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January 23, 1987

Honorable James E. Bryan, Jr.
Senator, District No. 9
Suite 506
Gressette Senate Office Bldg.
Columbia, SC 29202

Dear Senator Bryan:

You have requested that this Office advise you as to who has the authority to hire directors of the local community mental health centers (centers) around the state, the community mental health boards (community boards) or the State Department of Mental Health (DMH).

In response, I direct your attention to Chapter 15 of Article 44, South Carolina Code of Laws, 1976, as amended, which contains the primary statutes under which the community program boards operate. As you point out in your letter, §44-15-70(2) specifically empowers the community board to "employ personnel necessary to carry out the community mental health services program, who shall meet the job specifications as prescribed by the Department and its merit system." A previous opinion of this Office has recognized the role of the community board in hiring and firing the director of a center (Ops. Atty. Gen., 10/25/82, by Vance J. Bettis, Asst. Atty. Gen.).

Section 44-15-80(8), however, specifically empowers DMH to "employ personnel, certified by the merit system as classified according to existing job classifications . . ." to implement the community mental health programs. Previous opinions of this Office have held that all center employees are state employees under the control of DMH and that DMH has considerable authority over personnel including center directors. Ops. Atty. Gen., 1/28/80, by Raymond G. Halford, Dep. Atty. Gen.; Ops. Atty. Gen., 6/22/83, by J. Emory Smith, Jr., Asst. Atty. Gen.; See also 1965 Ops. Atty. Gen. 197.

Therefore, it appears that both the community boards and DMH have hiring authority and the statutes are in apparent conflict. It is a general rule of statutory construction that statutes dealing with the same subject which appear in conflict, commonly referred

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to as statutes in pari materia, be construed so as to produce the greatest harmony and least inconsistency and to give effect to both statutes. Vol. 2A Sutherland Statutory Construction, §51.01. To read §44-15-70(2) as giving unbridled authority to the community boards to hire a director would render §44-15-80(8) meaningless. In order to harmonize these statutes, the language of the introductory paragraph of §44-15-70, which states that all grants of authority to the community board are subject "to the provisions of this article and the rules/regulations of the Department of Mental Health . . .," must be read as a limitation on the community board's authority to hire a director. Pursuant to this language and the authority given to DMH under §44-15-80(6) and (8), DMH could restrict the authority of the community board to hire and fire directors. Therefore, while the community board has authority to hire a director, that authority is subject to any guidelines and directives of DMH which exist or may be promulgated.

If you have any additional questions or need further clarification, please let us know.

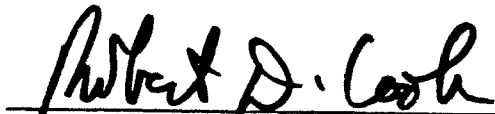
Sincerely,



B. J. Willoughby
Assistant Attorney General

BJW/rho
Enclosures

REVIEWED AND APPROVED:



ROBERT D. COOK
Executive Assistant for Opinions



FRANK K. SLOAN
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