

## The State of South Carolina



## Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE: 803-734-3680  
FACSIMILE: 803-253-6283

January 24, 1991

The Honorable Peden B. McLeod  
Code Commissioner and Director  
South Carolina Legislative Council  
P. O. Box 11489  
Columbia, South Carolina 29211

Dear Mr. Commissioner:

You have asked this Office for an opinion upon the status of DHEC proposed regulation R. 61-104 (Document # 1180). In communications with this Office, you advise that the Code Commissioner has determined that the period for legislative review of Document # 1180 terminates on January 28, 1991. The pertinent background provided to us is summarized as follows. Document # 1180 was submitted to the General Assembly for legislative review on February 6, 1990. On May 24, 1990, the House Agriculture and Natural Resources Committee introduced a joint resolution disapproving regulatory Document # 1180. See H. 5149 of 1990. In the absence of this House Agriculture and Natural Resources Committee sponsored joint resolution, Document # 1180 would have taken effect upon publication of the State Register after June 6, 1990. The House adjourned sine die on June 19, 1990, without a vote having been taken upon the House Agriculture and Natural Resource Committee joint resolution. You further advise that this joint resolution died upon sine die adjournment of the past session of the General Assembly.

Your request letter recognizes that the Administrative Procedures Act does not conclusively resolve this question. I agree with your assessment of Section 1-23-120, S. C. Code Ann. (1990 Cum. Supp.); however, I reference the following related provisions that provide some guidance to the Legislative Council in this circumstance. S. C. Code Ann. Section 1-23-120 (1990 Cum. Supp.) provides in part:

The Honorable Peden B. McLeod

Page 2

January 24, 1991

The committees have one hundred twenty days from the date regulations are submitted to the General Assembly to consider regulations so referred and determine their actions on the regulations.

\* \* \*

If a resolution to approve a regulation is not enacted within one hundred twenty days after submission to the General Assembly or if a resolution to disapprove a regulation has not been introduced by a standing committee to which the regulation was referred for review, the regulation is effective upon publication in the State Register.

\* \* \*

Upon a negative vote by either the Senate or House of Representatives on the resolution disapproving the regulation and the notification in writing of the negative vote to the Speaker of the House of Representatives and the President of the Senate by the clerk of the house in which the negative vote occurred, the remainder of the period begins to run. If the remainder of the period is less than ninety days, additional days must be added to the remainder to equal ninety days.

\* \* \*

The one-hundred-twenty-day period of review begins on the date the regulation is filed with the President and Speaker. Sine die adjournment of the General Assembly tolls the running of the period of review, and the remainder of the period begins to run upon the next convening of the General Assembly excluding special sessions called by the Governor.

Of course, statutory construction is, ultimately, the province of the courts. Johnson v. Pratt, 200 S.C. 315, 20 S.E.2d 865 (1942). And in the issuance of our opinion, this Office is constrained to consider the question in the manner that we believe a court would. When a statute is ambiguous and inconclusive as to legislative intent, the courts will defer to the administrative

The Honorable Peden B. McLeod

Page 3

January 24, 1991

interpretation of the statute by the specific governmental agency or official charged with its administration.

Construction of a statute by the agency charged with executing it is entitled to the most respectful consideration [by the courts] and should not be overruled absent cogent reasons.

Logan v. Leatherman, 290 S.C. 400, 351 S.E.2d 146, 148 (1986); Welch v. Public Service Commission, 297 S.C. 378, 377 S.E.2d 133 (S. C. App. 1989). You have advised us of your administrative interpretation of Section 1-23-120 in this instance:

In that the statute [Section 1-23-120] is silent on how a regulation such as the DHEC regulation in question should be treated, I, upon further review, decided to treat it as all regulations pending on sine die adjournment. If there is a resolution pending approving a regulation it dies on adjournment of the two-year session. The days remaining for automatic approval are tolled until the next session of the General Assembly convenes; then, regardless of how many days are left, those days begin to run. Consequently, I applied this procedure to the regulation in question. On January 8, 1991, the day the time would have began to run again, the regulation was withdrawn and resubmitted, requiring a minimum of twenty days before automatic approval would occur pursuant to Section 1-23-125. The new date for automatic approval became January 28, 1991.

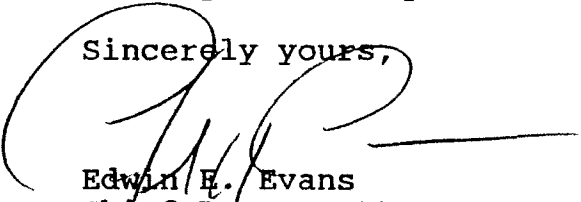
See, Letter dated January 22, 1991.

I believe that your administrative interpretation that the appropriate date for automatic approval of the DHEC regulation is January 28, 1991, is certainly one of several reasonable interpretations of Section 1-23-120. As earlier noted, in this circumstance the statute is silent and inconclusive as to the legislative intent. Thus, the court will ordinarily defer to the administrative interpretation by the official charged with administration of the statute; moreover, the administrative interpretation need not be the only reasonable interpretation, nor the result the court would have reached in the first instance. Udall v. Tallman, 380 U.S. 1 (1965). Accordingly, I believe that a court would defer to your administrative interpretation and concur with your conclusion that the automatic approval period for the DHEC regulation Document # 1180 terminates on January 28, 1991.

The Honorable Peden B. McLeod  
Page 4  
January 24, 1991

Please contact me if I may answer any further questions.

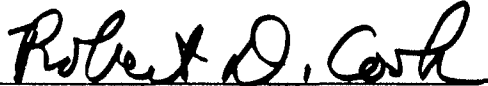
Sincerely yours,



Edwin E. Evans  
Chief Deputy Attorney General

EEE/shb

REVIEWED AND APPROVED:



---

ROBERT D. COOK  
Executive Assistant for Opinions