

1981 S.C. Op. Atty. Gen. 99 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-78, 1981 WL 96604

Office of the Attorney General

State of South Carolina

Opinion No. 81-78

September 17, 1981

***1 SUBJECT: Administrative Procedure, Charitable Organization, Rules and Regulations, State Agencies, Statutes, Statutory Construction.**

(1) [Section 8-11-97, Code](#) of Laws (1976) does not place an absolute requirement on the Comptroller General to promulgate regulations, if such regulations are not necessary, expedient, or reasonably convenient and useful to accomplish the purposes of Act 149 of 1981.

(2) If regulations are promulgated, the procedures required by the Administrative Procedures Act must be followed.

TO: V. C. Traywick, Jr.
Assistant Comptroller General

QUESTION:

(1) Does [Section 8-11-97 of the Code](#) of Laws (1976) place an absolute requirement on the Comptroller General to issue regulations?

OPINION:

[Section 8-11-97 of the 1976 Code](#) provides:

The Comptroller General, and the chief financial officers concerned, shall promulgate regulations necessary and expedient to accomplishing the purposes of Sections 8-11-91 through 8-11-96.

As a general rule, the use of the word 'shall' in a statute carries with it the presumption that it is used in a mandatory or imperative sense, operating to impose a duty which may be enforced. 82 C.J.S., Statutes, § 380 a (1953). However, it is also recognized that the words 'may', 'shall' and 'must' are frequently used interchangeably in statutes without regard to their literal meaning. 73 Am.Jur., Statutes, § 23 (1974). Therefore, the word 'shall' may be construed as merely permissive, where the language of the statute as a whole, and its nature and object indicate that such was the legislative intent, and where no public benefit or private right requires it to be given an imperative meaning. 82 C.J.S., Statutes, § 380(a) (1953); see also, 2A Sutherland Statutory Construction, § 57.03 (4th ed.). Considering the language of [Section 8-11-97](#) as a whole, it is clear that regulations are mandatory only when 'necessary' or 'expedient.' Of course, the determination of what is 'necessary' and 'expedient' has been left to the discretion of the Comptroller General. If he should determine that the statutory provisions of Section 8-11-91 through 8-11-96 are sufficiently clear and definite so as to make further implementation by regulation neither expedient nor reasonably useful, then there is no mandatory requirement that regulations be promulgated.

QUESTION:

(2) If regulations are promulgated pursuant to [Section 8-11-97 of the 1976 Code](#), must the procedures set forth in the APA be followed?

OPINION:

The requirements set forth in the Administrative Procedures Act, [Sections 1-23-10, et seq., of the 1976 Code](#) apply to regulations promulgated by the Comptroller General. Regulations promulgated under the authority of [Section 8-11-97](#) have not been exempted from these requirements. Therefore, the APA procedures must be followed.

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