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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

October 9, 2002

Mr. Ralph H. Haile
South Carolina Human Affairs Commission
P. O. Box 4490
Columbia, South Carolina 29240

Dear Mr. Haile:

You note that "the South Carolina Human Affairs Commission serves as the administrative agency for the filing of a complaint under the Public Accommodations Act." You advise that "[t]his law does not stipulate the time period an individual has to file a complaint from the date of the alleged act of discrimination." Accordingly, you have requested an opinion "interpreting the time period an individual has to file a timely complaint under this law." By way of background, you state that "[a]ll other laws that the Human Affairs Commission is charged with enforcing have a specific time period in which to file a complaint." In a telephone conversation with your Office, we were advised that such period consists of 180 days. In that same conversation, your staff indicated that in the past, the Commission had "borrowed" the three year statute of limitations governing personal injuries, but recently had received information from other attorneys questioning the applicability of a statute of limitations governing civil actions to the Commission's administrative proceedings.

Law / Analysis

The South Carolina statute which establishes the Right to Equal Enjoyment and Privileges To Public Accommodations is codified at S.C. Code Ann. Section 45-9-10 et seq. This law was enacted in 1990. Section 45-9-10(A) states that "[a]ll persons shall be entitled to full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in Article 1 [§45-9-10] of this chapter, without discrimination or segregation on the ground of race, color, religion, or national origin." Subsection (B) provides an enumeration of "public accommodations" covered by the Act "if discrimination is supported by state action." The term "supported by state action" is defined in Subsection (C).

Section 45-9-40 sets forth the procedure for filing a complaint with the Human Affairs Commission for violation of the Public Accommodations Act. Such Section provides:

> Whenever the Attorney General receives a complaint and has cause to believe that a person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by the provisions of Article 1, and that the pattern or practice is of a nature so as to deny the full exercise of the rights described in the provisions of Article 1, the Attorney General shall notify the State Law Enforcement Division which shall conduct an investigation. The results of this investigation must be reported to the State Human Affairs Commission. A panel of not fewer than three commission members, designated by the chairman, shall determine if there is reasonable cause to believe that the facts alleged, based upon the results of this investigation, are sufficient to state a violation of Article 1 by a pattern or practice of discrimination or segregation.
>
> If this panel finds reasonable cause, the chairman shall inform the Attorney General, and the Attorney General or his designee shall begin an action by filing a complaint with the commission and serving, by certified mail, return receipt requested, the parties named in the complaint. The commission members which serve on this panel may not serve on the panel conducting a hearing on the allegations contained in the complaint if a license revocation proceeding is initiated. If a person alleged to have violated the provisions of Article 1 by a pattern or practice of discrimination or segregation is an employee or agent of an establishment as defined in Section 45-9-10, the Attorney General shall make a diligent effort to include in the complaint the name of the employer, principal, or a third party who may be the holder of a license or permit under which the establishment or an agent of the establishment operates. The complaint must set forth a description of the charges, including the facts pertaining to the pattern or practice of discrimination or segregation and a listing of those licenses or permits which are sought to be revoked under the provisions of this article and must state clearly the remedy or penalty available pursuant to Section 45-9-60 and 45-9-80 if the allegations are found to be true.

As you indicate, no time deadline for filing an administrative complaint pursuant to § 45-9-40 is specified therein. Nor is a time restriction contained in any other part of the Public Accommodations Law. It is worthy of note, however, that even though no time deadline for filing the complaint is provided, a deadline is imposed for a hearing to be held on the complaint. Section 45-9-50 provides for a hearing on the complaint "within sixty days of its filing, but not sooner than twenty days from the date of the filing of the complaint." Section 45-9-60 also authorizes the Human Affairs Commission to "establish rules of procedure" for the conduct of the panel hearings. Such Section also establishes certain prerequisites for the conduct of such hearings and specifies particular rights of the person or persons charged in the complaint.

Section 45-9-75 provides the procedures for the Commission's panel to issue an order. Pursuant to § 45-9-80, if the panel finds a violation of § 45-9-10, a procedure for revocation of the license of the person charged is detailed. Such Section also states that "[n]o owner of an establishment, employee of an establishment, or agent of an establishment who is found to have violated the provisions of Article 1 by a pattern or practice of discrimination or segregation may obtain a license or permit from the same regulatory or licensing entity or seek the reissuance of a revoked license or permit within three years from the date of the panel's order or a final determination of a court of competent jurisdiction, whichever is later.

Section 45-9-90 establishes criminal penalties for a violation of Article 1. Pursuant to § 45-9-100 a person "may institute an action in his own name in the circuit court to recover damages for violations of Article 1." However, in accordance with § 45-9-110, prior to bringing any civil action, the person must "seek conciliation" thereof. The Commission is given "sixty days to investigate the charge, attempt conciliation, and negotiate a settlement." No civil action may be commenced by an aggrieved party "until sixty days after the filing of the charge [with the Commission] or until the commission issues a letter stating that the conciliation process has concluded, whichever occurs first." Following the expiration of the 60 day period, "the person filing the charge is deemed to have exhausted his administrative remedy notwithstanding whether the commission has concluded its attempts of conciliation." Section 45-9-120 makes it clear that the administrative remedies specified by the Act are not a limitation upon the right to sue civilly in accordance with the statute or vice versa.

While the State's Public Accommodations Law specifies no time deadline for filing an administrative complaint with the Human Affairs Commission, the Human Affairs Law does expressly restrict the time for filing a complaint with the Commission for violations of the Human Affairs statute. Section 1-13-90(a) provides that "[a]ny person shall complain in writing under oath or affirmation to the Commission within one hundred eighty days after the alleged discrimination practice occurred."

The South Carolina Human Affairs Act was first enacted in 1972 and was revamped in 1979. As our Supreme Court has recognized, "[t]he South Carolina Human Affairs Law essentially follows the substantive structure of Title VII [of the Civil Rights Act of 1964], and the enforcement agency for Title VII, the Equal Employment Opportunity Commission, is in all relevant and material respects analogous to the respondent commission." Orr v. Clyburn, 277 S.C. 536, 539, 290 S.E.2d 804, 805 (1982). In that regard, the Court noted that "Title VII cases which interpret provisions or procedures essentially identical to those of the Human Affairs Law are certainly persuasive if not controlling in construing the Human Affairs Law." Id.

The Human Affairs Act was again amended in 1996 by Act No. 426. The amended Act, among other changes, added discrimination based upon "disability" as an unlawful employment practice to go with the Commission's jurisdiction governing acts of discrimination based upon race,

religion, color, sex, national origin and age. Interestingly, Section 1-13-90 – that provision which requires the filing of administrative complaints with the Commission for alleged violations of the Human Affairs Law within 180 days – was also amended as part of Act No. 426. However the 180 day time limit was not affected by such amendment. Moreover, even though the Legislature then possessed the opportunity to do so, it is striking that in its 1996 amendments to the Human Affairs statute, the General Assembly declined to make any reference whatever to the Public Accommodations Law.

In attempting to determine the answer to the question of the time deadline for filing an administrative complaint pursuant to the Public Accommodations Law, a number of principles of statutory interpretation are pertinent. First and foremost, in interpreting a statute, the primary purpose is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). An enactment should be given a reasonable and practical construction, consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). Words used therein should be given their plain and ordinary meaning without resort to a subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Chas., 295 S.C. 408, 368 S.E.2d 899 (1988).

Furthermore, in construing a statute, it is proper to consider legislation dealing with the same subject matter. Fidelity and Casualty Ins. Co. of N.Y. v. Nationwide Ins. Co., 278 S.C. 332, 295 S.E.2d 783 (1982). Different statutes in pari materia, though enacted at different times, and not referring to each other must be construed together as one system and as explanatory of each other. Fishburne v. Fishburne, 171 S.C. 408, 172 S.E. 426 (1934).

In addition, a statute must be construed in light of the circumstances and conditions existing at the time of its enactment. Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956); Timmons v. S.C. Tricentennial Comm., 254 S.C. 378, 175 S.E.2d 805 (1970). In enacting a statute or resolution, it must be presumed that the Legislature acted with deliberation and with full knowledge of the effect of the act and with full information as to the subject matter and existing conditions and relevant facts. 82 C.J.S., Statutes, § 316, cited in Op. Atty. Gen., Op. No. 87-6 (January 21, 1987).

With these principles in mind, it is our opinion that the most reasonable interpretation of the General Assembly's intent in enacting the Public Accommodations Act, is that the Legislature desired to apply the same 180-day limitation for filing administrative complaints with the Human Affairs Commission under the Public Accommodations Act as is expressly required by the Human Affairs Law. A number of reasons support this conclusion.

First of all, we must determine whether the 3 year statute of limitations for civil actions for personal injury would be applicable here. By statute, an action for personal injury must be commenced within three years after the cause of action shall have accrued. See, S.C. Code Ann. Sec. 15-3-20; 15-3-530 (5) ["injury to the person or rights of another"]. Typically, courts deem civil

rights actions based upon invidious discrimination as most analogous to and governed by the State's statute of limitations for personal injuries. See, e.g. Gonzalez Garcia v. Puerto Rico Electric Power Authority, 214 F.Supp. 194 (D. Puerto Rico 2002); Bulls v. Holmes, 403 F.Supp. 475 (E.D.Va. 1975); Van Horn v. Lukhard, 392 F.Supp. 384 (E.D.Va. 1975).

Here, however, we are not concerned with a statute of limitations governing "civil actions," but, instead, a time deadline for seeking an administrative remedy. Courts draw a sharp distinction between court actions which seek a remedy from the judicial branch of government and administrative complaints which seek relief from the executive branch. See, State ex rel. McLeod v. Yonce, 274 S.C. 81, 261 S.E.2d 303, 304-305 (1979) [to authorize courts to appoint judges as hearing officers to preside over administrative hearings infringes upon the executive branch and violates the Constitutional provision mandating separation of powers].

We start by noting that authorities often deem administrative proceedings as not constituting "actions" for purposes of statutes of limitations. For example, in Guthmiller v. North Dakota Dept. of Human Services, 421 N.W.2d 469 (1988), the Supreme Court of North Dakota found that "[a]ttempted collection of child support arrearages through the tax intercept procedures is not 'an ordinary proceeding in a court of justice,' but rather is in the form of administrative proceedings conducted before the agency." 421 N.W.2d at 470.

Using similar reasoning, courts elsewhere have concluded that statutes of limitation for civil actions are inapplicable to administrative proceedings. See, Carter v. Commonwealth, 700 A.2d 1069 (Pa. 1997) [two year limitation period for action for civil penalty or forfeiture applies to proceedings commenced in courts and not to administrative proceedings]; In The Matter of Wage and Hour Violations of Holly Inn, 386 N.W.2d 305 (Minn. 1986) [two year statute of limitations governing actions for recovery of wages inapplicable to administrative proceeding against restaurant for violating state minimum wage laws]; Landes v. Dept. of Professional Regulation, 441 So.2d 686 (Fla. 1983) [in absence of specific legislative authority, civil or criminal statutes of limitations are inapplicable to administrative license revocation proceedings]; Robert F. Kennedy Medical Center v. Dept. of Health Services, 72 Cal.Reptr.2d 180 (1998); Bernd v. March Fong Eu, 100 Cal.App.3d 511, 161 Cal.Reptr. 58 (1979) [statute of limitations governing civil actions against notaries public was inapplicable to disciplinary proceeding brought against notary public by Secretary of State].

Conversely, courts have ruled that statutes governing time deadlines for filing administrative complaints alleging unlawful discrimination are not controlling with respect to determining the appropriate statute of limitations for bringing a civil rights action in court. In Doukas v. Metropolitan Life Ins. Co., 882 F.Supp. 1197 (D.N.H. 1995), for example, the Court concluded that New Hampshire's three year general personal injury statute of limitations, rather than its 180-day period for filing an administrative claim alleging a violation alleging its Law Against Discrimination, governed plaintiff's Americans with Disabilities Act suit. Citing Burnett v. Grattan, 468 U.S. 42, 104 S.Ct. 2924, 82 L.Ed. 36 (1984), the Doukas Court found there "are numerous distinctions between

the administrative process initiated under RSA 354-A when a complaint of discrimination is filed with the New Hampshire Commission for Human Rights and the judicial process initiated by filing a civil complaint in federal court under the ADA." 882 F.Supp. at 1200.

