

1983 WL 181922 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 22, 1983

*1 William S. Hall, M.D.
State Commissioner
Department of Mental Health
Box 485
Columbia, South Carolina 29202

Dear Dr. Hall:

You have requested that this office advise you as to whether the State Department of Mental Health (DMH) may evaluate the performance of the directors of community mental health centers (centers). Community mental health boards (community boards) have a role in the employment of directors [§ 44-15-70\(2\)](#), [Code of Laws of South Carolina \(1976\)](#). Previous opinions of this office have held that center employees are State employees ([Ops. Atty. Gen.](#), January 22, 1980, by Raymond G. Halford, Deputy Attorney General), but that directors are exempted from the State Employee Grievance Act, § 8-17-310, [et seq.](#), as amended ([Ops. Atty. Gen.](#), October 25, 1982, by Vance J. Bettis, Assistant Attorney General). [See also](#) 1965 [Ops. Atty. Gen.](#) 165.

DMH appears to have primary authority in this matter, but the community boards clearly have an interest in the performance of their directors. These boards, presumably would have the opportunity to observe regularly the directors' performances from a local perspective and input from the boards would lend validity to performance evaluations of directors. These reasons appear to require that the community boards have at least some opportunity to evaluate locally the performance of their directors; however, as noted above, center employees are state employees and the powers of their community boards are subject to DMH rules. [§ 44-15-70](#). DMH has the following specific powers which are relevant here: to prescribe job specifications for employees ([§ 44-15-70\(2\)](#)); to prescribe standards for qualifications of personnel and quality of professional service ([§ 44-15-80\(1\)](#)); and to review and evaluate local programs and the performance of all personnel and make recommendations thereon to community mental health boards and program administrators ([§ 44-15-80\(6\)](#)). Although the evaluation provisions in [§ 44-15-80\(6\)](#) do not appear to be directed toward the individual performance evaluations in question here, the above provisions indicate that DMH has considerable authority over personnel including center directors. [See also Ops. Atty. Gen., supra](#). The evaluation of the directors appears to come within the reasonable scope of that authority. Therefore, by rule, DMH could provide for the manner of evaluating the directors including evaluation at the state level if it so chooses; however, as noted above, because of the relationship of directors to their community boards, DMH should provide for and give at least some weight to evaluation on the local level, DMH could reserve for itself the authority to give final approval to an evaluation, but it is not required to do so.

If we may be of further assistance, please let us know.

Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

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