

The State of South Carolina



Office of the Attorney General

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May 16, 1990

The Honorable Peden B. McLeod
Chairman, Medical Affairs Committee
305 Gressette Building, Capitol Complex
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator McLeod:

Your letter to Attorney General Medlock of May 1, 1990, has been referred to me for a response. You pose the following question:

Is the appointment of two audiologists, one of whom is also a licensed hearing aid dealer, proper pursuant to Section 40-25-40 of the Code of Laws of South Carolina, 1976, as amended?

Of course, statutory construction is, ultimately, the province of the courts. Johnson v. Pratt, 200 S.C. 315, 20 S.E.2d 865 (1942).

In interpreting a statute, the primary purpose is to ascertain the intent of the legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987); Multi-Cinema, Ltd. v. South Carolina Tax Comm'n, 292 S.C. 411, 357 S.E.2d 6 (1987). When interpreting a statute, the legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in the light of the intended purpose of the statutes. Gambrell v. Travelers Ins. Cos., 280 S.C. 69, 310 S.E.2d 814 (1983).

Where a statute is clear and unambiguous, there is no room for construction and the terms of the statute must be given their literal meaning. Duke Power Co. v. South Carolina Tax Comm'n, 292 S.C. 64, 354 S.E.2d 902 (1987). In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Multi-Cinema, Ltd. v. South Carolina Tax Comm'n, *supra*. In determining the meaning of a statute, it is the duty of the court to give force and effect to all parts of the statute. State ex

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rel. McLeod v. Nessler, 273 S.C. 371, 256 S.E.2d 419 (1979). In construing a statute, words must be given their plain and ordinary meaning, without resort to subtle or forced construction for the purpose of limiting or expanding its operation. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). The legislature is presumed to have fully understood the import of words used in a statute and intended to use them in their ordinary and common meaning, unless that meaning is vague and indefinite, or in their well-defined legal sense, if any. Powers v. Fidelity & Deposit Co. of Maryland, 180 S.C. 501, 186 S.E. 523 (1936).

Construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should not be overruled without cogent reasons. Dunton v. South Carolina Bd. of Examiners in Optometry, 291 S.C. 221, 353 S.E.2d 132 (1987).

I have reviewed Section 40-25-40 and have concluded that the statute is clear and unambiguous in that it provides that the Commission be comprised of four licensed hearing aid dealers, each of whom shall be a primary dealer from a different manufacturer, as well as one audiologist. Therefore, it appears that both appointments would be proper provided that the Committee designate that the approval of Mr. Dawsey be for the licensed hearing aid dealer vacancy and the approval of Ms. Niedringhaus be for the audiologist vacancy. In addition, I assume that Mr. Dawsey is a principal dealer of a different manufacturer's hearing aid than the other three licensed hearing aid dealers, as required by the statute.

If I can be of any further assistance, please advise me.

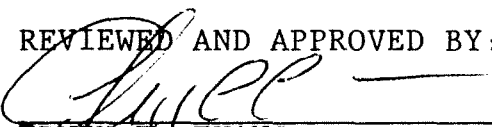
Sincerely,



Barbara M. Heape
Assistant Attorney General

BMH:bvc

REVIEWED AND APPROVED BY:


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