

1981 WL 157809 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 5, 1981

\*1 Edward L. Sessions, D.C.  
Chairman  
Board of Chiropractic Examiners  
3835 Rivers Avenue  
Charleston, South Carolina 29405

Dear Dr. Sessions:

You have asked three questions concerning the application of the Administrative Procedures Act to the promulgation of regulations by the Board of Chiropractic Examiners. The Board received a letter from the Chairman of the House Medical, Military, Public and Municipal Affairs Committee requesting the Board to withdraw its proposed regulations and resubmit them after deleting [Regulations 25-8](#) and 25-12; and deleting part of Regulation 25-10.

You have asked first whether the Board, if it recalls these regulations, is required to delete both [sections 25-8](#) and 25-10, or whether it may delete only one such section before returning them to the General Assembly for its consideration. It would appear from [§ 1-23-125, S.C. CODE](#), 1976 (as amended) that if the Board withdraws the regulations pursuant to the request of the Committee, it thereafter has the power only to make the recommended changes. [§ 1-23-125\(a\)](#), *Id.* If the Board intends to make no changes to a regulation, it may simply decline to withdraw the regulation pursuant to [§ 1-23-125\(c\)](#), *Id.* There is no other provision of the Administrative Procedures Act whereby an agency may withdraw a proposed regulation pursuant to request of a legislative committee, and thereafter resubmit the regulation without the recommended changes.

Second, you have asked whether the time for approval would be extended beyond 90 days if the regulations are withdrawn, only one section is deleted, and the remaining sections are then resubmitted to the General Assembly. The Board may not resubmit the regulations in this manner, as indicated in the answer to the first question above. Therefore, this situation could not arise. Third, you have asked whether the Board has the authority to amend other sections of the regulations when they are resubmitted, assuming that no substantive change is made in them. The statute does not provide a clear answer to this question. However, there is no express authority given an agency by the Administrative Procedures Act to make any changes other than the recommended changes, if a regulation is withdrawn and resubmitted pursuant to [§ 1-23-125](#), *Id.* Therefore if such changes are made, that regulation may possibly be treated as a new submittal pursuant to [§ 1-23-120](#), *Id.*, giving the General Assembly the period of 90 days to review that changed regulation.

The conclusions stated in this opinion are not entirely free from doubt. The Administrative Procedures Act is relatively new and the sections applied in this opinion have not been judicially interpreted. This opinion is based, however, on the general law that a statute granting powers to an administrative agency should be strictly construed. SUTHERLAND, STATUTORY CONSTRUCTION, § 65.02.

Sincerely yours,

David C. Eckstrom  
Assistant Attorney General

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