

The State of South Carolina



Office of the Attorney General

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January 15, 1991

The Honorable Caldwell T. Hinson
Senator, District No. 16
1115 Chesterfield Avenue
Lancaster, South Carolina 29720

Dear Senator Hinson:

In a telephone call to this Office you questioned whether the Eastern Star Home in Sumter County is exempt from legislation requiring licensing of community residential care facilities. You asked whether Act No. 512 of 1984, Part II, paragraph 19g effectively repealed 1972 legislation, R.1795, H.3608, which had exempted the Home from licensing and regulatory provisions of earlier legislation relating to boarding homes, rest homes and convalescent homes. The 1972 legislation stated:

The General Assembly finds that the Eastern Star Home in Sumter County is a private institution not open to the public and is not a boarding home, rest home or convalescent home as described in Act No. 474 of 1967 and is not therefore subject to the provisions of the Act.

The Eastern Star Home in Sumter County is hereby exempted from all licensing and regulatory provisions of Act No. 474 of 1967 so long as that institution continues its admittance procedures and financial arrangements for guests in effect on the effective date of this act.

Act No. 474 of 1967 cited in the 1972 legislation was repealed by Act No. 648 of 1976. Such legislation provided for the licensing of a "residential care facility," and was codified as Sections 43-28-10 et seq. of the Code. An exemption to the licensing requirement was provided by Section 43-28-40 for "... any such facility supported entirely by public funds or by private donations which provides accommodations and services at no cost to its residents and which was not licensed prior to June 18, 1976." This may have been cited as an exemption for the Eastern Star Home. However, pursuant to Act

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No. 512 of 1984 such provisions were repealed. The provisions in Act No. 512 referenced by you defined a "community residential care facility" and provided for licensing, regulation and inspection of such facilities.

Subsequently, Act No. 512, which had been codified as Sections 44-7-510 et seq. of the Code, was also repealed pursuant to Section 3 of Act No. 670 of 1988. The provisions of Act No. 670 have been codified as Sections 44-7-110 et seq. of the Code. Included in the 1988 Act were provisions pertaining to a "community residential care facility." Therefore, for purposes of questions regarding the status of the Eastern Star Home, reference must be made to the applicability of such provisions to the referenced Home.

The term "community residential care facility" is defined by Section 44-7-130(6) as "... a facility which offers room and board and provides a degree of personal assistance for two or more persons eighteen years older or older." A list of exemptions to the legislation is set forth in Section 44-7-170. However, based upon my review, it does not appear that such exemptions would include the Eastern Star Home. The Department of Health and Environmental Control is given authority to administer the provisions of the legislation, which include requirements for licensing of "community residential care facilities." See: Section 44-7-260.

Referencing the above, it appears that the Eastern Star Home would be subject to the provisions of Sections 44-7-110 et seq. Legislation could be sought which would remove the Home from the requirements of such provisions. However, an exemption strictly limited to the Eastern Star Home may be subject to constitutional challenges.

If there is anything further, please advise.

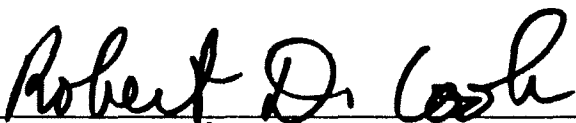
Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions