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Office of the Attorney General

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April 29, 1985

Patricia A. Wright, R.S., Secretary-Treasurer
Board of Examiners for Registered Sanitarians
S.C. Dept. of Health & Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

Dear Ms. Wright:

Your letter dated March 29, 1985 to the Attorney General has been referred to me for reply. Please address any future correspondence in this matter directly to me.

You have requested our opinion as to whether §40-61-140 of the 1976 CODE OF LAWS OF SOUTH CAROLINA, as amended, requires an applicant to pass the examination or merely to take it.

Section 40-61-140 states:

"The Board must also issue a certificate of registration to any individual who is working in environmental health and control programs in the State on the effective date of this chapter who is not a registered environmental sanitarian who makes application to the Board and takes the examination prior to July 1, 1985. (Emphasis added.)

Since the above-referenced statute is silent on the pertinent point, we must examine other portions of the law for guidance. Sutherland, Statutory Construction, §§51.01 - 51.03.

Section 40-61-60 provides that one of the requirements for registration is that the applicant "pass a written or

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oral examination as prescribed by the Board." Therefore, reading those two companion statutes together, the meaning becomes quite clear that the examination must be passed. To construe the legislative intent otherwise, as your applicant argues, would make the examination requirement meaningless thereby resulting in an absurdity. As observed at 53 C.J.S. Licenses §33, "An applicant who fails to make a passing grade is not entitled to a license."

This interpretation is further supported by Dovalina v. Albert, 409 S.W.2d 616 (Tex. Civ. App.), 32 ALR 3d 1316 (1966), wherein a polygraph examiner applying for certification argued that "since failure to pass the examination is not one of the grounds [for denying certification] the Board was without authority to refuse [him] a license." The court, in rejecting the argument, relied upon legislative intent and the entire enactment, saying, "nor will application be made of any rule of construction that, in the circumstances, will lead to absurdity," in relation to another point.

Therefore, it is the opinion of this Office that the requirement of §40-61-140 that certain applicants "take the examination" also requires that they make a passing grade in order to qualify for certification. To hold otherwise would produce an absurd result.

I trust the preceding discussion adequately answers your question, however, if any further explanation is required, please do not hesitate to contact me.

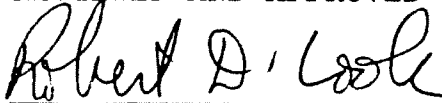
Very truly yours,



Richard P. Wilson
Assistant Attorney General

RPW:em

REVIEWED AND APPROVED BY:



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