assistance be administered uniformly throughout the State, having regard to the varying conditions in different parts of the State, and that the spirit and purpose of this chapter may

be complied with. All such rules and regulations made by the State Department shall be binding upon the county departments and shall be complied with by them.' (Emphasis added).

\*2 Section 71-34, Code of Laws of South Carolina (1962) provides in part:

'Subject to rules and regulations of the State Department, each county board shall select a director, referred to in this chapter as the county director, to discharge the duties of such office . . . The county director shall be the chief executive officer of the county board electing him and shall perform such duties as are directed by the county board, in conformity to the general policies of the State Department or as directed by law.' (Emphasis added).

Section 71-36, Code of Laws of South Carolina (1962) provides in part:

'The respective county boards shall act as the representatives of the State Department in administering such welfare activities within the county as are provided for by law or as are directed and required by the State Department when not otherwise provided for by law . . . Subject to the rules and regulations of the State Department, each of the county boards may use any funds supplied to it by the county in which it operates for such purposes as may be directed by law, in addition to its other duties. Each county board shall serve as the agent of the State Department in the performance of such functions as the State Department may delegate to it.'

Section 71-39, Code of Laws of South Carolina (1962) provides:

'The respective county boards shall maintain such standards of work, procedure and records as are required by the State Department in the discharge of their functions or in the use of any funds provided by the State Department.'

Section 71-40, Code of Laws of South Carolina (1962) provides:

'The records and accounts of each county shall be maintained as prescribed by the State Department and shall be subject to inspection, supervision and audit by the State Department and in the same manner and with the same effect as may be provided by law for the examination of other public offices.'

The failure of a county department to comply with any of the cited statutory provisions or any other statutory provision specifying their duties can certainly be rectified by appropriate legal action in the courts of this State. In the opinion of this Office, there are no provisions in the Appropriations Act dealing with the South Carolina Department of Social Services or any other State statutes which prevent the State Department of Social Services from carrying out the State Plan commitments in the AFDC and Medicaid programs.

Very truly yours,

Raymond G. Halford  
Senior Assistant Attorney General

1976 WL 30423 (S.C.A.G.)