

# 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: 803-734-3660  
FACSIMILE: 803-253-6283

May 31, 1991

The Honorable Joe Wilson  
Senator, District No. 23  
Post Office Box 142  
Columbia, South Carolina 29202

Dear Senator Wilson:

Your letter of March 4, 1991 to Attorney General Medlock was referred to me for response. In that letter, you asked the following question: Who regulates corporations in South Carolina?

You also referenced Section 33-1-102 of the 1976 S. C. Code of Laws, Ann. The plain and unambiguous provisions of that statute are as follows:

"The General Assembly of South Carolina has power to provide regulations regarding Chapters 1 through 20 of this Title and to amend or repeal all or any part of Chapters 1 through 20 of Title 33 or its regulations at any time; and all domestic and foreign corporations subject to Chapters 1 through 20 of this Title are governed by the amendment or repeal."

Section 33-1-102 clearly vests in the General Assembly regulatory authority over corporations. Where the language of a statute is clear and unambiguous, it must be held to mean what it plainly says. Luck v. Pencar, Ltd., 282 S.C. 643, 320 S.E.2d 711 (1984).

There does not appear to be a conflict of regulatory authority because the General Assembly has limited the duties of the Secretary of State to only those official and ministerial functions prescribed by the Legislature. To that end, Section 33-1-300, CODE, provides that the "Secretary of State has the power reasonably necessary to perform the duties required of him by Chapters 1 through 20 of this Title."

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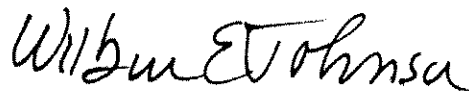
According to the Official Comment annotated to Section 33-1-300, that statute "is intended to grant the Secretary of State the authority necessary for his efficient performance of the filing and other duties imposed on him by the Act but is not intended to give him general authority to establish public policy." (emphasis supplied). In addition, the S. C. Reporters' Comments annotated to Section 33-1-300 indicate that "the Secretary of State only has the "power reasonably necessary to perform "his duties, rather than the previous more expansive grant of authority giving him that power and authority reasonably necessary" to enable him to "administer the act efficiently..."" (emphasis supplied).

Finally, the General Assembly's intention to limit the authority of the Secretary of State is further illustrated by the provisions of Section 33-1-250, CODE. In part, that statute provides that the Secretary's duty to file documents is "ministerial" in nature. The South Carolina Reporters opine that "this provision and others emphasize and clarify that the duties of the Secretary of State are purely ministerial and are intended to give no discretion if statutory requirements are met."

Accordingly, we conclude that the power to regulate corporations in the State of South Carolina rests, at present, with the General Assembly.

I trust that you will find the foregoing information to be responsive to your inquiry. Please contact me if I can be of further assistance.

Very truly yours,



Wilbur E. Johnson  
Assistant Attorney General

WEJ/fc  
REVIEWED AND APPROVED:



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DONALD J. ZELENSKA  
Chief Deputy Attorney General



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ROBERT D. COOK  
Executive Assistant for Opinions