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November 2, 1993

The Honorable Patrick B. Harris
Chairman, Joint Legislative Committee on Aging
212 Blatt Building
Columbia, South Carolina 29211

Dear Representative Harris:

You have advised that the Human Services Coordinating Council is created each year in Part I of the annual Appropriations Act. This year the authorization is found in proviso 129.21 of Act No. 164 of 1993. This section states that: "The Council shall consist of: (1) The chairperson of the boards of the following agencies: Division on Aging ... (3) The Governor or his designee"

As you observed, prior to restructuring, the South Carolina Commission on Aging had representation on the Council. The name of the Commission was changed by Act No. 181 of 1993 (the Restructuring Act) to the Division on Aging. You have further advised that since restructuring, all of the Divisions under the Governor's office have been rolled up into one seat, represented by one person from the Governor's office.

You have asked whether the Division on Aging is to have a separate seat on the Human Services Coordinating Council. Aspects of the Restructuring Act and the Appropriations Act must be considered.

Restructuring Act

Section 1-30-110 was added to the Code by the Restructuring Act; effective July 1, 1993, various agencies, boards, and commissions were transferred to the Governor's Office, including the Commission on Aging. Within that Act, § 43-21-10 et seq. as to the Commission on Aging were amended, to the effect that the Commission became the Division on Aging and its governing body became an advisory commission. The Division

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will carry out the responsibilities formerly handled by the Commission, and certain responsibilities have been added. See amended § 43-21-40.

The Restructuring Act was signed by the Governor on and was effective as of June 18, 1993. Section 1615 of that Act provides a means to resolve conflicts between that Act and other 1993 acts should a conflict arise.

Appropriations Act

As previously stated, the Human Services Coordinating Council has been created from year to year in the annual appropriations acts; in Act No. 164 of 1993, the enabling authority is found in proviso 129.21, supra.

A review of proviso 129.21 (and, indeed, the entire act) reveals that governmental restructuring was taken into account when the General Assembly passed the act. For example, among the entities to have representation on the Human Services Coordinating Council are, in addition to the Division on Aging, the Department of Alcohol and Other Drug Abuse Services, Department of Juvenile Justice, Department of Disabilities and Special Needs, and four other programs or agencies which are now within the Governor's office. Clearly the General Assembly was aware of restructuring and took the restructured system into account, as evidenced by the recognition of new state agencies or various divisions within the Governor's office.

The Appropriations Act was signed by the Governor on and was effective as of June 25, 1993, according to the Digest of Senate and House Bills and Resolutions, or June 21, 1993, according to Advance Sheet No. 5, page 1293, of the Acts and Joint Resolutions of the General Assembly, 1993 Regular Session. Following Part II of the Appropriations Act is the following: "All Acts or parts of Acts inconsistent with any of the provisions of Part I of this Act are hereby suspended for the Fiscal Year 1993-94."

Discussion

The Human Services Coordinating Council has been created or renewed each year pursuant to provisions in the annual appropriations act. See proviso 129.21, Act No. 164 of 1993; proviso 129.25, Act No. 501 of 1992; proviso 129.45, Act No. 171 of 1991; proviso 129.48, Act No. 612 of 1990; and proviso 129.48, Act No. 189 of 1989. Each year's provisions seem to be quite similar, particularly with respect to the entities or perspectives to be represented on the Council. The only apparent changes made to proviso 129.25 of 1992 Act No. 501 by the 1993 act include the revision of names of participating agencies or commissions to reflect restructuring, and modification of one of

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the Council's goals concerning the Client Masterfile System. Thus, while each year's Council is temporary, due to the nature of appropriations acts, there is some measure of permanence, as well.

Examining all provisions of both 1993 acts together, we are of the view that the provisions are not inconsistent and further that the proviso of the appropriations act was drafted with the restructuring act in mind. Thus, it is possible to construe both acts harmoniously, as must be done whenever possible, to conclude that the Division of Aging would be entitled to its own seat, separate from the representative of the Governor, on the Human Services Coordinating Council.

Based on the foregoing, it is our opinion that the Division of Aging would have a separate seat on the Human Services Coordinating Council.

With kindest regards, I am

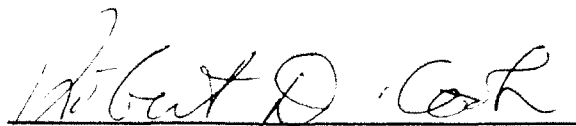
Sincerely,

Patricia D. Petway

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REVIEWED AND APPROVED BY:



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