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The State of South Carolina



Office of the Attorney General

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August 24, 1993

The Honorable Irene K. Rudnick
Member, House of Representatives
Post Office Box 544
Aiken, South Carolina 29802

Dear Representative Rudnick:

Referencing correspondence on the appointment of members to community mental health boards, the Aiken-Barnwell Mental Health Board in particular, you have asked whether appointments can be made at the discretion of the Aiken and Barnwell county legislative delegations. You have also referenced recent amendments to the statute governing appointment of these board members.

The act bearing ratification number 57 of 1993 amended S.C. Code Ann. § 44-15-60, as to appointment of members to community mental health boards, to remove the requirement that representation of counties on a multi-county board be in proportion to that county's share of the mental health center's budget. The 1993 amendment now provides: "The number of members representing each county must be proportional to its population." The act took effect upon approval by the governor on April 23, 1993, but contained no terms of transition or implementation.

In the Restructuring Act, however, § 44-15-60 was amended in § 1079 to provide for removal of mental health board members by the governor pursuant to newly amended § 1-3-240. The editing of § 1079 demonstrates unequivocally the legislative intent that the change was limited to the removal process; however, in effecting this change, the legislature reenacted the text of § 44-15-60 as it existed prior to the 1993 amendment; the only amendment made to § 44-15-60 by the Restructuring Act related to removal. By repeating the language of § 44-15-60 as it appeared prior to the 1993 amendment, a conflict seems to have been created by the legislature.

Request Letter

Section 1615 of the Restructuring Act recognizes that certain conflicts may occur:

Notwithstanding any permanent or temporary provision of law, any enactment, or portion thereof, of the General Assembly in 1993 in conflict with any provision of this act shall be suspended as to its force and effect until March 1, 1994. Where there is no conflict the provisions of any other enactments shall supersede the provisions of this act. For the purposes of this section, "conflict" shall not include:

(1) where provisions of the Code of Laws of 1976, as amended, are repeated herein so as to incorporate only changes in the names of agencies, divisions or departments, except so far as such change in name conflicts with another enactment or a portion of another enactment, or

(2) where provisions of the Code of Laws of 1976, as amended, are repeated herein so as to incorporate only changes in the governance or structure of an agency, division or department except so far as such governance or structure is in conflict with another enactment or some portion of another enactment.

Analyzing your inquiry in conjunction with § 1615, the following may be observed: Section 44-15-60 was amended in 1993, by R-57. The Restructuring Act repeated the language of § 44-15-60 prior to amendment, to effect a change in the removal of community mental health board members. The Restructuring Act did not repeat the language to incorporate a name change in an agency, division, or department. The Restructuring Act may well be viewed as having repeated the language to effect changes in the governance of an agency, division, or department of the state, however, since community mental health board members are appointed by the governor (upon recommendation by the legislative delegation or county council) and would be removed by the governor pursuant to § 1-3-240 in an appropriate case. That being the case, the second exception specified in § 1615 may well be met, so that the earlier 1993 amendment as to appointment based on population would be given effect, as would the removal procedure specified in the Restructuring Act; the two provisions would not be

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viewed as conflicting and both would be given effect.¹ This conclusion is, of course, consistent with legislative intent to amend only the removal function of the law in § 1079 of the Restructuring Act.

Based on the foregoing, it is the opinion of this Office that the amendment to § 44-15-60 as to appointment of community mental health board members according to population of the member-counties, as adopted by R-57, would be given effect. Because the amendment to § 44-15-60 contains mandatory language, i.e., the word "must," c.f. South Carolina Dept. of Hwys. and Public Transportation, 288 S.C. 189, 341 S.E.2d 134 (1986), it would appear that appointments to community mental health boards are to be made in proportion to the population of the participating counties. In that respect, we are of the opinion that the county legislative delegations have no discretion in implementing the law.

With kind regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions

¹We understand that the Code Commissioner intends to incorporate both amendments to § 44-15-60 into the South Carolina Code of Laws. See enclosed memorandum of July 29, 1993 to David Williams from H. Thompson Cone of the Legislative Council.