1981 WL 157979 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
September 23, 1981

***1 RE: § 43-1-220, Code of Laws of South Carolina (1976)**

Mr. John Stephen Hooks, Jr.
Assistant
Policy Development
Office of the Governor
Post Office Box 11450
Columbia, South Carolina 29211

Dear Mr. Hooks:
You have requested the opinion of this office on whether or not § 43-1-220, Code of Laws of South Carolina (1976), has been repealed by Act No. 651 of 1978, as amended by § 18, Part II, Act No. 178 of 1981 (General Appropriations Act).

Section 43-1-220, in summary, designates the South Carolina Department of Social Services as the single state agency to administer and supervise the administration of Title XX of the Social Security Act, as established by Public Law 93-647 (the Social Services Amendments of 1974). Section 43-1-220 also established a State Social Services Advisory Committee which was to make recommendations in relation to carrying out the provisions of Public Law 93-647. It should be noted at the outset that neither the Federal statute nor the attendant rules and regulations required the State to establish an advisory committee.

The Congress has recently enacted the Omnibus Budget Reconciliation Act of 1981, which deals with the seven block grant programs established by the Act, among which are amended Title XX of the Social Security Act which now reads: 'Title XX—Block Grants to States for Social Services'. The Title XX provisions of 1974 have been substantially altered by the 1981 Act. The old Title XX Comprehensive Services Program Plan is no longer required. While the new Title XX legislation retains the old title and trust, it has removed by law many limitations previously placed on States. Some major changes include: (1) States have complete flexibility determining who is eligible to receive services, (2) there is no longer a separate allotment for training, nor is a training plan required, (3) there is no longer a provision which sets aside specific amounts of funds for day care.

Act No. 651 of 1978, as amended, creates the Joint Appropriations Review Committee and among the pertinent provisions thereof under the amendments, § 4 provides that with the exceptions of appropriations from the general fund and other items referred to therein, no agency or institution of state government shall receive and expend any funds without prior approval of the Governor and the concurrence by the Joint Appropriations Review Committee. This same section says that all proposals for the expenditure of federal funds shall originate which the agency or institution designated by the Governor. The same section provides that all requests for federal fund allocation shall be furnished to the Committee by the Governor with his recommendations, and within a reasonable time, a statement of concurrence or nonconcurrence will be furnished by the Committee. § 6 of Act 651 provides that when reviewing federal grant applications, the Governor shall determine the requirements or desirability for a single state agency designation. If the designation is found to be desirable or required, the Governor, with the concurrence of the Committee, shall make the designation. It should be noted that Act No. 178 contains the following repealer provision:
***2** 'All acts or parts of acts inconsistent with any of the provisions of Part II of this Act are hereby repealed.'

The brief summary of changes in the Federal law, was necessary to show that there have been rather substantial revisions in Title XX of the Social Security Act. There have also been some rather dramatic changes in the methods and procedures for the approval and receipt of federal funds in the State of South Carolina and the designation and allocation of these funds, as now provided for in Act No. 651 of 1978, as amended. It would appear that the original purpose of § 43-1-220 no longer exists, in particular, Act No. 651 gives the Governor the authority to designate the single state, agency to administer federal funds. It now appears that there is a conflict and inconsistency between § 43-1-220 and Act No. 651, as amended. 'A repeal of a statute by implication is not favored, and is to be resorted to only in event of irreconcilable conflict between provisions of two statutes, and if provisions of two statutes can be construed so that both can stand, the Supreme Court will so construe them.' In Interest of Shaw, 265 S.E.2d 522. 'To effect an implied repeal of one statute by another, they must both relate to the same subject and cover the same situation.' McCollum v. Snipes, 49 S.E.2d 12, 213 S.C. 254. Both § 43-1-220 and Act No. 651 deal with the receipt and allocation of federal funds, the former with specific federal funds and the latter with all federal funds. There is no requirement under the new Title XX Program that it be administered by a single state agency, nor a requirement for an advisory committee.

As previously noted, the original Title XX Program has been altered substantially and that portion of § 43-1-220 that created the State Social Services Advisory Committee is, in the opinion of this office, no longer effective, needed or required. This Committee was set up with a view to help make recommendations to the Department of Social Services in relation to Public Law 93-647 of 1974. Under Act No. 651 recommendations for the designation and allocation of federal funding are furnished to the Joint Review Committee by the Governor. While the new Title XX requires that the report on intended use of the block grant payments to the State be made public within the State in such manner as to facilitate comment by any person (including any federal or other public agency), during the development of the report and after its completion, the present requirements of Title XX are not nearly so elaborate or detailed as former Title XX. Once again, it would be apparent that the Advisory Committee can serve no useful purpose in light of the substantial change in the Federal statute and the substantial change in the State process for the allocation of federal funds received in this State before they can be allocated and approved for use by any agency or institution of State Government. 'If there are any conflicting provisions in two statutes, the last expression of the Legislature will control; but such rule is to be resorted only to when there is clearly an irreconcilable conflict, and all of the means of interpretation have been exhausted.' City of Spartanburg v. Blalock, 75 S.E.2d 361, 223 S.C. 252.

***3** It is the opinion of this office that § 43-1-220, Code of Laws of South Carolina (1976), has been impliedly repealed by the enactment of Act No. 651 of 1978, as amended, by Act No. 178 of 1981, as well as the fact it has been rendered a nullity by the impact of new Title XX, it being denuded of its purpose and being.

Very truly yours,

Raymond G. Halford
Deputy Attorney General

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