

The State of South Carolina



Office of the Attorney General

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April 17, 1985

The Honorable Donald H. Holland
Member, Senate of South Carolina
Suite 211, Gressette Building
Columbia, South Carolina 29211

Dear Senator Holland:

By your letter of April 2, 1985, you have asked for the opinion of this Office on two questions:

- (1) Does the Health and Human Services Finance Commission fall within the meaning of "any business" referred to in Section 43-1-25 of the South Carolina Code of Laws?
- (2) If so, how does this affect a candidate working for a program administered by the Commission given the fact that the Commission contracts with the Department of Social Services?

Section 43-1-25 of the Code provides the following prohibition for members of the State Board of Social Services:

No member of the State Board of Social Services, directly or indirectly, (a) individually, (b) as a member of a partnership or of an association, (c) as a member or stockholder of a corporation, or (d) as a relative to any person by consanguinity or affinity within the second degree shall have any interest in any business which contracts with the Department of Social Services to provide services. [Emphasis added.]

REQUEST LETTER

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An individual who wishes to be considered for appointment to the State Board of Social Services is employed in the Community Long Term Care program of the Health and Human Services Finance Commission (hereafter Commission). You wish to know whether the prohibition of Section 43-1-25 would apply to this individual.

At the outset it must be noted that the Commission is specifically prohibited from delivering services with respect to any of the programs under its control. Section 44-6-30 of the Code, enumerating the powers of the Commission, provides:

The Commission shall:

* * *

(4) Be prohibited from engaging in the delivery of services.

Thus, whatever ties may otherwise exist between the Commission and the Department of Social Services, the delivery of services by Commission employees is statutorily excluded.

Because neither the statute nor Act No. 377, 1984 Acts and Joint Resolutions, which added the statute to the Code of Laws, defines the phrase "any business," the principles of statutory construction must be considered. The primary objective of both this Office and the courts in construing statutes is to determine and give effect to the legislative intent. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Words of a statute are to be given their plain and ordinary meanings unless there is something in the statute requiring a different interpretation. Brewer v. Brewer, 242 S.C. 9, 129 S.E.2d 736 (1963).

The term "business" is commonly used "in connection with an occupation for livelihood or profit," Butler v. Moore, 125 Ga.App. 435, 188 S.E.2d 142, 144 (1972), "a pursuit or occupation of a commercial or mercantile nature to obtain a livelihood," State Farm Fire and Casualty Company v. Quirt, 28 Md.App. 603, 346 A.2d 497, 502 (footnote 9) (1975), or "an activity carried on for profit," Riddle v. Allstate Insurance Company, 203 So.2d 820, 823 (La.App. 1967). However, the performance of governmental functions has not been deemed a business. Hazen v. National Rifle Association, 69 U.S.App.D.C. 339, 101 F.2d 432 (D.C.Cir. 1938).

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The term "any" is frequently used to mean "all" or "every." Pursley v. Inman, 215 S.C. 243, 248, 54 S.E.2d 800 (1949). Interpreting the phrase "any business" based on the above definitions, it would appear that all pursuits or occupations in which one earns a livelihood or profit would be included within the phrase, excluding those pursuits or occupations involving the performance of governmental functions. The Commission, by the powers granted to it by the General Assembly, can be said to perform governmental functions. See Section 1 of Act No. 83 of 1983; also Sections 44-6-30, -40, and -50 of the Code. Thus, the Commission is most probably outside the scope of the phrase "any business."

When the entire phrase relative to "any business" is considered, the same conclusion may be reached. The phrase as emphasized supra reads "any business which contracts with the Department of Social Services to provide services." As stated in Section 44-6-30 of the Code, the Commission is prohibited from providing services; thus, it cannot contract "with the Department of Social Services to provide services." In addition, the fact that the Commission performs governmental functions must also be taken into account.

Other tenets of statutory construction appear to mandate the same conclusion. The title of an act may be considered in the determination of legislative intent, University of South Carolina v. Elliott, 248 S.C. 218, 149 S.E.2d 433 (1966), though the title of an act may not be used to limit (or expand) the plain meaning of a statute. 1/ 2A Sutherland Statutory Construction, § 47.03; 73 Am.Jur.2d Statutes § 98. The title of Act No. 377 of 1984 is as follows:

AN ACT ... TO PROHIBIT A MEMBER OF THE
BOARD OF SOCIAL SERVICES FROM HAVING ANY
INTEREST IN A NURSING HOME OR RESIDENTIAL
CARE FACILITY OR ANY PERSONAL PROPERTY
USED IN THE FACILITIES

1/Because the statute is remedial in nature, a liberal interpretation would be justified to effect the purposes of the statute. South Carolina Department of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978).

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Senate Bill No. 405 which became Act No. 377 was amended to its present form 2/ but the relevant portion of the title was unchanged. It would appear that the General Assembly was particularly concerned with prohibiting Board members from having an interest, directly or indirectly, by whatever business set-up (partnership, corporation, sole proprietorship, etc.) in nursing homes or residential care facilities, which of course are in a position to contract with the Department of Social Services. While nursing homes and residential care facilities would be covered by the phrase "any business," the phrase would cover, in addition, any other business which might contract with the Department of Social Services to provide services. Considering the title of the act, it would appear that the Commission would most probably not be within the scope of businesses covered by the statute.

Because this statute is of the nature of an ethical standard, the definition of "business" found in the state ethics laws may be useful. Section 8-13-20(a) of the Code defines "business" to mean "any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, and self-employed individual." Given the nature of each of these entities, it is very doubtful that a governmental agency would be considered a business under the ethics laws, to which all public officials and public employees are subject.

Based on the foregoing, we advise that the terms of Section 43-1-25 of the Code do not appear to apply to the Health and

2/The original version of S.405 read:

No member of the State Board of Social Services, directly or indirectly,
(a) individually, (b) as a member of a partnership or of an association, (c) as a member or stockholder of a corporation, or (d) as a relative to any person by consanguinity or affinity within the second degree shall have any interest in or mortgage or deed of trust on any lands or buildings pertaining to a nursing home as defined in item (c) of Section 40-35-10, residential care facility as defined in Section 43-28-10, or in any personal property used in the facility.

The Senate Committee on Medical Affairs proposed the amended version which was adopted as Act No. 377 of 1984.

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Human Services Finance Commission. Thus, one who is employed with the Commission would not be prohibited from serving on the State Board of Social Services by that statute. This conclusion makes it unnecessary to address your second inquiry.

Since the Commission has many connections to the Department of Social Services, through eligibility determinations by the Department for the Commission, for data processing, administration of grants by the Commission, and so forth, there may be other considerations. The individual in question does not appear to be employed in a capacity in which he would determine whether grant money should be given to the Department of Social Services, for example, or in which decisions he might make would affect the Department. A Board member serves a term of four years; over that period of time, the individual's duties could change so that a conflict of interest, not apparent at this time, would arise. Of course, such problems could be dealt with if they arise. See, 63A Am.Jur.2d Public Officers and Employees, § 319; see also Op. Atty. Gen. dated January 7, 1985; cf., Ops. Atty. Gen. No. 4327 dated April 14, 1976 and No. 4287 dated March 8, 1976.

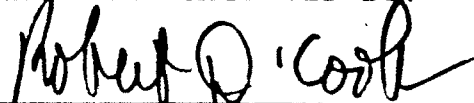
We trust that the foregoing will satisfactorily respond to your inquiry. Please advise us if additional information or assistance is needed.

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

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REVIEWED AND APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions