

1982 S.C. Op. Atty. Gen. 14 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-11, 1982 WL 154981

Office of the Attorney General

State of South Carolina

Opinion No. 82-11

March 3, 1982

\*1 Eugene N. Zeigler, Esquire  
Member  
S.C. Board of Corrections  
Post Office Drawer 150  
Florence, South Carolina 29503

Dear Mr. Zeigler:

Your February 17, 1982, letter to Attorney General McLeod has been referred to me for response. You have asked (1) whether the Department of Corrections may lawfully employ a lobbyist full-time to present the 'concerns and needs' of the Department to the General Assembly; (2) whether the Department may use one of its current employees as a part-time lobbyist for the Department; and (3) whether the Department may lawfully engage the services of a lobbyist paid by funds other than those appropriated by the State of South Carolina. It is the opinion of this office that the Department may not lawfully employ—directly or indirectly—a lobbyist, regardless of the source of funding for such an employee.

Administrative agencies have only such powers as are conferred on them—either expressly or by necessary implication—by statute. 1 Am.Jur.2d Administrative Law, § 72 (1962); 73 C.J.S. Public Administrative Bodies and Procedure, § 48 (1951). In this respect, state agencies are like counties, see, e.g., [Williams, et al. v. Wylie, et al.](#), 217 S.C. 247, 252, 60 S.E.2d 586 (1950), and municipal corporations, see, e.g., [McKenzie v. City of Florence](#), 234 S.C. 428, 437, 108 S.E.2d 825 (1959). To my knowledge, there is no statutory authority for the Department of Corrections' employing a lobbyist to present its needs and concerns to the General Assembly. Accordingly, the Department may not lawfully employ a lobbyist—either directly or indirectly, by using a current employee to perform lobbying functions. Compare 10 McQuillin, Municipal Corporations, § 2992 (3d revised ed. 1981) ('A municipal corporation has no authority to employ persons to influence members of the legislature with respect to pending legislation affecting the municipal interest.'). Also compare, 81 A C.J.S. States, § 157b. (1977) (Agency heads have no implied power to retain private counsel to represent the agency absent legal, as distinguished from actual, necessity).

This disposition renders moot the issue of whether a lobbyist could be employed or retained by the Department if he or she were paid from wholly private sources. Nevertheless, as a matter of interest, this office has previously opined that absent express statutory authorization, public funds may not be expended by a political subdivision of the State for the purpose of opposing legislation or securing beneficial legislation. A copy of this May 22, 1979, opinion is attached.

Nothing in this opinion should be construed to preclude a Board member, the Commissioner, or any employee of the Department of Corrections from appearing and testifying before a legislative committee at the request of the committee or a committee member. Nor should this opinion be construed as precluding a Board member, the Commissioner, or any employee of the Department of Corrections from making episodic appearances before the General Assembly or one of its committees only and solely on matters pertaining to the Board member's, Commissioner's, or employee's office and public duties. Such appearances are sanctioned by § 2-17-50(b) and (c), Code of Laws of South Carolina, 1976.

\*2 In conclusion, the Department may not, in the opinion of this office, employ—either directly or indirectly and regardless of the source of funds—a person whose full or part-time function is to lobby the members of the General Assembly on behalf of the Department on a regular and continual basis.

Sincerely,

Vance J. Bettis  
Assistant Attorney General

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