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The State of South Carolina

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Opinion No. 88-32
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The Honorable Donna A. Moss
Member, House of Representatives
309-B Blatt Building
Columbia, South Carolina 29211

Dear Representative Moss:

By your letter of March 22, 1988, with attachments, you have inquired as to the constitutionality of a portion of ratified act number 427 of 1988, section 4, effective March 18, 1988. The section in question amends Section 44-7-140 of the Code of Laws of South Carolina and provides:

> The provisions of this article do not apply to privately-owned educational institutions maintaining infirmaries for the exclusive use of their student bodies, any health care facility owned and operated by the federal government, or any federal health care facility sponsored and operated by this State.

This Office has already issued one opinion relative to this new statute; a copy of the opinion dated March 2, 1988 is enclosed.

In considering the constitutionality of an act of the General Assembly, it is presumed that the act is constitutional in all respects. Moreover, such an act will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland County, 190 S.C. 270, 2 S.E.2d 777 (1939). All doubts of constitutionality are generally resolved in favor of constitutionality. While this Office may comment upon potential constitutional problems, it is solely within the province of the courts of this State to declare an act unconstitutional. Unless and until the courts declare an act to be unconstitutional, it should be followed.

The operation of a hospital or similar health care facility bears a reasonable relation to the health, safety, and welfare of the public or affects the public interest to such an extent

that governmental regulation has been deemed an appropriate exercise of police power. Mount Royal Towers, Inc. v. Alabama Board of Health, 388 So.2d 1209 (Ala. 1980); 40 Am.Jur.2d Hospitals and Asylums § 4. The delegation of power by a state legislature to a state agency or other entity to determine the need for additional health care facilities is often made, and such has been held not to be an unlawful delegation of legislative power. Williamson v. Snow, 239 N.C. 493, 80 S.E.2d 262 (1954). With regard to delegation, the General Assembly has generally delegated the determination of need for health care facilities to the Department of Health and Environmental Control. See Section 44-7-110 et seq., Code of Laws of South Carolina (1976).

The General Assembly had already created two exceptions to the determination of need, in Section 44-7-140, for "privately-owned educational institutions maintaining infirmaries for the exclusive use of their student bodies" and for "hospitals maintained by the federal Government." It would appear that, by the amendment to Section 44-7-140, the General Assembly has declared that another special need exists, that the type of facility in question is reasonably necessary to provide health care (mental health and skilled nursing care) to the targeted population, and that in this instance delegation of such a determination to the Department of Health and Environmental Control is unnecessary.

In the attachment to your letter, your constituent appears to be raising an argument that the Equal Protection clause of the Fourteenth Amendment to the United States Constitution is violated by the amendment to Section 44-7-140. In creating a classification of objects for special treatment, the General Assembly will violate the Equal Protection clause only if the classification so created is arbitrary or lacking in some rational justification. Eslinger v. Thomas, 324 F.Supp. 1329 (D.S.C. 1971). In this instance, it cannot be said that removal of "any federal health care facility sponsored and operated by this State" from the determination of need procedure by the Department of Health and Environmental Control is arbitrary or unreasonable.

The amendment to Section 44-7-140 under consideration herein was made by the Senate prior to third reading and later concurred in by the House of Representatives. See Senate Journals dated February 17, 1988 and March 1, 1988; House of Representatives Journal dated March 9, 1988. The journals do not reflect the purpose of the amendment, and thus rules of statutory construction must be applied in conjunction with other acts of the General Assembly to determine whether a rational justification for this exemption exists.

In the absence of ambiguity, the words of a statute must be accorded their plain and ordinary meanings and applied literally. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980); State v. Goolsby, 278 S.C. 52, 292 S.E.2d 180 (1982). The words used will also be scrutinized to determine legislative intent, which must be effectuated if it can be determined. Wellman v. Bethea, 243 F. 222 (D.S.C. 1917); McGlohon v. Harlan, 254 S.C. 207, 174 S.E.2d 753 (1970). Furthermore, in construing a statute, it is proper to consider other legislation dealing with the same subject matter and to construe the several legislative acts together. Hartford Acc. and Indem. Co. v. Lindsay, 273 S.C. 79, 254 S.E.2d 301 (1979); Fishburne v. Fishburne, 171 S.C. 408, 172 S.E. 426 (1934). Because your constituent, in a telephone conversation with an attorney in this Office, raised the issue of the motive of a legislator as expressed during a debate or to the media in enacting the amendment, it must be pointed out that opinions of individual legislators cannot be considered in determining the purpose or scope of a given enactment. Tallevast v. Kaminski, 146 S.C. 225, 143 S.E. 796 (1928); Greenville Baseball, Inc. v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942).

The language of the amendment to Section 44-7-140 was narrowly drawn to encompass a particular project for which the General Assembly had determined a need existed several years ago. By Act No. 41 of 1977, the following became Section 44-11-30 of the Code:

> The South Carolina Mental Health Commission may, in mutual agreement with the authorities of the United States Veterans Administration, establish a South Carolina Veterans Home to be located on grounds owned by the Department of Mental Health. The purpose of this home is to provide treatment for South Carolina veterans who are mentally ill or whose physical condition requires long-term nursing care. Admission requirements to the home shall be the same as any other facility operated by the department except that the patients at this facility shall be South Carolina veterans. The South Carolina Mental Health Commission is designated as the agency of the State to apply for and to accept gifts, grants and other contributions from the Federal Government or from any other governmental unit for the operation and construction of a South Carolina Veterans Home.

The project narrowly described in amended Section 44-7-140 will be a portion of the project authorized by Section 44-11-30 of the Code and is under the auspices of the federal State Veterans Nursing Home Program of the United States Veterans Administration. See Title 38 of the United States Code.

In addition to the $6,000,000.00 now available from the federal government for this project, $3,000,000.00 in bonds was authorized by Act No. 538 of 1986 for financing a portion of the project. Part 16 of Act No. 538 provided:

> The Department of Mental Health may use the $3,000,000 in Capital Improvement Bonds authorized in this subitem to finance a portion of the cost of the Anderson Veterans Hospital. The department may also use paying-patient-fee funds or a combination of the funds and the $3,000,000 in bonds authorized in this subitem, not to exceed $3,000,000, to finance the hospital. The State Budget and Control Board and the Joint Bond Review Committee shall determine the financing arrangements. The $3,000,000 authorized in this subitem is conditioned upon the receipt of six million dollars from federal funds.

The condition expressed therein is apparently ready to be met by the federal government at this time.

Based on the foregoing, it is clear that several years ago the General Assembly determined that an unmet need existed for veterans who were in need of nursing care but had no facility in which such care was available. The need was acted upon to the extent possible by the provisions of Act No. 538 of 1986, conditioned upon the receipt of $6,000,000.00 in federal funds. Such determinations having earlier been made by the General Assembly, coupled with the apparent immediate availability of the requisite federal funding, it would appear to make the determination of need procedure a duplication of efforts by the Department of Health and Environmental Control if Section 44-7-140 were not amended to reflect the determination of need already made by the General Assembly.

The unique nature of this project cannot be overlooked. It is designed to serve a target population, veterans with unique needs for whom similar services are not readily available elsewhere. The interplay of the state and federal governments under the federal State Veterans Nursing Home Program is extraordinary. For these reasons, it is appropriate that the project in

question be treated differently from the usual hospital or nursing home determination of need. It may thus be said that a rational basis or justification exists to uphold the amendment if it were challenged as violative of the Equal Protection clause of the Fourteenth Amendment to the United States Constitution. 1/

With kindest regards, I am

Sincerely

T. Travis Medlock
Attorney General

TTM/an

Enclosure

1/ Preferential treatment of veterans in other matters has also been accorded by the General Assembly. See Sections 12-37-220(B)(3) of the Code (exemption of one personal motor vehicle of disabled veteran from property taxes); Sections 56-3-1110 et seq. (waiver of vehicular registration fee, special license plate for disabled veterans); and Section 50-9-820 (special hunting and fishing privileges). We note too that preferential hiring practices for veterans have been upheld against equal protection challenges. The United States Supreme Court in Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256, 99 S.Ct. 2282, 60 L.Ed.2d 870 (1979), stated:

> The veterans' hiring preference ... has traditionally been justified as a measure designed to reward veterans for the sacrifice of military service, to ease the transition from military to civilian life, to encourage patriotic service, and to attract loyal and well-disciplined people to civil service occupations.

Id., 60 L.Ed.2d at 879. See also Rios v. Dillman, 499 F.2d 329 (5th Cir. 1974); Koelfgen v. Jackson, 355 F.Supp. 243 (D. Minn. 1972); White v. Gates, 253 F.2d 868 (D. C. Cir. 1958). Thus, preferential treatment for veterans is often accorded as a recognition of and reward for patriotic service.