

1981 WL 158238 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 20, 1981

***1 SUBJECT: State Agencies—Administrative Law—Statutory Interpretation—Federal Programs**

The South Carolina State Education Assistance Authority possesses sufficient statutory authority to establish a program of loans to parents of dependent undergraduates at institutions of higher education, in accordance with Public Law 96-374 (Education Amendments of 1980).

State Treasurer

DISCUSSION:

You have requested the opinion of this office concerning the scope of statutory authority of the South Carolina State Education Assistance Authority (Authority). Specifically, you have asked whether the Authority's empowering authority is broad enough to commence a program of loans to parents of dependent undergraduates at institutions of higher learning, pursuant to Public Law 96-374, without seeking an amendment to the authority's statutory authority.

Section 419 of P.L. 96-374 amends Title I of the Higher Education Act of 1965, extending the federal student loan program to include parents with dependent undergraduate students. The amendment specifies a number of conditions for loans to parents and sets certain prerequisites for insuring such loans by the Secretary of Education in the various states of the Union.

The Authority's statutory authority is set forth in [§ 59-115-50, Code of Laws of South Carolina](#), 1976, as amended. This code section gives the Authority broad authorization to make, insure, guarantee, acquire contingent interests, and sell student loans. [§ 59-115-50\(e\)](#) states:

To develop and administer all programs and to perform all functions necessary or convenient to promote and facilitate the making, guaranteeing and insuring of student loans and to provide such other student loan assistance and services as the Authority shall deem necessary or desirable and to enable it to qualify for loans, grants, insurance and other benefits and assistance under any program of the United States now or hereafter authorized fostering student loans . . .

The General Assembly has granted the Authority broad powers in the area of making student loans, leaving the Authority considerable discretion in filling up the details of implementing the program through administrative regulation. While an administrative agency of the State may not act either on matters or in a manner beyond its statutory authority, an agency of the State does have authority to perform acts implied within its authority and necessary to accomplish the primary goal of the agency's duties. The following quotations from 1 Am.Jur.2d Administrative Law §§ 72, 73 are pertinent here:

The powers of administrative agencies are measured and limited by the statutes or acts creating them or granting their powers, to those conferred expressly or by necessary or fair implication.

It is well settled that an administrative agency has no inherent powers, although implied powers may sometimes be spoken of as

'inherent'. Authority may be implied as well as expressed especially in the field of internal administration. An express grant of power will be deemed to include such other powers as are necessary or reasonably incident to the power granted.

*2 Even though an administrative agency must have some discretion in performing acts incidental to its express authority, the scant South Carolina case law on the subject makes clear the following proposition, '. . . enabling legislation is not merely precatory, but prescribes the parameters of conferred authority.' [Bostic v. City of West Columbia](#), 268 S.C. 386 234 S.E.2d 224 (1977).

Keeping the above stated principles in mind, the opinion of this office is that the Authority possesses sufficient current statutory authority to offer 'student loans' to parents of dependent undergraduate students. There is no question that loans to parents are still 'student loans' within the intention of [§ 59-115-50](#), in that the sole purpose of such loans is to allow South Carolina residents to meet their costs of a higher education. See § 1 of Act No. 433, Acts and Joint Resolutions of South Carolina, 1971, for the findings of the General Assembly relative to 'The State Education Assistance Act'. Finally, the loans to parents program authorized in P.L. 96-374 appears to come within [§ 59-115-50\(e\)](#) as a program by the United States Government authorized to foster student loans.

OPINION:

Therefore, based upon the foregoing discussion the opinion of this office is that the State Education Assistance Authority may make loans to parents of dependent undergraduate students in accordance with the provisions of § 419 of P.L. 96-374.

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