

The State of South Carolina



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April 26, 1990

Jesse A. Coles, Jr., Ph.D.
Executive Director
South Carolina State
Budget & Control Board
612 Wade Hampton Office Building
Post Office Box 12444
Columbia, South Carolina 29211

Dear Dr. Coles:

You have inquired whether the various divisions of the South Carolina State Budget and Control Board may amend certain existing policies, or "regulations," without meeting the administrative requirements of the Administrative Procedures Act. The regulations in question apply to state employees only, as opposed to members of the general public. Under prior opinions of this Office ^{1/} which refer to the Administrative Procedures Act definition of "regulation," which excludes agency procedures applicable only to agency personnel, such regulations normally need not have been promulgated subject to the Act's requirements of a public hearing and approval by the General Assembly because they do not have "general public applicability." However, at the time the Board divisions issued the regulations in question, the Appropriations Act contained a specific temporary proviso that they be submitted to the General Assembly. Such a specific legislative requirement no longer exists.

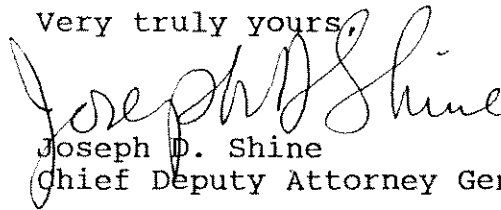
^{1/} See S.C. Att'y Gen. Ops. of March 16, 1978, and July 7, 1979, copies of which you have. Since prior opinions are not overruled unless found to be clearly erroneous or based upon applicable law which has since changed, these opinions continue to be valid. See, for example, S.C. Att'y Gen. Op. of October 3, 1986.

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Therefore, the General Assembly has mandated that Board divisions, as state agencies, are now exempt from the administrative route mandated by the Administrative Procedures Act in issuing such policy directives or rules, as described above. As a practical matter, new regulations so promulgated could alter, supersede or in effect repeal the regulations which were passed upon by the General Assembly at the time such was required. It may be prudent as a policy matter to give notice to the appropriate committees of the General Assembly of any changes in policy or rules.

In conclusion the General Assembly, has mandated that divisions of the Board, in amending policy or rules at issue herein, are exempt from the requirements of the Administrative Procedures Act.

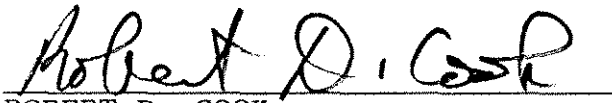
Very truly yours,



Joseph D. Shine
Chief Deputy Attorney General

JDS:ds

REVIEWED AND APPROVED:



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