

1981 WL 157905 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 12, 1981

*1 The Honorable Sam Applegate
Member
House of Representatives
327-D Blatt Building
Columbia, South Carolina 29211

Dear Representative Applegate:

You have requested an opinion on two questions. First, you have asked what course of action is available to a legislative committee when a state licensing board, after submitting a proposed regulation to the General Assembly for review pursuant to the Administrative Procedures Act (APA), is thereafter requested by the committee to withdraw the regulation and the board refuses. The APA does not specify any particular course of action available to the committee in this instance. It provides, of course, that the ninety day review period is thereafter extended to one hundred twenty days. [§ 1-23-125, S.C. CODE, 1976](#) (as amended).

Generally, under the Administrative Procedures Act, the appropriate standing committee of either the House or the Senate may disapprove a proposed regulation, and advise the promulgating agency as to the changes it could make to obtain committee approval. [§ 1-23-125, S.C. CODE, 1976](#) (as amended). The agency may then either withdraw the proposed regulations permanently or it may withdraw them for the purpose of making the recommended changes. *Id.* If the agency refuses to withdraw the regulations, the committee's only alternative is to seek passage of a joint resolution disapproving the proposed regulation. [§ 1-23-120, Id.](#) The APA does provide that following a refusal of the agency to withdraw a proposed regulation pursuant to [§ 1-23-125, Id.](#), the review period in the General Assembly for that regulation is extended to one hundred twenty days. This period would be extended further by the number of days, if any, that the regulations may earlier have been withdrawn for revision pursuant to [§ 1-23-125, Id.](#) Thus, in answer to your first question, the only course of action available to a committee when an agency refuses, upon request, to withdraw a regulation is to seek passage of a joint resolution of disapproval during the review period which will thereby have been extended according to the statute.

Second you have asked whether 'Section 25-8 [of the South Carolina Rules and Regulations] is an expansion of the Code section which describes chiropractic practice, and if so, does the Board of Chiropractic Examiners have the legal authority to expand the scope of practice by regulation.' This Office has previously advised the Board of Chiropractic Examiners that it does not have the authority to define the scope of practice of chiropractic.

It might be argued, however, that the Board by this regulation has simply clarified an ambiguity in the licensing statute concerning the scope of chiropractic practice, under its authority to adopt regulations concerning patient care and treatment. [§ 40-9-30\(3\), Id.](#) The question then is whether this regulation expands the statutory scope of practice of chiropractic. A regulation should be construed, whenever possible, in a manner that would uphold its validity. 2 Am.Jur.2d, 'Administrative Law' § 307. It is the opinion of this Office that this regulation could, most probably, be construed in such a manner as would uphold its validity under the chiropractic licensing statute.

*2 The licensing statute defines chiropractic practice as 'spinal analysis . . . and . . . adjustment to the articulations of the vertebral column and its immediate articulations . . .' [§ 40-9-10\(c\), Id.](#) The regulation, at first glance, appears to provide that chiropractic practice shall extended to 'the therapeutic treatment of patients and such other procedures as are generally used in the practice of chiropractic.' This provision, by itself, would probably go beyond the statutory scope of practice of chiropractic.

However, it is an established rule of construction that administrative regulation should be construed together with the statute authorizing the regulation. 2 Am.Jur.2d 'Administrative Law' § 307. Thus the regulation might be construed as providing that licensed chiropractors may make 'adjustment to the articulations of the vertebral column and its immediate articulations' using only procedures generally used in the practice of chiropractic. Construed in this fashion the regulation could be harmonized with the statute and thus might be upheld if it were challenged in court. The regulation most likely could not be construed, however, as broadly permitting chiropractors to perform therapeutic 'procedures as are generally used in the practice of chiropractic' if such procedures go beyond 'adjustment to the articulations of the vertebral column and its immediate articulations . . .'

It should be noted that the statute does broadly permit spinal analysis by means of procedures 'generally used in the practice of chiropractic.' But the statute does not define treatment in the same broad terms. Since the Board of Chiropractic Examiners does not have the statutory authority to define the scope of practice of chiropractic, [Regulation 25-8](#) should be construed in such a manner as to conform to the scope of practice as defined in [§ 40-9-10, S.C. CODE](#), 1976 (as amended).

In conclusion, it is the opinion of this Office that when an Agency refuses to withdraw a regulation disapproved by a House Committee pursuant to the APA, the only option available to the Committee is to seek passage of a joint resolution of disapproval; furthermore, it is the opinion of this Office that the [Regulation 25-8](#) is valid insofar as it is construed in a manner consistent with the licensing statute for chiropractors.

The second opinion expressed herein is not altogether free from doubt. Nonetheless by limiting the regulation to the express provisions of the statute in this manner it could be regarded as remaining within the Code section which describes and defines chiropractic practice.

Sincerely yours,

David C. Eckstrom
Assistant Attorney General

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