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THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
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OPINION NO. _____

March 28, 1989

SUBJECT: Boards and Commissions - County Mental Retardation Boards.

SYLLABUS: The members of a county board of mental retardation are to be appointed by ordinance of the County Council when the board is created under Section 4-9-30. The State Department of Mental Retardation must approve the disbursement of any funds under its control to such a board subject to a contract between the State Department and the board.

TO: Ms. Mary L. Duffie
Executive Director
Richland/Lexington Mental Retardation Board

FROM: Joe L. Allen, Jr. *JLA*
Chief Deputy Attorney General

QUESTION: Could the members of a county board of mental retardation created pursuant to Section 4-9-30(6) be appointed by the legislative delegation and by the county governing body and could that board receive state appropriations through the South Carolina Department of Mental Retardation?

APPLICABLE LAW: Sections 4-9-30(12), 44-21-830, 44-21-835 and 44-21-840, South Carolina Code of Laws, 1976.

DISCUSSION:
Section 44-21-830 conferred authority upon a county or counties to establish a county mental retardation service program. A condition for the establishment of such a program, however, was that the county or counties had to establish a county mental retardation board of not less than five members. The members were to be appointed by the governor upon recommendation of the majority of the county's legislative delegation.

Section 44-21-840 conferred certain powers upon the board. Subsection (1) provided that the board was to:

"Be the administrative, planning, coordinating and service delivery body

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for county mental retardation services funded in whole or in part by State appropriation to the South Carolina Mental Retardation Department or funded from other sources under the Department's control; and it shall be a body corporate in deed and in law with all the powers incident to a corporation."

That power however is:

"Subject to the provisions of this article and the rules and regulations of the Department. [S.C. Department of Mental Retardation.]"

By Act 26, Acts of 1987, it was provided that:

"Section 44-21-835. County Mental Retardation Boards created by actions of county councils have equal status with those created pursuant to Section 44-21-830, and they shall accept and perform the duties assigned to boards pursuant to Section 44-21-840. The Department may contract with them for a full range of mental retardation services."

It is settled that all statutes that are in pari materia are to be considered together and where possible effect given to all:

"Statutes in pari materia have to be construed together and reconciled, if possible, so as to render both operative." Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376. (See 17 S.C.D., Statutes, Key 223, for other cases.)

Section 4-9-30(6) confers authority upon a county governing body:

". . . to establish such agencies, departments, boards, commissions and positions in the county as may be necessary and proper to provide services of local concern for public purposes, . . ."

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This authority is subject to the general laws of the State and to the South Carolina Constitution.

A county may thus establish a board under either or both general laws. If the board is created under Section 4-9-30, then the power to appoint the members of the board must rest with the council. Section 4-9-170 provides that:

"The council shall provide by ordinance for the appointment of all county boards, . . ."

The other inquiry is whether a board created by council action under Section 4-9-30 can receive appropriated funds from the South Carolina Department of Mental Retardation and from the county. As a county board, it obviously could receive such funds as the county may provide. Whether such a board could receive funds through the South Carolina Department of Mental Retardation would be governed by that department. There is no mandatory obligation that the State Department provide such a board with funds. This is evidenced by the last sentence of the 1987 Act.

"The Department may contract with them for a full range of mental retardation services."

Additionally, Section 44-21-860 provides that county boards:

". . . may apply to the Department for funds . . ."

Any funds thus provided a mental retardation board created by a county council under the 1987 Act are subject to approval by the State Department and should be contractual in nature.

CONCLUSION:

The members of a county board of Mental Retardation are to be appointed by ordinance of the County Council when the board is created under Section 4-9-30. The State Department of Mental Retardation must approve the disbursement of any funds under its control to such a board subject to a contract between the State Department and the Board.

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