

1980 WL 120855 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 3, 1980

\*1 The Honorable James M.Waddell, Jr.  
Chairman  
Tax Study Commission  
P.O. Box 142  
Columbia, South Carolina 29202

Dear Senator Waddell

You have requested an opinion of this Office as to several questions raised by the South Carolina Tax Commission proposed [regulation 117-126](#). The questions are:

- 1) By the promulgation of [Regulation 117-126](#), has the Tax Commission initiated the proper procedure to make the Use Value Manual a regulation in accordance with the provisions of Act 176 of 1977 (Administrative Procedures Act), as amended, and consistent with the opinion from your office to Representative Robert J. Sheheen from C. Havird Jones, Jr., dated April 22, 1980?
- 2) By the promulgation of [Regulation 117-126](#), has the Tax Commission incorporated by reference the provisions of the Use Value Manual only as it exists presently or as it will be changed from time to time?
- 3) Can the General Assembly make changes in the Use Value Manual?
- 4) Can the General Assembly or a committee of the General Assembly request the Tax Commission to make changes in the Use Value Manual and, if so, what procedures does the Commission follow in making such changes?
- 5) If the Use Value Manual is adopted as a regulation by the Tax Commission, what procedure does the Commission follow in making periodic changes which may be required or needed?

The opinion of this Office as to the above stated questions are as follows:

1. This Office in an opinion issued on April 22, 1980, to Representative Robert J. Sheheen concluded that the Use Value Manual of the South Carolina Tax Commission was a regulation as the term is defined by § 1-23-10(4) of the Administrative Procedures Act, §§ 1-23-10, et seq., (Act 176 of 1977, recently amended by Acts 188 of 1979 and Act 442 of 1980). Therefore, in accordance with the procedures as outlined in the Administrative Procedures Act, and in accordance with the previously referred to opinion of this Office, the Use Value Manual itself must be promulgated as a rule and regulation.
2. As stated above the Use Value Manual itself must be promulgated as a rule and regulation. It is required by §§ 1-23-20, 40 and 120 of the Administrative Procedures Act that initially a synopsis or text—not an incorporation by reference—of such a proposed regulation be published in the State Register, and further that upon approval by the General Assembly that a complete text of such regulations be published in the State Register. (As to the procedure that the Commission must follow in making periodic changes see (5) below).
3. The General Assembly is not authorized by the Administrative Procedures Act to make changes in proposed rules and regulations; they are limited to approving or disapproving a regulation or group of regulations by means of a joint resolution. See, §§ 2 and 3 of Act 442 of 1980, amending §§ 12 and 12A of Article I of Act 176 of 1977, last amended by Act 188 of 1979.

\*2 4. The standing committee to which the regulations or group of regulations are referred is authorized to recommend changes to the promulgating agency that would be necessary to obtain committee approval. Section 12A of Article I of Act 176 of 1977, as amended by § 3 of Act 442 of 1980, sets forth the procedure by which the standing committee to which the proposed rules and regulations are referred may recommend such changes. Section 3 of Act 442 of 1980, states in part that:

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If a committee determines that it cannot approve a regulation in the form submitted it may notify the promulgating agency along with its recommendation as to changes that would be necessary to obtain committee approval. The agency may thereupon;

(a) Withdraw the regulation from the committee and resubmit it with the the recommended changes to the Speaker and the Lieutenant Governor;

(b) Withdraw the regulation permanently;

(c) Take no action and abide by whatever action is taken or not taken by the General Assembly on the regulation concerned.

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5. Periodic changes, i.e., amending or repealing, which may be required or needed to be made to a regulation or group of regulations, must follow the same procedure as that of initially promulgating such regulation(s). See, § 1 of Act 442 of 1980, which amends § 11 of Article I of Act 176 of 1977.

If this Office can be of any further assistance, please do not hesitate to contact us.

Very truly yours,

C. Havird Jones, Jr.  
Assistant Attorney General

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