1982 WL 189495 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
December 2, 1982

***1** Honorable John C. Williams, Jr.
Chairman
South Carolina Board of Social Services
Post Office Box 6100
Spartanburg, South Carolina 29304
Honorable Robert L. Helmly
Chairman
Health Care Planning and Oversight Committee
Post Office Drawer 1194
Moncks Corner, South Carolina 29461

Gentlemen:
You have jointly requested an opinion from this Office regarding the constitutionality of the following provision relating to the Health Care Planning and Oversight Committee ('Committee'), which provision is contained in the 1982-83 General Appropriation Act:
Provided, Further, That any of the above stated provisos pertaining to the Medicaid Program which relate specifically to the current rate methodology for long term care institutions shall be waived if a different rate methodology is adopted which would render such proviso inapplicable. In the event that the current reimbursement mechanism is materially modified or replaced with a new mechanism, DSS shall submit such change to the Health Care Planning and Oversight Committee for review and approval prior to the implementation of the change. Further, should funding limitations render any of the Medicaid provisos inappropriate to implement, DSS shall request relief therefrom by submitting justification to the Health Care Planning and Oversight Committee which is empowered to grant such relief through this proviso. In both reimbursement changes or funding limitations, coordination by the Committee with the Governor's Office and the Budget and Control Board is desired.

Inasmuch as the provision has been enacted, its constitutionality must be presumed. Nevertheless, if a declaratory judgment were sought pursuant to Sections 15-53-10 et seq., CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended (the 'Uniform Declaratory Judgments Act'), in my opinion, the language would most probably be declared unconstitutional as violative of the separation of powers provision of Article I, Section 8 of the South Carolina Constitution. In State, ex rel. McLeod v. McInnis, —— S.C. —— (Opinion No. 21787 filed August 31, 1982), the South Carolina Supreme Court struck down certain statutory provisions relating to the Joint Appropriations Review Committee because they authorized the legislative branch to perform a traditional executive function, i.e., the implementation and administration of a statute:
. . . These [statutory] sections are constitutionally invalid because they would permit the twelve Defendants to control expenditures by administration rather than by legislation. . . . Slip Op. at 8.

See also, Spartanburg County v. Miller, 135 S.C. 348, 132 S.E. 673 (1924); Gunter v. Blanton, 259 S.C. 436, 193 S.E.2d 473 (1972); Aiken County Board of Education v. Knotts, 274 S.C. 144, 262 S.E.2d 14 (1980). In Spartanburg County v. Miller, the State Supreme Court set forth a rule which it has consistently applied in resolving questions of legislative overlap into the executive branch:

***2** 'As a general rule, the Legislature may not, consistently with the constitutional requirement here involved, undertake to both pass laws and execute them by setting its own members to the task of discharging such functions by virtue of their office as legislators.' 274 S.C. at 149-50. [Emphasis added.]

Applying this rule to the provision in question, a court of competent jurisdiction could find that it authorizes the Committee to perform an executive function because it permits the Committee to administer the statute by requiring the Committee's approval before any change in the current reimbursement mechanism for long term care institutions can be implemented. Assuming that the implementation of a revised reimbursement mechanism is an executive function, the Committee, composed, as it is, of members of the legislative branch, most probably cannot constitutionally participate in that function by giving prior approval to its exercise. And if, on the other hand, the function were to be considered as legislative in nature, then a legislative committee could not perform it without violating Article III, Section 1 of the South Carolina Constitution, which prohibits the delegation of legislative authority. See, e.g., Gunter v. Blanton, 259 S.C. 436, 192 S.E.2d 473 (1972).

With kind regards,

Karen LeCraft Henderson
Deputy Attorney General

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