The State of South Carolina

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November 5, 1986

Jody Greenstone, Legal Counsel
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Dear Ms. Greenstone:

By a letter dated October 29, 1986, Ms. Mary Barnett, Acting Director of the Division of Health and Human Services in the Governor's Office, has advised that Public Law 93-641 has been sunsetted. Several provisions of South Carolina law were potentially affected since the federal law was incorporated by reference in several of the statutes. Ms. Barnett asked for advice on whether certain programs, agencies, or entities were required to be continued since the federal law and federal funding have been sunsetted.

After our telephone conversation on Thursday, October 30, I was able to locate several opinions which may give you the necessary guidance. An opinion dated November 30, 1978, discusses the status of health systems agencies as nonprofit, private corporations whose relationships to federal and state governmental bodies are purely contractual. The status of the Statewide Health Coordinating Council as a state entity is discussed in an opinion dated April 4, 1978.

Finally, in an opinion dated August 6, 1976, the issue of the effect of expiration of federal statutes upon state legislation in the health planning and resource development areas was analyzed. The situation described therein is quite similar to what Ms. Barnett has described in her letter. While the entire opinion is enclosed for your perusal, we call your attention particularly to the following language:

> The question left then is what effect a subsequent modification or repeal of the

> provisions of a statute adopted by referenced has upon the adopting statute. There are two general rules: (1) the adoption of a statute by reference is an adoption of the law as it existed at the time the adopting statute was passed, and therefore is not affected by any subsequent modification or repeal of the statute adopted; (2) a subsequent amendment or repeal of an adopted statute has no effect upon the antecedent law (adopting statute) unless such intent is expressed or arises by necessary implication (See 168 A.L.R. 627-636.) Thus, the determination of whether the adoption is restricted to the law at the time of its adoption or includes subsequent modifications, repeals or revisions is fundamentally a question of legislative intent and purpose.
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> Section 32-503 of the Code incorporates the various Federal enactments by specific reference. It is generally held that when a statute makes such a specific adoption, such adoption takes the statute as it exists at the time of adoption and does not include subsequent additions or modifications of the statute unless it does so by express intent. 168 A.L.R. 627, 631 (1947). While there are no South Carolina cases precisely on point, Santee Mills v. Query, supra at pp. 168-169, contains dicta implying that position.

Based on this opinion, we would advise that the state statutes which refer to the federal law would not be repealed or terminated merely because the federal law and funding have been sunsetted, absent a legislative intent to the contrary. Thus, whatever programs or agencies would be affected by the termination of federal funds would continue to operate to the extent possible as long as state funds are available. This is consistent with the idea that, generally speaking, federal law does not repeal state laws or statutes and that implied repeals are not favored.

As was suggested during our telephone conversation, you may wish to consider approaching the Budget and Control Board and/or the General Assembly to apprise those bodies of the

situation, to obtain additional funding or the clarify the legislature's intent that the state programs or entities should continue to operate in the absence of federal legislation.

We trust that this advice and the enclosed opinions will be beneficial in your work with Ms. Barnett.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

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