

1984 S.C. Op. Att'y. Gen. 119 (S.C.A.G.), 1984 S.C. Op. Att'y. Gen. No. 84-49, 1984 WL 159856

Office of the Attorney General

State of South Carolina

Opinion No. 84-49

May 2, 1984

\*1 Honorable David O. Hawkins  
House of Representatives  
312-B Blatt Building  
Columbia, South Carolina 29201

Dear Representative Hawkins:

You have asked the opinion of this Office upon the following:

1. Under the Administrative Procedures Act, if the General Assembly disapproved a set of regulations which an agency is required to promulgate, at what time must the promulgating agency resubmit those regulations?
2. If a legislative committee to whom the regulations were referred requests that a set of regulations be permanently withdrawn, or repeatedly requests temporary withdrawal, at what time is the promulgating agency required to resubmit the regulations?

In response to your first inquiry, the Administrative Procedures Act [§§ 1-23-10 through 1-23-160, [CODE OF LAWS OF SOUTH CAROLINA](#), 1976 (1983 Cum.Supp.)] does not prescribe when or if a set of regulations promulgated by an executive agency must be resubmitted to the General Assembly for approval after being disapproved by joint resolution of the General Assembly. In response to your second inquiry, the Administrative Procedures Act likewise does not provide when or if a set of regulations promulgated by an executive agency must be resubmitted to the General Assembly for approval after the regulations have been withdrawn by the promulgating agency following a request from the appropriate committee of the House or Senate.

The Administrative Procedures Act generally requires that after an agency has promulgated regulations, the agency must submit the regulations to the General Assembly for approval.<sup>1</sup> Sections 1-23-120 through 1-23-125 provide the procedure for General Assembly approval or disapproval of promulgated regulations.

Pursuant to § 1-23-120 of the amended Code, the General Assembly may disapprove regulations promulgated by an agency by joint resolution.<sup>2</sup> Such affirmative action by the General Assembly appears to be the only procedure whereby disapproval by the General Assembly may be effectuated.

Section 1-23-125 provides certain authority to the standing committees of the Senate and House with regard to review of regulations.<sup>3</sup> If a reviewing committee determines 'that it cannot approve a regulation in the form submitted, it may notify the promulgating agency in writing along with its recommendation as to changes that would be necessary to obtain committee approval.' The promulgating agency may then decide whether to withdraw either permanently or temporarily, or leave the regulation with the General Assembly for its ultimate approval or disapproval.

With regard to disapproval of the regulation by joint resolution, the Administrative Procedures Act does not address when or if such regulation should be resubmitted. Likewise, there is no restraint upon an agency resubmitting the same regulation or to submitting modified regulations pertaining to the same subject matter. Again, pursuant to § 1-23-120 a joint resolution only approves or disapproves a submitted regulation.<sup>4</sup>

\*2 With regard to a regulation withdrawn by the promulgating agency pursuant to § 1–23–125, there exists no legislative mandate as to when or if such regulation should be resubmitted. If the agency elects to amend the regulation and proceed pursuant to § 1–23–125(a), this option contemplates resubmission by the agency. But again, there is no legislative restriction within the Administrative Procedures Act as to when the regulation with suggested changes incorporated therein must be resubmitted.

Section 1–23–125(b) provides the promulgating agency the option to ‘[w]ithdraw the regulation permanently’, after an assigned committee notifies the agency that it cannot approve the regulation in the form submitted. It appears that this statutory option envisions with the use of the word ‘permanently’ that the identical regulation not be resubmitted during the same legislative session. Again, there is no legislative mandate within the Administrative Procedures Act that the regulation be resubmitted.

The entire statutory scheme relative to the promulgation of regulations by executive agencies suggests that the General Assembly's role is limited to either approving or disapproving regulations. Thus, it is not contemplated by the Administrative Procedures Act that the General Assembly will determine when or if an agency must resubmit regulations disapproved by the General Assembly or withdrawn by the agency pursuant to a request by the assigned committee. You suggest in your letter that an agency may be compelled to promulgate certain regulations pursuant to its enabling act.<sup>5</sup> Nonetheless, the within noted provisions of the Administrative Procedures Act appear to provide the only procedure for obtaining approval by the General Assembly. The promulgating agency may not compel the General Assembly to approve its regulations; it may only submit them in accordance with the Administrative Procedures Act.

With best wishes,

Very truly yours,

Edwin E. Evans  
Senior Assistant Attorney General

#### Footnotes

- 1 See, i.e., § 1–23–40(1) of the amended Code. Note however, that pursuant to § 1–23–120, General Assembly ‘review shall not be required for regulations promulgated to maintain compliance with Federal law including but not limited to grant programs.’
- 2 Rule 10.3.1.(c), Rules of the House of Representatives defines ‘joint resolution’ as having ‘the same force of law as an act, but is a temporary measure dying when its subject matter is completed. It requires the same treatment as a Bill does in its passage through both Houses, but its title after passage shall not be changed to that of an Act; . . .’
- 3 Section 1–23–120 provides in pertinent part that the President of the Senate and the Speaker of the House of Representatives shall submit the proposed regulations to the standing committees of the Senate and House, respectively, which are most concerned with the function of the promulgating agency.
- 4 Rule 17, Joint Rules of the Senate and House, provides generally the procedure for processing administrative regulations in the General Assembly.
- 5 This Office takes no position relative to this suggestion.

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