Our own Supreme Court and Court of Appeals have steadfastly recognized the clear distinction between judicial and administrative proceedings as well. See, Schwartz v. Mount Vernon-Woodberry Mills, Inc., 206 S.C. 227, 337 S.E.2d 517 (1945) [Industrial Commission is not a "court" in the constitutional or statutory sense, but is an administrative tribunal exercising some quasi-judicial functions, whose powers are found in statute]; Jennings v. Sawyer, 182 S.C. 427, 189 S.E. 746 (1937) [statutes authorizing Condemnation Board to make award of damages to owner of property condemned for state highway not unconstitutional as attempting to bestow judicial functions since Condemnation Board acts merely as a fact-finding body and is not a "court" with judicial functions]; McEachern v. Black, 329 S.C. 642, 496 S.E.2d 659 (Ct. App. 1998) [citing Forrester v. White, 484 U.S. 219, 108 S.Ct. 538, 98 L.Ed.2d 555 (1988), noting that the Forrester Court "created a distinction between judicial and administrative decisions ... ." 329 S.C. at 650]. The reasoning of these decisions makes it evident that our courts would agree with the courts in other jurisdictions that a proceeding before an administrative board, such as the Human Affairs Commission, "is not a civil action ...," and thus is not governed by statutes of limitations such as § 15-3-530(5) [three year statute of limitations for personal injury and deprivation of rights] because such provisions relate "only to actions ... in courts, and not hearings before boards." See, Bold v. Bd of Med. Examiners, 133 Cal.App. 23, 23 P.2d 826 (1933).

In enacting the Public Accommodations Act of 1990, the General Assembly did not impose a deadline therein for filing an administrative complaint with the Human Affairs Commission. However, for us to conclude that this was a mere oversight or the expression of an intent to employ the 3 year statute of limitations for personal injury actions in court sweeps too far. It makes more sense to conclude that by omitting any time deadline for administrative complaints, the Legislature intended to rely upon the same deadline of 180 days required by the parallel Human Affairs Act. Since the Legislature must be presumed to know the clear difference between a civil "action" and an administrative proceeding, we must ascribe that legislative intent which is most logical rather than one which merely speculates that the General Assembly may have intended to apply a statute of limitations governing court "actions" rather than a well-established time deadline for a parallel administrative process before the same administrative agency. Such speculation would require us to ask why the Legislature would impose a 180-day time deadline for certain administrative complaints made to the Human Affairs Commission and yet mandate a three year limitation for Public Accommodations Act complaints. We choose instead to read the Public Accommodations Act in pari materia with the Human Affairs Act and thus governed by the very same time deadline for filing administrative complaints under the Human Affairs Law – 180 days.

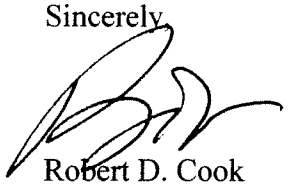
It is also significant that the Public Accommodations Act does impose other specific time deadlines. For example, § 45-9-110 gives the Human Affairs Commission "sixty days" to

investigate "a charge of unlawful discrimination or segregation under Article 1." This inclusion of that time deadline buttresses the conclusion that the Legislature was satisfied with leaving the time deadline for filing the complaint the same as that imposed by the Human Affairs Law. Again, this reading of legislation governing this administrative procedure together with its parallel administrative procedure, rather than a judicial limitation such as the 3 year statute of limitations for court actions, is preferable, more logical and, in our view, most consistent with the intent of the General Assembly.

Conclusion

It is our opinion that the General Assembly intended the same 180-day deadline for parallel or similar proceedings under the Human Affairs Act to serve as the deadline for filing administrative complaints before the Human Affairs Commission under the Public Accommodations Law of 1990. This conclusion, while not free from doubt, is the most logical, and is consistent with the recognition by the Legislature of the clear distinction between a judicial "action," governed by a statute of limitations such as § 15-3-530(5) and an administrative proceeding before the Human Affairs Commission. The General Assembly may, however, wish to clarify its intent by further amendment.

Sincerely,



Robert D. Cook
Assistant Deputy Attorney General

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