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August 3, 1987

The Honorable Dick Elliott  
Member, House of Representatives  
Post Office Box 3165  
North Myrtle Beach, South Carolina 29582

Dear Rep. Elliott:

You have asked whether Act No. 178 of 1987, which took effect on June 30, 1987, is effective to prohibit the charging by DHEC of inspection fees for swimming pools and restaurants. Rep. Carnell has asked a similar question, and by copy of this letter to him, we are responding to his question as well.

Section 8-21-15(A), as added by the above act, provides that no agency "initially may set a fee for performing any duty...unless the fee for performing the particular duty...is authorized by statutory law and set by regulation...." (emphasis added).

Regarding swimming pool fees, the charging of such fees was authorized by § 41.31 of the 1987-88 General Appropriations Act. There is thus no issue as to the applicability of Act No. 178 of 1987 to these fees because even if that Act applies, the fees have been authorized by statute.

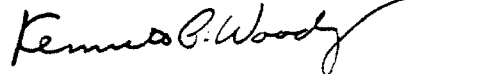
As to restaurant fees, we are informed by DHEC that DHEC's policy on these was set last fall. The proposal was submitted to the Joint Appropriations Review Committee on November 18, 1986, and approved by the Committee on January 12, 1987.

One definition of the term "set," as in "to set fees" is that it means to institute or establish. Under this plain-meaning definition of the term, the fees had clearly been "set" prior to June 30, 1987. Had the statute prohibited the charging of fees, the question would have been much closer. But since the statute only prohibits an agency, after June 30, 1987, from initially setting fees without legislation, and since the DHEC fees were clearly set before that date, the fact that the fees

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have not been charged or collected until after that date does not, in our opinion, make the provisions of Act No. 178 effective to prohibit the charging of the fees.

Sincerely yours,

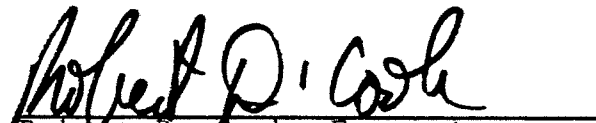
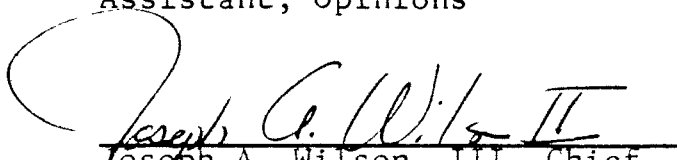


Kenneth P. Woodington  
Senior Assistant Attorney General

KPW:jca

cc: Honorable Marion P. Carnell

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