

The State of South Carolina

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January 15, 1988

The Honorable Joe Wilson  
Senator, District No. 23  
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The Honorable David H. Wilkins  
Member, House of Representatives  
408 E. North Street  
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Mr. John R. Kellum  
Chairman, Beaufort County Board  
of Social Services  
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The Reverend Clarence J. Fennell  
Chairman, Hampton County Board  
of Social Services  
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201 Jackson Street West  
Hampton, South Carolina 29924-0126

Gentlemen:

By your respective letters to this Office, you have asked for the opinion of this Office as to whether a county board of social services or the Commissioner or State Board of Social Services would have the authority or responsibility to discipline or terminate from employment a county director of social services who has allegedly not followed the policies or regulations promulgated by the Commissioner or the State Board of Social Services.

In Opinion No. 84-135 issued November 26, 1984 (copy enclosed), this Office concluded that county boards of social services possess the authority to impose disciplinary sanctions on a county director of social services upon receipt of a report of alleged violations of State DSS policies and procedures. By

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way of background we advised that

we can find no direct or express provision of law granting the authority about which you have inquired to the State Board or Commissioner. Further, it would appear that such disciplinary action taken by the State Board against a county director would be unprecedented; at least we are unaware of any such previous action. Thus, any conclusion that the State Board or Commissioner possesses such authority would have to be reached either by inference, implication, or extrapolation of existing statutes.

In reaching the conclusion as stated above, we further advised that

[w]hile the State Board or Commissioner might attempt disciplinary action against a county director, applying general agency law, such action would not be without legal risks. Express or direct (i.e., statutory) authority appears to lie with the county boards, whereas any comparable authority for the State Board or Commissioner to so act would be derived entirely from general agency law or by implication or inference from statutes cited above. A court might not find such implied authority to exist, but would instead probably conclude that the county board possesses the sole authority to take such disciplinary action.

In summary, it is our advice that there exists no express provision of law authorizing the State Board or Commissioner of Social Services to take disciplinary action directly against a county director of social services. To the contrary, several statutes appear to place such authority solely in the hands of the appointing agency, the county board of social services. While an argument might be made for such authority also to reside in State DSS, under general agency law, no statute so expressly provides. Accordingly, the State Board or Commissioner

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would be at legal risk at this time in taking disciplinary action. Nevertheless, it is clear that the county DSS board does possess the authority to take such disciplinary action; the county board has indeed a mandatory duty to maintain and enforce all policies and procedures promulgated by State DSS.

The various statutes in question have remained on the books virtually unchanged since 1937. We have identified several gaps and loopholes in the law, including the fact that there is no provision in the law to deal with a situation in which a county board refuses to insure that standards established by the State Department are maintained. Accordingly, the General Assembly may wish to consider immediately closing the gaps in the law identified herein.

The opinion issued November 26, 1984, remains the opinion of this Office. We reiterate the identification of gaps and loopholes in the relevant law and once again suggest that the General Assembly may wish to consider adopting legislation which would close these gaps and loopholes in the law.


With kindest regards, I am

Sincerely,

*Patricia D. Petway*  
Patricia D. Petway  
Assistant Attorney General

PDP/rhm  
Enclosure

REVIEWED AND APPROVED BY:

  
Robert D. Cook  
Executive Assistant for Opinions

cc: The Honorable James L. Solomon  
Commissioner, South Carolina  
Department of Social Services