1981 WL 158079 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
December 21, 1981

***1** Mr. Steve Hooks
Assistant for Policy Development
Office of the Governor
P. O. Box 11450
Columbia, S. C. 29211

Dear Mr. Hooks:
You have requested an opinion of this office on the question whether or not §§ 44-5-30 and 44-7-150, Code of Laws of South Carolina (1976), as amended, have been impliedly repealed by virtue of amendments to Act 651 of 1978 (Joint Appropriations Review Committee) as contained in Section 18, Part II, Act No. 178 of 1981 (1981-82 General Appropriations Act). Section 44-5-30 denominates the Department of Health and Environmental Control as 'the single and official state health planning and development agency as defined in the federal act.' The federal act referred to is defined in § 44-5-20(2) as Public Law 93-641 (National Health Planning and Resources Development Act of 1974, 42 U.S.C. §§ 300k-t). Section 44-7-150 designates the Department of Health and Environmental Control as 'the sole state agency for control of and participation in the program for construction, repair, location, licensing and franchising of hospitals . . .' Section 44-5-30 is contained in Chapter 5 under the title 'State Health Planning and Development Act' as amended by Act No. 45 of 1979, pursuant to the requirements of Public Law 93-641. Section 44-7-150 is contained in Article 3 titled 'State Hospital Construction and Franchising Act'. as amended by Act No. 51 of 1979.

Due to the length of the federal statutes and regulations involved and also statutes, no attempt will be made herein to quote all of the applicable provisions. The pertinent provision of the 1981 amendments to Act 651 of 1978, supra, provides:
'Section 6. When reviewing federal grant applications, the Governor shall determine the requirement 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.'

There is very little argument that the requirements under Public Law 93-641 still provides for a grant application procedure and is unaffected by the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35, insofar as the funds available thereunder are converted to any form of block grant. Therefore, the remaining question under Section 6 of Act 651 is whether or not there is a requirement or desirability for a single state agency designation. The question of desirability files in light of § 42 U.S.C. § 300m, wherein it is required that there be a designation agreement with the Governor of a State for the designation of an agency (selected by the Governor) as the State health planning and development agency to administer the State administrative program and to carry out the functions prescribed under the federal act, such agreement to be entered into by the Governor and the Secretary of HHS. Therefore, the question of desirability or requirement is answered by virtue of the foregoing provision of the federal act.

***2** When the state statutes were amended in 1979 in an endeavor to comply with the requirements of Public Law 93-641, although the statutes now provide DHEC with the authorization to carry-out the mandate of the federal law, the designation of DHEC as the 'single state agency' is not required by federal law.

The documents submitted to me include a 'Designation Agreement Between the Secretary of Health and Human Services and the Governor of South Carolina', entered into by representatives of each individual, which designation continues through June 30, 1982, and complies with 42 U.S.C. § 300m(b).

It is clear that if a conflict exists between federal and state health planning laws, federal law is supreme. Park East Corp. v. Califano, 435 F. Supp. 46 (S.D.N.Y. 1977); Greater St. Louis Health Systems Agency vs. Teasdale, 506 F. Supp. 23 (E.D. Mo. 1980). Although the state statutes continue to designate DHEC as either 'the single state agency' or 'the sole state agency' this is not in conformity with the federal statutes, and in the opinion of this office under the Supremacy Clause of the United States Constitution, are invalid insofar as meeting a federal requirement, if and only if, a grant application is submitted to the Department of Health and Human Services. The question remains whether or not under the amendments to Act No. 651 of 1978, as amended, §§ 44-5-30 and 44-7-150 have been impliedly repealed. It will have to be observed, at the outset, that Section 6 of Act 651, as amended, insofar as it requires the concurrence of the committee (Joint Appropriations Review Committee) conflicts with the requirement of the federal statute, but, once again this is only where a grant application is made to the federal agency. It is clear that the federal statute [42 U.S.C. § 300m(b)] requires that the agreement be entered into by the Governor, who has complete authority to select and designate the agency. The federal statute does not explicitly require that the agency be the 'sole or single' state agency; however, from a reading of the entire federal statute, it can be concluded that while this is not used in terms of an adjective description, it is clear the authority can only be committed to an agency which contains the authority to carry-out administrative programs and functions, and while it does permit the state agency to subcontract, this can only be done with the agreement of the Governor, the designated State agency and the Secretary of HHS. Therefore, it would have to be concluded that in effect there is a single or sole state agency. It thus follows that there is an irreconcilable conflict between §§ 44-5-30, 44-7-150 and Section 6 of Act No. 651, and it is the opinion of this office that §§ 44-5-30 and 44-7-150 are repealed by implication only insofar as federal funding is concerned and a grant application is submitted to the federal agency.

It is the opinion of this office that §§ 44-5-30 and 44-7-150, Code of Laws of South Carolina (1976), as amended, must fall for two reasons. (1) As indicated, there is clear conflict between the existing federal statute and the state health planning laws, and under the Supremacy Clause the federal statutes prevail; (2) Section 6 of Act 651, as amended, requires the Governor to designate a single state agency where required and the requirement is contained in the federal statute, 42 U.S.C. § 300m(b).

***3** In conclusion, it is extremely important to note that the matter and manner of designation of a state agency is only one of many requirements that must be met when applying for a federal grant. Additionally, the agency must have the authority and resources to administer the state administrative program and to carry-out the health planning and development functions required by federal law. This authority is now vested in the Department of Health and Environmental Control. § 44-5-10 et seq., and § 44-7-110 et seq., Code of Laws of South Carolina (1976), as amended.

Very truly yours,

Raymond G. Halford
Deputy Attorney General

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