The State of South Carolina

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The Honorable James L. Solomon, Jr.
Commissioner
S. C. Department of Social Services
P. O. Box 1520
Columbia, South Carolina 29202-1520

Dear Commissioner Solomon:

Your letter requesting an opinion from this office as to the interpretation of certain language in H2654, a recently enacted amendment to § 43-5-65(a) (1), South Carolina Code of Laws (1976), hereinafter Code, has been referred to me for response. You ask whether the language in question may be construed as meaning that all recipients of IV-D services from the South Carolina Child Support Program, whether or not they are receiving public assistance from the Department of Social Services, may be deemed to have automatically assigned their support rights to the Department by their act of making application for those services.

Section 43-5-65(a) (1), Code, as amended by H2654, states

> that by accepting public assistance for or on behalf of a child or children, or by making application for services under Title IV-D, ... the recipient or applicant is considered to have made an assignment to the State Department of Social Services of any rights, title and interest to any support obligation which is owed for the child or children or for the absent parent's spouse or former spouse who is the recipient or the applicant with whom the child is living, if and to the extent that a spousal support obligation has been established and the child support obligation is being enforced pursuant to Title IV-D of the federal Social Security Act. (emphasis added).

This is the language in question and, read alone, it appears to say that the act of making application for IV-D services triggers the assignment of support rights to the Department, with no

additional requirement that the applicant receive public assistance.

Section 45-5-65(a) (1), Code, as amended by H2654, goes on to say, however, that

> [t]he assignment to the Department is considered to have been made up to the amount of public assistance money or foster care board payments paid for or on behalf of the child or children for that period of time as the public assistance monies or foster care board payments are paid. The assignment shall consist of all rights and interest in any support obligation that the recipient may be owed past, present, or future by any person up to the amount of public assistance money paid to the recipient for or on behalf of the minor child or children.... (emphasis added).

This language specifically limits the assignment of support rights to the amount of public assistance money paid on behalf of the minor child or children. These two portions of § 45-5-65(a) (1), Code, as amended, are inconsistent on their face since not all persons who make application for services under Title IV-D are recipients of public assistance money for their children, but the assignment of support rights triggered by the act of application is limited to the amount of public assistance received for the child or children. Resort must be made to accepted rules of statutory interpretation to resolve that inconsistency.

The intention of the legislature is the primary guideline used in interpreting a statute. Alton Newton Evangelistic Association, Inc. v. South Carolina Employment Security Commission, 284 S.C. 302, 326 S.E.2d 165 (Ct.App. 1985), Helfrich v. Brasington Sand and Gravel Co., 268 S.C. 236, 233 S.E.2d 291 (1977). "The intention of the legislature is to be ascertained primarily from the language used in the statute...." 82 C.J.S. Statutes § 322b (1), p. 571 (1953).

> Provided always that the interpretation is reasonable and not in conflict with the legislative intent, it is a cardinal rule of construction of statutes that force, meaning, significance, or effect must be given if possible, and if it can fairly and reasonably be done, to the whole statute and every part, section and provision thereof, and to all the language employed or contained therein ... so that no part will become inoperative, and so as to render the statute a harmonious, consistent and symmetrical whole. 82 C.J.S. Statutes § 346, pp. 705-712 (1953). See also Jolly v. Atantic Greyhound Corp., 207 S.C. 1, 35 S.E.2d 42 (1945).

Following these guidelines, the two apparently inconsistent portions of § 43-5-65(a) (1) Code as amended, as quoted above, may be interpreted so as to give meaning and effect to both parts. Although not all applicants for services under Title IV-D are recipients of public assistance, some are. Indeed, many applicants for or recipients of public assistance automatically become applicants for services under Title IV-D. The approval of their application for public assistance results in their receipt of services under Title IV-D. Section 43-5-220 Code. If the legislature, in enacting H2654, intended that the assignment of support rights to the Department be triggered by the act of making application for services under Title IV-D only where that application for services was the result of the receipt of or application for public assistance, then the subsequent limitation of the assignment to the amount of public assistance received is not inconsistent. This interpretation gives meaning to both parts of the statute and renders them harmonious with each other.

This reasoning is reinforced when § 43-5-65(a) (1) Code, as amended by H2654, is read in context with § 43-5-65 Code as a whole. Section 43-5-65 Code is a fairly lengthy statement describing the certificate of eligibility which sets forth the conditions which a needy family must meet in order to be eligible to receive aid to families with dependent children. At no point in the unamended portion of that Code section is any reference made to persons not recipients of or applying for public assistance. Section 43-5-65(a) (1) Code is immediately preceded by the statement, "The certificate of eligibility shall also provide that, as a condition of eligibility for aid, each applicant or recipient shall...." To insert at this point in the statute a reference to applicants who are not seeking aid to families with dependent children would be totally incongruous and inconsistent with the subject matter of the statute as a whole.

"Generally, the title of an act is to be considered in construing it, and the rule is well established that, in case of ambiguity, the title may be resorted to as an aid to ascertainment of legislative intent...." 82 C.J.S. Statutes § 350, pp. 731-732 (1953). See also Lindsay v. Southern Farm Bureau Casualty Insurance Co., 258 S.C. 272, 188 S.E.2d 374 (1972), University of South Carolina v. Elliott, 248 S.C. 218, 149 S.E.2d 433 (1966). "The title may limit the scope of the act, but the act cannot be extended by construction beyond the scope of its title." 82 C.J.S. Statutes § 350, p. 734 (1953). Under this rule of statutory interpretation, H2654 cannot be interpreted as referring to applicants for services under Title IV-D who are not

receiving or applying for public assistance. The title of H2654 states that it is

> An act to amend section 43-5-65, Code of Laws of South Carolina, 1976, relating to certificates of eligibility and conditions of eligibility for public aid and assistance, so as to further provide for the assignment to the Department of Social Services by a recipient of this aid of certain support obligation payments the recipient is entitled to receive and to provide for the rights of the department in regard to those payments, including the right of subrogation. (emphasis added).

The title of the act clearly limits the subject matter of the act to persons receiving public assistance. To interpret the language of the act otherwise would be to extend construction of the act beyond the scope of its title, in violation of the above-stated rule.

Finally, 45 C.F.R. § 302.33 (e) (1985), which sets forth requirements imposed on the states in the provision of the services of the Child Support Program to non-welfare applicants, states that an assignment of support rights from those individuals may be taken, but may not be a condition of their receipt of child support services. If H2654 were interpreted to mean that the act of application for those services automatically triggered an assignment, then it would be impossible for a non-welfare applicant to receive those services without making an assignment, and South Carolina's Child Support Program would be out of compliance with the federal regulation.

In conclusion, it is the opinion of this office that H2654 only refers to applicants for services under Title IV-D who are also applicants for aid to families with dependent children who ultimately do receive such aid.

Sincerely,

Nan L. Black

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Reviewed and Approved by

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