

1980 WL 120718 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 17, 1980

*1 Mr. Vinton D. Lide
General Counsel
South Carolina Department of Social Services
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Dear Dee:

By your letter of April 14, 1980 you have asked the opinion of this Office on two questions concerning Chapter 35 of Title 43, Code of Laws of South Carolina (1976), as amended. This chapter, the codification of Act 184 of the 1977 Acts provides for the licensing and inspecting of child day care facilities by the Department of Social Services.

Your questions are: (1) Does the Department have the authority to promulgate regulations concerning fire safety requirements of the facilities covered by the Act? and (2) If so, may the Department require the State Fire Marshal or local authorities to inspect the facilities for compliance with the Department's regulations?

The opinion of this Office is that the answer to both questions is yes.

As to the first question, DSS is given specific authority to promulgate regulations by Section 43-35-910: 'The Department shall with the advice and consent of the Advisory Committee develop and promulgate regulations depending upon the nature of services to be provided for the operation and maintenance of child day care centers and group day care homes'. ('Child day care centers' and 'group day care homes' are defined by § 43-35-10(e) and (f).) Section 43-35-910 also sets out the procedure for adopting regulations. It tells with whom the Department is to consult before promulgating regulations, what procedure to follow before adopting final regulations and what procedure to follow to periodically review regulations. The section further sets out principles to guide DSS in issuing the regulations:

The regulations for operating and maintaining child day care centers and group day care homes and the suggested standards for family day care homes shall be designed to promote the health, safety and welfare of the children who are to be served by assuring safe and adequate physical surroundings and healthful food; by assuring supervision and care of the children by capable, qualified personnel of sufficient number. The regulations with respect to licensing and approval, and the suggested standards with respect to registration of family day care homes shall be designed to promote the proper and efficient processing of matters within the cognizance of the department and to assure applicants, licensees, approved operators, and registrants fair and expeditious treatment under the law.

Section 43-35-910(b).

Other evidence in the Act of DSS's regulation-making authority is Section 43-35-720. That section is on the registration and inspection of church day care facilities. The section says that local health and fire safety agencies are to inspect these facilities; if no local agencies exist to do the job, the 'appropriate' state agencies shall do it. The regulations the agencies are to apply 'shall be the same health and fire safety regulations applied to other facilities regulated under this chapter as set forth in the December 28, 1976 regulations as filed with the Secretary of State by the department for Child Day Care Centers and Group Day Care Homes'. Thus the legislature specifically recognized previous regulations the Department had issued, which regulations apparently covered fire safety. (You have sent these regulations to me. They do indeed cover fire safety, and cite as their

authority § 43-15-30, Code (1976), which says: 'The Department shall administer the provisions of this chapter and shall make and promulgate such rules and regulations relating to licensing standards and other matters as may be necessary to carry out the purposes of this chapter'. The 'chapter' is Chapter 15, Title 43, on 'child welfare agencies'; such agencies are defined broadly enough to include the facilities covered by Act 184.)

*2 The provisions quoted above show that the legislature has given DSS the authority to promulgate regulations to effectuate the Act. The only question remaining is whether rules on fire safety would be valid.

'An administrative regulation is valid as long as it is reasonably related to the purpose of the enabling legislation.' [Hunter & Walden Company, Inc. v. South Carolina State Licensing Board for Contractors](#), 272 S.C. 211, 251 S.E.2d 186 (1978). The purpose of the Act is

to define the regulatory duties of government necessary to safeguard children in care in places other than their own homes, insuring for them minimum levels of protection and supervision. Toward that end, it is the purpose of this chapter to establish statewide minimum regulations for the care and protection of children in child day care facilities, to insure maintenance of these regulations and to approve administration and enforcement to regulate conditions in such facilities. It shall be the policy of the State to insure protection of children under care in child day care facilities, and to encourage the improvement of child day care programs.

Section 43-35-20(a).

Regulations concerning fire safety would be in keeping with the purpose of the Act and are within the scope of the language that specifically gives the Department the authority to make regulations.

Your second question, on the Department's authority to require the State Fire Marshal to conduct inspections, is answered by Section 43-35-920:

In conducting investigations and inspections, the department may call on political subdivisions and governmental agencies for appropriate assistance within their authorized fields. The inspection of the health and fire safety of child day care centers and group day care homes shall be completed upon the request of the department by the appropriate agencies (i.e. Department of Health and Environmental Control, the Office of the State Fire Marshal or local authorities).

To conclude, then, it is the opinion of this Office that Chapter 35, Title 43 authorizes the Department to (1) promulgate regulations concerning fire safety requirements of child day care centers and group day care homes and (2) require the State Fire Marshal or local authorities to inspect these facilities for compliance with the Department's regulations.

Sincerely,

Eugene W. Yates, III
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