

The State of South Carolina



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March 15, 1993

The Honorable Candy Y. Waites
Member, House of Representatives
310-B Blatt Building
Columbia, South Carolina 29211

Dear Representative Waites:

You have advised that, in Proviso 39.13 of the 1992-93 Appropriations Act, the General Assembly appropriated to the State's seventeen rape crisis centers \$483,407; the proviso states in relevant part that "[o]f the amounts appropriated in Primary Care-Case Service, \$483,407 shall be used for rape crisis centers around the state." (Emphasis added.) Further, in September 1992, the Budget and Control Board ordered all agencies to reduce their budgets by four percent. In response to this mandate, the Department of Health and Environmental Control (DHEC) reduced the funds appropriated to the rape crisis centers under Proviso 39.13 by \$100,978, in excess of twenty percent of the funds appropriated by the General Assembly and five times more than the amount authorized by an across-the-board reduction.

Based on the above, you have asked for our opinion on two questions:

1. Whether DHEC had the authority to violate the explicit language of Proviso 39.13 that the appropriated funds "shall be used for rape crisis centers around the state."
2. Whether it would be an unlawful delegation of legislative power to allow DHEC, in the face of the language of Proviso 39.13, to reduce the funds appropriated under the proviso in excess of the four percent across-the-board reduction.

In interpreting any legislative act, the primary objective is to ascertain and effectuate legislative intent if at all possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Words used in a statute are to be given their plain

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and ordinary meanings. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). When language of a statute is plain and unambiguous, it is to be applied literally. State v. Goolsby, 278 S.C. 52, 292 S.E.2d 180 (1982). Use of the word "shall" in a statute generally connotes mandatory compliance. S.C. Dept. of Highways and Public Transp. v. Dickinson, 288 S.C. 189, 341 S.E.2d 134 (1986). Provisos must be strictly construed. Barringer v. Dinkler Hotels Co., 61 F.2d 82 (4th Cir. 1932); 2A Sutherland, Statutory Construction, § 47.08.

Based on the foregoing principles of statutory construction, it is our opinion that the explicit language that \$483,407 "shall be used for rape crisis centers around the state" (emphasis added) is mandatory. Thus, we are of the opinion that the explicit language expressed the General Assembly's intent that DHEC must act in accordance with the proviso and that DHEC has no authority to deviate from the requirements of the proviso.¹

If the Budget and Control Board's mandate that all agencies reduce their budgets by four percent across-the-board in the wake of Gilstrap v. S.C. Budget and Control Board, Op. No. 23711 (S.C. Sup. Ct. filed September 15, 1992) is viewed as permitting an agency such as DHEC to avoid the clear mandate of language such as in Proviso 39.13, then it would appear that an unlawful delegation of legislative authority may have occurred. As stated in the Gilstrap decision,

The legislature may not delegate its power to make laws. [Cites omitted.] The appropriation of public funds is a legislative function. [Cites omitted.] A statute which, in effect, gives an administrative body "an absolute, unregulated, and undefined discretion" bestows arbitrary powers and is an unlawful delegation of legislative powers. [City omitted.] [Emphasis in original.]

It appears that DHEC has exercised "absolute, unregulated, and undefined discretion" in reducing the appropriation to rape crisis centers by more than twenty percent in light of

¹In footnote 3 of the Gilstrap decision discussed below, the Supreme Court observes that the Appropriations "Act itself contains certain categories of exemptions." In our view, the explicit language of Proviso 39.13 makes the proviso one of those items exempt from reduction.

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the mandated four percent across-the-board reductions, thus amounting to an unlawful delegation of legislative powers which flies in the face of the explicit language of Proviso 39.13.

CONCLUSION

In conclusion, we are of the opinion that:

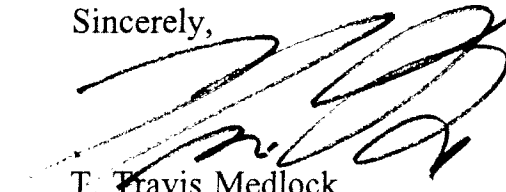
1. It is evident that the General Assembly has placed the funding of rape crisis centers, whose purpose is to reduce sexual violence against women and to assist women against whom such violence is inflicted, in a position of priority.

2. The explicit language of Proviso 39.13 of the 1992-93 Appropriations Act is mandatory and expresses the General Assembly's intent that \$483,407 shall be used for rape crisis centers around the state. DHEC has no authority to deviate from the requirements of the proviso.

3. DHEC appears to have exercised "absolute, unregulated, and undefined discretion" in reducing the appropriations to rape crisis centers in light of the mandated four percent across-the-board reductions, thus amounting to an unlawful delegation of legislative powers which flies in the face of the explicit language of the proviso.

With kindest regards, I am

Sincerely,



T. Travis Medlock
Attorney General

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