



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

January 16, 1997

James T. Clark, State Director
South Carolina Department
of Social Services
Post Office Box 1520
Columbia, South Carolina 29202

Re: Informal Opinion

Dear Mr. Clark:

You have requested that this Office reconsider the legal conclusions reached in two previously issued opinions.

In an opinion dated November 29, 1973, this Office concluded that mileage and per diem allowances for members of county DSS boards should be controlled by the provisions of the 1973-74 Appropriations Act rather than the provisions of S.C. Code Ann. § 71-32 (1962). The reason behind this conclusion was that the provisions of the 1973-74 Appropriations Act were controlling since the Act represented the last expression of legislative will.

In 1989, then commissioner of the DSS James L. Solomon, Jr., asked this Office to reconsider the November 29, 1973 opinion. In an opinion dated January 10, 1990, this Office found that the 1973 opinion was not clearly erroneous. Instrumental in this decision was the conclusion that the broad language of the Appropriations Act which included "all boards, commissions and committees" could arguably supersede other statutes which make different provisions for compensation of various board members.

In light of these opinions, you ask whether § 72.36 of the 1995-96 Appropriations Act governs the payment of the per diem to DSS county advisory board members or whether S.C. Code Ann. § 43-3-20 (Supp. 1995) governs the payment of the per diem.

There are two seemingly conflicting legislative statements governing the payment of a per diem to the DSS county advisory board members. First, S.C. Code Ann. § 43-3-

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20 (Supp. 1995) provides that "[m]embers of the county boards shall receive the same mileage as is provided by law for state boards, committees and commissions for travel in attending meetings and a per diem, the total per diem not to exceed seventy-five dollars per year." Second, § 72.36 of the 1995-96 Appropriations Act provides in pertinent part that "[t]he per diem allowance of all boards, commissions and committees shall be at the rate of Thirty-five (\$35) Dollars per day."

This Office has consistently found that subsequent comprehensive legislation controls over former laws on the subject. See, Ops.Atty.Gen. dated September 26, 1986 and August 7, 1985. In the facts presented by your opinion request, it appears that the Appropriations Act provision which includes the language "all boards" is comprehensive legislation on this subject. Therefore, there is strong support for a conclusion that the language of the Appropriations Act was intended to supersede that language of § 43-3-20. Furthermore, since the issuance of the 1973 and 1990 opinions, the General Assembly has not amended the per diem provisions of § 43-3-20. It is well recognized that the absence of any amendments following the issuance of an opinion of the Attorney General strongly suggests that the views expressed therein were consistent with legislative intent. Scheff v. Township of Maple Shade, 149 N.J. Super. 448, 374 A.2d 43 (1977); Op.Atty.Gen. No 84-69.

This Office is keenly aware of the budgetary considerations that each State Agency must face on a daily basis. However, when a question is presented for legal analysis, we must determine the question asked based on our interpretation of the law. As the law presently stands, the previous opinions of this Office are not clearly erroneous. I would recommend that it may be prudent to work with the General Assembly in order to clarify the per diem question.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,


Paul M. Koch

Assistant Attorney General