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The State of South Carolina



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April 8, 1992

The Honorable Isadore E. Lourie
Senator, District No. 21
303 Gressette Building
Columbia, South Carolina 29202

Dear Senator Lourie:

In a letter to this Office you questioned recent action by the State Commission on Aging in adopting new criteria which provides additional program procedure for the Commission's "Senior Citizen Centers Permanent Improvement Fund" (hereafter "the Fund"). Such is set forth in a Program Instruction dated March 13, 1992. Your question involves an interpretation of Section 32 of Part II of Act No. 171 of 1991, the 1991-1992 Appropriations Act, which provides for certain bingo revenues to be placed in the Fund. Subsection (B)(1) of such provision states:

Monies credited to the Commission on Aging Fund may be used only for funding authorized in this section for the projects identified in the Senior Citizens Center Survey published by the Commission on Aging in October, 1989, and updated August, 1990. Projects must be established in the order of priority as identified in the Commission on Aging's 1990 Overall Permanent Improvement Plan Submission. The order of priority can be changed by the Joint Bond Review Committee and the State Budget and Control Board at the request of the Commission on Aging.

You question whether the recent action by the Commission on Aging in adopting new criteria was appropriate.

It is generally recognized that state agencies have only such authority as has been specifically provided.

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City of Columbia v. Board of Health and Environmental Control, 292 S.C. 199, 355 S.E.2d 536 (1987); South Carolina Tax Commission v. South Carolina Tax Board of Review, 278 S.C. 556, 299 S.E.2d 489 (1983). Any reasonable doubt as to the existence of any particular authority should be resolved against its existence. Piedmont and Northern Railway Co. v. Scott, et al. 202 S.C. 207, 24 S.E.2d 353 (1943).

As stated, the order of priority for projects as identified in the original plan can only be changed by the Joint Bond Review Committee and the State Budget and Control Board at the request of the Commission on Aging. As to any proposed changes which would be brought about pursuant to the referenced Program Instruction, this Office cannot review any such changes themselves. Any review of facts involved would be beyond the province of this Office in the issuance of opinions. See: Opins, Atty. Gen. dated December 12, 1983 and March 29, 1991. However, it is clear that in providing for a change of priorities by action of the Joint Bond Review Committee and the State Budget and Control Board by the provision in the Appropriations Act, there was no additional grant of authority to alter the basis for the original order of priority for projects as set forth in the 1990 Improvement Plan. To provide a new basis would alter significantly the original priority of projects as set forth in the Commission on Aging's 1990 Overall Permanent Improvement Plan which established the original order of priority for funding projects. Thus, if there is to be the establishment of new criteria by which any alteration of priorities is to occur, such must be by statutory authorization or the promulgation of regulations specifically permitting a different basis.

If there are any further questions, do not hesitate to contact me.

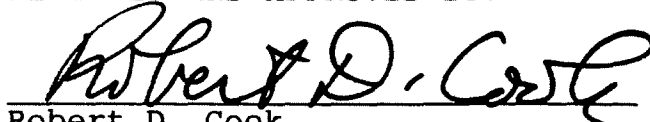
Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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